CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

FORTY-THIRD CONGRESS.

SPECIAL SESSION

OF

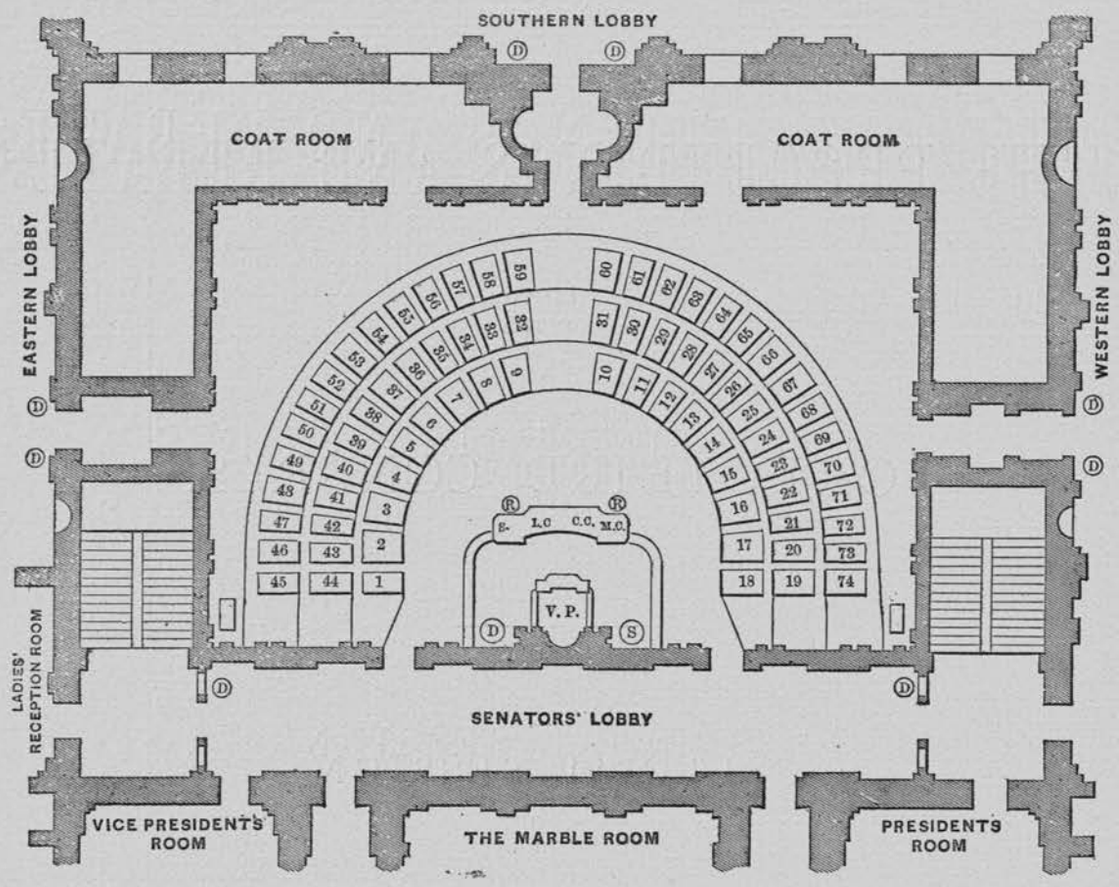
THE SENATE OF THE UNITED STATES.

MARCH 4 TO 26, 1873.

VOLUME I.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1874.

DIRECTORY OF THE SENATE.



V. P. Vice-President. S. Secretary. L. C. Legislative Clerk. C. C. Chief Clerk. M. C. Minute Clerk. S. Sergeant-at-Arms. D. Doorkeeper and assistants. R. Reporters.

1. W. G. Brownlow, Tennessee.
2. J. J. Ingalls, Kansas.
3. Frederick T. Frelinghuysen, New Jersey.
4. Simon Cameron, Pennsylvania.
5. Justin S. Morrill, Vermont.
6. H. B. Anthony, Rhode Island.
7. G. F. Edmunds, Vermont.
8. J. R. West, Louisiana.
9. William A. Buckingham, Connecticut.
10. Oliver P. Morton, Indiana.
11. Lot M. Morrill, Maine.
12. J. W. Flanagan, Texas.
13. Powell Clayton, Arkansas.
14. Arthur I. Boreman, West Virginia.
15. Phineas W. Hitchcock, Nebraska.
16. T. J. Robertson, South Carolina.
17. John J. Patterson, South Carolina.
18. Matt. W. Ransom, North Carolina.
19.
20. A. S. Merrimon, North Carolina.
21. George R. Dennis, Maryland.
22. John B. Gordon, Georgia.
23. John F. Lewis, Virginia.
24. Henry G. Davis, West Virginia.
25. William T. Hamilton, Maryland.
26. Aaron A. Sargent, California.
27. James L. Alcorn, Mississippi.
28. Abijah Gilbert, Florida.
29. William Sprague, Rhode Island.
30. John Sherman, Ohio.
31. John Scott, Pennsylvania.
32. Roscoe Conkling, New York.
33. Hannibal Hamlin, Maine.
34. Timothy O. Howe, Wisconsin.
35. Adelbert Ames, Mississippi.
36. Carl Schurz, Missouri.
37. William Windom, Minnesota.
38. Orris S. Ferry, Connecticut.
39. George G. Wright, Iowa.
40. Thomas W. Ferry, Michigan.
41. Thomas W. Tipton, Nebraska.
42. William B. Allison, Iowa.
43. S. W. Dorsey, Arkansas.
44. S. B. Conover, Florida.
45.
46. George S. Boutwell, Massachusetts.
47. R. J. Oglesby, Illinois.
48. John H. Mitchell, Oregon.
49. Bainbridge Wadleigh, New Hampshire.
50. Daniel D. Pratt, Indiana.
51. Alexander Ramsey, Minnesota.
52. Zachariah Chandler, Michigan.
53. John P. Jones, Nevada.
54. Morgan C. Hamilton, Texas.
55. Charles Sumner, Massachusetts.
56. John A. Logan, Illinois.
57. Reuben E. Fenton, New York.
58. Aaron H. Cragin, New Hampshire.
59. Matthew H. Carpenter, Wisconsin.
60. William M. Stewart, Nevada.
61. George E. Spencer, Alabama.
62. John W. Stevenson, Kentucky.
63. Allen G. Thurman, Ohio.
64. Eugene Casserly, California.
65. Thomas F. Bayard, Delaware.
66. Henry Cooper, Tennessee.
67. John P. Stockton, New Jersey.
68. Eli Saulsbury, Delaware.
69. Thomas M. Norwood, Georgia.
70. John W. Johnston, Virginia.
71. James K. Kelly, Oregon.
72. Lewis V. Bogy, Missouri.
73. George Goldthwaite, Alabama.
74. Thomas C. McCreery, Kentucky.

CONGRESSIONAL RECORD.

DEBATES AND PROCEEDINGS OF THE FORTY-THIRD CONGRESS.

SPECIAL SESSION OF THE SENATE.

IN THE SENATE.

TUESDAY, *March* 4, 1873.

Hon. HENRY WILSON, Vice-President of the United States, having taken the oath of office at the close of the last regular session of the Forty-second Congress, took the chair and directed the Secretary to read the proclamation convening a special session of the Senate.

The Secretary (Hon. GEORGE C. GORHAM) read the proclamation, as follows:

A PROCLAMATION

Whereas objects of interest to the United States require that the Senate should be convened at twelve o'clock on the fourth of March next, to receive and act upon such communications as may be made to it on the part of the Executive:

Now, therefore, I, ULYSSES S. GRANT, President of the United States, have considered it to be my duty to issue this, my proclamation, declaring that an extraordinary occasion requires the Senate of the United States to convene for the transaction of business at the Capitol, in the city of Washington, on the fourth day of March next, at twelve o'clock at noon on that day, of which all who shall at that time be entitled to act as members of that body are hereby required to take notice.

Given under my hand and the seal of the United States, at Washington, the twenty-first day of February, in the year of our Lord one thousand eight [L. S.] hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

The VICE-PRESIDENT. The Secretary will read the names of the newly-elected Senators.

The list was read as follows:

Hon. Bainbridge Wadleigh, of New Hampshire.
Hon. Justin S. Morrill, of Vermont.
Hon. Orris S. Ferry, of Connecticut.
Hon. Roscoe Conkling, of New York.
Hon. Simon Cameron, of Pennsylvania.
Hon. George R. Dennis, of Maryland.
Hon. Augustus S. Merrimon, of North Carolina.
Hon. John J. Patterson, of South Carolina.
Hon. Simon B. Conover, of Florida.
Hon. George E. Spencer, of Alabama.
Hon. Stephen W. Dorsey, of Arkansas.
Hon. John B. Gordon, of Georgia.
Hon. Lewis V. Bogy, of Missouri.
Hon. Thomas C. McCreery, of Kentucky.
Hon. John Sherman, of Ohio.
Hon. Oliver P. Morton, of Indiana.
Hon. Richard J. Oglesby, of Illinois.
Hon. Timothy O. Howe, of Wisconsin.
Hon. William B. Allison, of Iowa.
Hon. John J. Ingalls, of Kansas.
Hon. Aaron A. Sargent, of California.
Hon. John H. Mitchell, of Oregon.
Hon. John P. Jones, of Nevada.

When the name of Mr. Conkling was called,

Mr. HAMLIN said: Mr. President, owing to some inadvertence the credentials of the Senator-elect from New York have not been presented in this body. It is a matter of public notoriety that he has been elected; and, in accordance with the usage of the body, I move that the oath of office be administered to him.

The VICE-PRESIDENT. The question is on the motion of the Senator from Maine.

The motion was agreed to.

As their names were called the respective Senators-elect came forward, and the oaths prescribed by law were administered to them, with the exception of Mr. Wadleigh, Mr. Ferry, Mr. Gordon, Mr. Spencer, and Mr. Jones, who were not present.

The Senators-elect having been sworn and taken their seats in the Senate, the following Senators were present:

From the State of—
Maine—Hon. Hannibal Hamlin and Hon. Lot M. Morrill.
New Hampshire—Hon. Aaron H. Cragin.
Vermont—Hon. George F. Edmunds and Hon. Justin S. Morrill.
Massachusetts—Hon. Charles Sumner.
Rhode Island—Hon. Henry B. Anthony and Hon. William Sprague.
Connecticut—Hon. William A. Buckingham.
New York—Hon. Roscoe Conkling and Hon. Reuben E. Fenton.
New Jersey—Hon. Frederick T. Frelinghuysen.
Pennsylvania—Hon. Simon Cameron and Hon. John Scott.
Delaware—Hon. Thomas F. Bayard and Hon. Eli Saulsbury.
Maryland—Hon. George R. Dennis and Hon. William T. Hamilton.
Virginia—Hon. John F. Lewis.
North Carolina—Hon. Augustus S. Merrimon and Hon. Matthew W. Ransom.
South Carolina—Hon. John J. Patterson and Hon. Thomas J. Robertson.
Georgia—Hon. Thomas M. Norwood.
Florida—Hon. Simon B. Conover and Hon. Abijah Gilbert.
Alabama—Hon. George Goldthwaite.
Mississippi—Hon. James L. Alcorn and Hon. Adelbert Ames.
Louisiana—Hon. J. Rodman West.
Texas—Hon. J. W. Flanagan and Hon. Morgan C. Hamilton.
Arkansas—Hon. Powell Clayton and Hon. Stephen W. Dorsey.
Missouri—Hon. Lewis V. Bogy and Hon. Carl Schurz.
Tennessee—Hon. Henry Cooper.
Kentucky—Hon. Thomas C. McCreery and Hon. John W. Stevenson.
West Virginia—Hon. Arthur I. Boreman and Hon. Henry G. Davis.
Ohio—Hon. John Sherman and Hon. Allen G. Thurman.
Indiana—Hon. Oliver P. Morton and Hon. Daniel D. Pratt.
Illinois—Hon. John A. Logan and Hon. Richard J. Oglesby.
Michigan—Hon. Zachariah Chandler and Hon. Thomas W. Ferry.
Wisconsin—Hon. Matthew H. Carpenter and Hon. Timothy O. Howe.
Iowa—Hon. Willam B. Allison and Hon. George G. Wright.
Minnesota—Hon. Alexander Ramsey and Hon. William Windom.
Kansas—Hon. Alexander Caldwell and Hon. John J. Ingalls.
California—Hon. Eugene Casserly and Hon. Aaron A. Sargent.
Nebraska—Hon. Phineas W. Hitchcock and Hon. Thomas W. Tipton.
Oregon—Hon. James K. Kelly and Hon. John H. Mitchell.
Nevada—Hon. William M. Stewart.

INAUGURATION CEREMONIES.

The persons entitled to admission on the floor of the Senate Chamber having been admitted to the places reserved for them, the President, Hon. ULYSSES S. GRANT, entered the Senate Chamber, accompanied by Mr. CRAGIN, Mr. LOGAN, and Mr. BAYARD, members of the Committee of Arrangements, and was conducted to a seat in front of the Secretary's desk, and the members of the committee were seated on his right and left.

The VICE-PRESIDENT. The order of proceedings will now be formed, for the purpose of repairing to the front of the portico, according to the programme prepared by the Committee of Arrangements.

Those assembled in the Senate Chamber proceeded to the platform on the central portico of the Capitol in the following order:

The Marshal of the Supreme Court.
Ex-Presidents and ex-Vice-Presidents.
The Supreme Court of the United States.
The Sergeant-at-Arms of the Senate.
The Committee of Arrangements.
The PRESIDENT of the United States, the PRESIDENT-ELECT.
The VICE-PRESIDENT and the Secretary of the Senate.
The members of the Senate.
The Diplomatic Corps.
Members of the Cabinet and the Solicitor-General.
Ex-members of the House of Representatives, and members-elect of the Forty-third Congress.
Governors of States.
Officers of the Army and Navy.

Other persons admitted to the floor of the Senate Chamber and to the reserved seats at the left of the diplomatic gallery.

The PRESIDENT-ELECT delivered the following

INAUGURAL ADDRESS.

FELLOW-CITIZENS: Under Providence I have been called a second time to act as Executive over this great nation. It has been my endeavor in the past to maintain all the laws, and, so far as lay in my power, to act for the best interests of the whole people. My best efforts will be given in the same direction in the future, aided, I trust, by my four years' experience in the office.

When my first term of the office of Chief Executive began, the country had not recovered from the effects of a great internal revolution, and three of the former States of the Union had not been restored to their Federal relations. It seemed to me wise that no new questions should be raised so long as that condition of affairs existed. Therefore the past four years, so far as I could control events, have been consumed in the effort to restore harmony, public credit, commerce, and all the arts of peace and progress.

It is my firm conviction that the civilized world is tending toward republicanism, or government by the people through their chosen representatives, and that our own great republic is destined to be the guiding star to all others.

Under our republic we support an army less than that of any European power of any standing, and a navy less than that of either of at least five of them. There could be no extension of territory on the continent which would call for an increase of this force, but rather might such extension enable us to diminish it.

The theory of government changes with general progress. Now that the telegraph is made available for communicating thought, together with rapid transit by steam, all parts of a continent are made contiguous for all purposes of government, and communication between the extreme limits of the country made easier than it was throughout the old thirteen States at the beginning of our national existence.

The effects of the late civil strife have been to free the slave and make him a citizen. Yet he is not possessed of the civil rights which citizenship should carry with it. This is wrong, and should be corrected. To this correction I stand committed, so far as executive influence can avail.

Social equality is not a subject to be legislated upon, nor shall I ask that anything be done to advance the social status of the colored man, except to give him a fair chance to develop what there is good in him, give him access to the schools, and when he travels let him feel assured that his conduct will regulate the treatment and fare he will receive.

The States lately at war with the General Government are now happily rehabilitated, and no executive control is exercised in any one of them that would not be exercised in any other State under like circumstances.

In the first year of the past administration the proposition came up for the admission of Santo Domingo as a Territory of the Union. It was not a question of my seeking, but was a proposition from the people of Santo Domingo, and which I entertained. I believe now, as I did then, that it was for the best interest of this country, for the people of Santo Domingo, and all concerned, that the proposition should be received favorably. It was, however, rejected, constitutionally, and therefore the subject was never brought up again by me.

In future, while I hold my present office, the subject of acquisition of territory must have the support of the people before I will recommend any proposition looking to such acquisition. I say, here, however, that I do not share in the apprehension held by many as to the danger of governments becoming weakened and destroyed by reason of their extension of territory. Commerce, education, and rapid transit of thought and matter, by telegraph and steam, have changed all this. Rather do I believe that our Great Maker is preparing the world, in His own good time, to become one nation, speaking one language, and when armies and navies will be no longer required.

My efforts in the future will be directed to the restoration of good feeling between the different sections of our common country; to the restoration of our currency to a fixed value as compared with the world's standard of values, gold, and if possible to a par with it; to the construction of cheap routes of transit throughout the land, to the end that the products of all may find a market and leave a living remuneration to the producer; to the maintenance of friendly relations with all our neighbors and with distant nations; to the re-establishment of our commerce and share in the carrying trade upon the ocean; to the encouragement of such manufacturing industries as can be economically pursued in this country, to the end that the exports of home products and industries may pay for our imports: the only sure method of returning to and permanently maintaining a specie basis; to the elevation of labor; and by a humane course to bring the aborigines of the country under the benign influences of education and civilization. It is either this or a war of extermination. Wars of extermination, engaged in by people pursuing commerce and all industrial pursuits, are expensive even against the weakest people, and are demoralizing and wicked. Our superiority of strength and advantages of civilization should make us lenient toward the Indian. The wrong inflicted upon him should be taken into account and the balance placed to his credit. The moral view of the question should be considered, and the question asked, cannot the Indian be made a useful and productive member of society by proper teaching and treatment? If the effort is made in good faith we will stand better before the civilized nations of the earth, and in our own consciences, for having made it.

All these things are not to be accomplished by one individual, but they will receive my support, and such recommendations to Congress as will, in my judgment, best serve to carry them into effect. I beg your support and encouragement.

It has been, and is, my earnest desire to correct abuses that have grown up in the civil service of the country. To secure this reformation, rules regulating methods of appointment and promotions were established and have been tried. My efforts for such reformation shall be continued, to the best of my judgment. The spirit of the rules adopted will be maintained.

I acknowledge before this assemblage, representing as it does every section of our country, the obligation I am under to my countrymen for the great honor they have conferred on me by returning me to the highest office within their gift, and the further obligation resting on me to render to them the best services within my power. This I promise, looking forward with the greatest anxiety to the day when I shall be released from responsibilities that at times are almost overwhelming, and from which I have scarcely had a respite since the eventful firing upon Fort Sumter, in April, 1861, to the present day. My services were then tendered and accepted under the first call for troops growing out of that event. I did not ask for place or position, and was entirely without influence or the acquaintance of persons of influence, but was resolved to perform my part in a struggle threatening the very existence of the nation. I performed a conscientious duty, without asking promotion or command, and without a revengeful feeling toward any section or individual. Notwithstanding this, throughout the war, and from my candidacy for my present office in 1868 to the close of the last presidential campaign, I have been the subject of abuse and slander scarcely ever equaled in political history, which, to-day, I feel that I can afford to disregard in view of your verdict, which I gratefully accept as my vindication.

The oath of office was then administered to the President by the Chief Justice of the Supreme Court.

The Senate returned to their chamber, and the Vice-President took the chair at forty-seven minutes past twelve o'clock p. m.

HOUR OF MEETING.

Mr. ANTHONY. I move that until otherwise ordered the hour of the daily meeting of the Senate be twelve o'clock noon.

The motion was agreed to.

NOTIFICATION TO THE PRESIDENT.

Mr. ANTHONY. Now, I move that when the Senate adjourns to-day it be to meet on Thursday next, the day after to-morrow.

Mr. HAMLIN. I think we had better meet here to-morrow. ["O, no."] I think we are called upon to notify the President that we are convened pursuant to his proclamation. That certainly ought to be done by to-morrow.

Mr. CONKLING. Let that be done to-day.

Mr. HAMLIN. Very well. If that is agreeable to the Senate, I move that a committee of three be appointed to notify the President that a quorum of the Senate is present and ready to proceed to business.

The VICE-PRESIDENT. Does the Senator from Rhode Island withdraw his motion?

Mr. ANTHONY. Certainly, for that purpose.

The VICE-PRESIDENT. The Senator from Maine moves that a committee of three be appointed to wait upon the President of the United States and inform him that a quorum of the Senate has assembled, pursuant to his proclamation, and that the Senate is ready to proceed to business.

The motion was agreed to; and the Vice-President being authorized, by unanimous consent, to appoint the committee, Messrs. HAMLIN, SHERMAN, and CASSERLY were appointed.

ADJOURNMENT TO THURSDAY.

Mr. ANTHONY. Now I renew my motion that when the Senate adjourns to-day it be to meet on Thursday next.

Mr. BOREMAN. It seems to me that we might as well meet to-morrow. We do not expect to do much for a day or two, but we can get under way and do something toward facilitating our business to-morrow. We shall not stay here very long at all events, and I think we might as well commence our business, so as to complete it as soon as possible.

Mr. CONKLING. If my friend from West Virginia had been in a moment before, he would have heard the expression of opinion of various Senators from all over the chamber against meeting to-morrow, the desire being almost universal to have that day for rest. I hope we shall be allowed to vote and not spend time on the question.

Mr. BOREMAN. I shall vote against the motion, but I shall not press any opposition in debate. The question is with the Senate.

The VICE-PRESIDENT. The question is on the motion of the Senator from Rhode Island, that when the Senate adjourns to-day it be to meet on Thursday next.

The motion was agreed to.

Mr. CONKLING. Now, unless some Senator has another motion to make, I move that the Senate adjourn.

The motion was agreed to; and (at twelve o'clock and fifty-two minutes p. m.) the Senate adjourned.

IN THE SENATE.

THURSDAY, *March* 6, 1873.

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

The journal of the proceedings of Tuesday last was read and approved.

Hon. WILLIAM G. BROWNLOW, from the State of Tennessee, appeared in his seat to-day.

SWEARING IN OF SENATORS.

The VICE-PRESIDENT. If there are any Senators-elect present who have not been sworn in, they will now advance to the chair.

Mr. STEWART. I ask that the oath be administered to my colleague.

Hon. ORRIS S. FERRY, from the State of Connecticut, and Hon. JOHN P. JONES, from the State of Nevada, advanced to the chair, and the oaths prescribed by law having been administered to them, they took their seats in the Senate.

Mr. CRAGIN. I ask that the oath of office be administered to my colleague.

Hon. BAINBRIDGE WADLEIGH, from the State of New Hampshire, and Hon. George E. Spencer, from the State of Alabama, advanced to the chair.

Mr. BAYARD. Do I understand the Senator from Alabama proposes to be sworn in at this time?

The VICE-PRESIDENT. The Chair so understands.

Mr. BAYARD. I shall object to the swearing in of Hon. George E. Spencer, from Alabama, until the question of the credentials of another and opposing Senator have been considered. I make no objection to the honorable Senator from New Hampshire being sworn in. The Chair called the honorable Senator from New Hampshire; but I observed Mr. Spencer approach the chair and hold up his hand to be sworn at the same time. He is now aware, if he was not before, that there is objection to his being sworn in as a member of this body until the credentials of a person who claims title to the seat, as well as his own credentials, have been submitted to the scrutiny and the report of a committee of this body. When they have been passed upon and the Senate have made their order, I think it will be time to swear in whoever was legally elected.

As a member of this body, I desire that its proceedings shall be conducted with regularity. The Chair will understand that there is not the least objection to the swearing in of the honorable Senator from New Hampshire, but simply to the proposed member from Alabama, who was not called by the Chair, and yet who approached and raised his hand for the purpose of taking the oath of office.

The VICE-PRESIDENT. The Chair will first administer the oath to the Senator-elect from New Hampshire.

Mr. CAMERON. Allow me a moment, Mr. President. I desire to correct an error made by the Senator from Delaware.

The Senator says that the name of George E. Spencer was not called by the Vice-President. I am very much mistaken if his name was not called, both his name and that of the Senator from New Hampshire. Am I correct?

The VICE-PRESIDENT. The Chair will state that an invitation was extended to Senators who had not been sworn to advance to the chair and have the oath administered. Objection has been made to administering the oath to Mr. Spencer. The Chair therefore will first administer the oath to the Senator-elect from New Hampshire, and then the objection will be considered.

The oaths prescribed by law were administered to Mr. WADLEIGH, and he took his seat in the Senate.

SENATOR FROM ALABAMA.

Mr. MORTON. If it is in order I offer the following resolution and ask for its present consideration.

The VICE-PRESIDENT. The question before the Senate is on administering the oath to the Senator-elect from Alabama.

Mr. MORTON. Let my resolution be deferred, then.

Mr. HAMLIN. On that matter I desire to say only that the usual practice of the Senate has been, I believe, to administer the oath of office to a Senator who presents himself with credentials in the usual form. Such I understand to be the case with Mr. Spencer; indeed his contestant admits that. That in no way and in no manner involves an examination and discussion of the merits of the case subsequently. I believe, however, precedents may be found in the Senate where credentials have been referred to the Committee on the Judiciary formerly, and since the creation of the new committee, to the Committee on Privileges and Elections, and the oath of office refused; but the usual practice has been the other way, and I am not sure but that the practice has been uniform. At all events it does not involve the question of the right of either party if the member is sworn in upon the credentials presented. It seems to me, therefore, better that the oath of office should be administered and the contest referred to the Committee on Privileges and Elections, where it belongs.

Mr. ALCORN. I move that the credentials of Mr. Spencer be taken from the table and read for information.

Mr. BAYARD. If I may amend that motion, I propose that the credentials of Mr. Francis W. Sykes be read also in connection with them.

The VICE-PRESIDENT. It is moved that the credentials of Mr. Spencer and Mr. Sykes be read.

Mr. ALCORN. I do not see the propriety of reading anything but credentials.

The VICE-PRESIDENT. The papers in regard to this case have been ordered to be printed, and have not been returned from the printer.

Mr. BAYARD. I understand the Chair to state that the papers—that is to say, the memorials and credentials—of these two parties, Mr. Spencer and Mr. Sykes, have been ordered to be printed for the use of the Senate, and that as yet they have not been returned from the printer.

The VICE-PRESIDENT. The Chair is so informed by the Secretary.

Mr. BAYARD. Then, as the subject is filled with grave importance, and as it should be accompanied with all that decorum which befits its gravity, I move that the consideration of the application of Mr. Spencer and of Mr. Sykes to be sworn in be postponed until to-morrow, or such other day as the printer shall have made return of the papers and memorials for the information of the Senate.

The VICE-PRESIDENT. It is moved by the Senator from Delaware that the question of administering the oath to Mr. Spencer be deferred until to-morrow, or some day when the papers shall have been returned by the printer.

Mr. CONKLING. The suggestion of the Senator from Delaware is made, as to terms and manner, in a way entirely unexceptionable.

Mr. ALCORN. Will the Senator permit me to interrupt him for a moment? I wish to inquire, with the permission of the Senator from New York, whether it is true that there are credentials here for any one but Mr. Spencer?

Mr. CONKLING. I will come to that in a moment. It was on that point that I rose to speak. I was in the act of observing that the Senator from Delaware has put in the least exceptionable and least offensive form an objection which, in its nature, is somewhat abrupt whenever it is made in either House. In the other House it has been made sometimes; always there, I believe, however, in cases growing out of the war, or what I may denominate the reconstruction policy of Congress. My impression is that it has been made here once or twice, as suggested by the Senator from Maine, and always in cases coming from the Southern States at a time when the question of the Statehood or *status* of those States was in some way involved. The honorable Senator from Delaware deems it his duty to make it now; but I submit to the Senate, and to him, that nothing is to be gained by it, and that upon the state of the case, as I understand it, the Senator need not and ought not to ask even a postponement. It appears from the records of the Senate that credentials are here for Mr. Spencer in the ordinary form and involving on their face no question. There has been laid upon the table of the Senate, not credentials for Mr. Sykes, but a memorial, which the Senator from Delaware has, and which I have.

Mr. BAYARD. Allow me to interrupt the honorable Senator from New York.

Mr. CONKLING. Certainly.

Mr. BAYARD. The honorable Senator will find upon the front of this memorial, in its very commencement, the credentials, and they will be found in full; that is to say, a certificate of the election by the legislature of Alabama, according to the forms of the Federal law passed in 1866, of Mr. Sykes; and those papers are duly authenticated and are on the Clerk's table; it is these papers which were ordered to

be printed, as I understand, and to which the Chair referred just now.

Mr. CONKLING. I was not going to overlook that fact and comment upon it. I repeat, however, again, as I was in the act of saying, that Mr. Sykes appears here as a memorialist, and he presents "the memorial of Francis W. Sykes to the Senate of the United States," and as a part of the contents and recital of his memorial he sets out the certificate to which the Senator refers. He concludes his memorial, showing that he has full knowledge of the practice of the Senate and the fact that he loses nothing by Mr. Spencer's being sworn in. He says:

28. Your petitioner respectfully submits to the Senate that he is entitled to be seated as the Senator of the United States for the State of Alabama from and after the 4th of March, 1873, and he is ready to take the oath of office whenever it shall be the pleasure of the Senate that he shall do so; or, if the Senate shall decide that the credentials presented by Hon. George E. Spencer *prima facie* entitle him to be received and seated as a Senator for Alabama, your petitioner respectfully asks that such action be taken in the premises by the Senate as will enable him duly to present, and to prove, and to establish his right to the office of Senator, and his right to be received and seated as the Senator from Alabama, for the term to commence on the 4th of March, 1873, in the place of Hon. George E. Spencer, and notwithstanding the certificate of his election, which he has put in the possession of the Senate.

The conclusion of this memorial states exactly, as I undertand it, the practice of the Senate, and calls attention to the fact that under that practice every right is preserved to the contestant, and every right is preserved to the Senate. Nothing is lost, nothing is changed, because Mr. Spencer is simply permitted to take his seat *prima facie* upon the evidence which appears on the face of the paper. So it seems to me that the substance being exactly equivalent, there being nothing which even the contestant objects to, and there being in the usage of the Senate no objection whatever in the effect which it is to produce, the smoother way, the better way, is to allow Mr. Spencer to take the oath of office, and then refer this memorial and his credentials, and all other papers relating to the case, to the Committee on Privileges and Elections, which will have the same jurisdiction, with the same force and effect in all regards, as if Mr. Spencer is interrupted upon the threshold and prevented from taking the oath in the ordinary way,

Mr. BAYARD. Mr. President, of course not for the purpose of confusing or obscuring this question before the Senate, but with that effect nevertheless, as I respectfully submit to him and the Senate, the honorable Senator from New York styles Mr. Sykes a memorialist, a petitioner; and he would, in effect, have the Senate believe and act on the belief that Mr. Sykes is here solely in the position of a memorialist, of a petitioner for the right to contest. Not so, Mr. President. Mr. Sykes's credentials as a Senator from the State of Alabama are upon the table of the Senate; they have been read to the Senate; they are entitled to as much consideration from the Senate as those of any other person who may have a formal certificate of election; and the honorable Senator from New York, I think, is in error (although I bow to his longer experience in this body) when he supposes that only in that most abnormal condition of affairs, known as the period of reconstruction of the Southern States, has a *prima-facie* certificate not been held sufficient for a Senator-elect to have the oath administered to him upon. Why, sir, let me remind him of the case from Oregon of Mr. Stark, Senator from that State. He came here the only person claiming the seat, the only person certified in the forms of law to the Senate; but he was refused his seat, and his credentials, in the absence of all contest, with nothing of which the Senate could even take judicial notice, or actual notice, were referred, and the right to a seat denied to him until the committee acted upon his case. There was the case also of our brother from Alabama, [Mr. GOLDTHWAITE.] In that case there was no contest, no one claiming his seat, no such condition of affairs as exists now, of which I say the Senate is bound to take not only actual notice, they having been clearly and formally notified of the facts, but to take judicial notice; there was no contest there; no suggestion of a contest in regard to Mr. GOLDTHWAITE'S place; and yet how long was it that he remained out of his seat in this body, and that the State of Alabama was deprived of her representation here by the action of the Senate? It was perhaps a year, certainly many months—I forget the exact length of time—but the fact of delay, and delay for a considerable period of time, is a fact beyond cavil or doubt.

There is here before the Senate a certificate, in due form, from a governor of Alabama, that Mr. George E. Spencer was elected Senator at a certain time and for a certain period, to commence from the 4th of March instant. But there is no record to sustain that certificate; and, on the contrary, the record, the verity of which cannot be denied, distinctly denies the truth of the governor's certificate. There is a certification of the record, of the substance of what was required by the law of Congress passed in 1866, showing that another and a different person from Mr. Spencer is the legally and duly chosen representative in this body from the State of Alabama for six years from and after the 4th of March instant. The record of the proceedings of the body who alone can choose the Senator are here before you in due form. You have also a certificate from a governor which is contradicted by the record, which alone can speak in regard to the facts contained within it. Nothing can contradict a record. Many things can contradict a certificate. The record imports the highest verity, even in a court of law; and this is a court, the high court of a State's judicature. We have the legislative record of that State, showing to this Senate and to the world, by the highest proof known to our system of government, that a person not Mr. Spencer was duly elected, according to the act of Congress, to a seat in this body for six years from and after the 4th day of this present month. So, then, you have a certificate which is denied by the record, and you have a record which cannot be set aside by a certificate. Between the two the Senate should choose; between the form that is capable of denial, and that is denied, and the substance which has force of itself, and cannot be denied.

Now, sir, I do not wish to argue this case, except sufficiently to show the Senate that it would be a direct violation of the law of the United States, a direct perversion of the will of the people of Alabama, if Mr. George E. Spencer for one moment of time shall be admitted by this Senate, as the case now, without the action of its committee, *prima facie*, stands before the Senate. It will be, I say, a violation of the rights of the people of that State, a violation of the rights of the people of every other State, if you allow a certificate that is contradicted by the record to take the place of that proof which the record imports, and which cannot be denied.

Sir, there never was a case which called for more careful and orderly and deliberate proceedings upon the part of this body than this, the case now before you. I am willing to hear, and I can say most candidly that I am in a mental condition fairly to judge between the legal rights of these parties. To me the member who has been sitting here is personally known. The gentleman who claims the place now for the present term is, personally, scarcely known to me. Both are nearly strangers, and to either or to both I feel that I am capable of doing accurate, simple, and yet full justice, and I wish to have the opportunity of doing it. The Senate must have the opportunity; they must have it by necessary and proper delay and examination, and therefore I trust they will not stand upon form, neglecting the substance, when the substance is here before them as formally authenticated as any law could require or as any reasonable demand could suggest.

The credentials of Francis W. Sykes as a member-elect of this body as Senator from the State of Alabama, for the term of six years from and after the 4th day of the present month, are upon the table of the Senate. They are there a true and veritable record, duly attested from the body appointed by law alone to choose a Senator. Was it the legislature? That will not be denied. Did they choose him? That will not be denied. There stands the record of both facts. How can you with that record permit the certificate of a governor, referring to no record, having no record that he would venture to refer to, a mere certificate of form, to triumph over the substance of a people's choice?

No, Mr. President, I trust that there may be delay for the purpose of due and careful examination and consideration, and that we may have the aid which the care and scrutiny of a body raised by the will of the Senate, its Committee on Privileges and Elections, may give to this case, in order, not only that we may follow in the path of just precedent, but that we may stand on the rock of law and of justice.

Mr. THURMAN. Mr. President, I shall occupy but a few minutes of the time of the Senate on this subject.

Technically speaking, the credentials of the gentleman who claims to be Senator, Mr. Spencer, are not correct. It is not a certificate to the President of the Senate of the United States, as the law requires it to be, but rather a certificate at large, or a commission. I am frank to say that for my own part I attach very little importance to that, the commission being in every other respect regular; and I should be inclined, were there nothing in the case but that, to say that the greater includes the less, and when the governor certifies to everybody he certifies to the President of the Senate, although the credentials are really not addressed to anybody, I believe. Technically, as I said, they are not correct, and it might be worthy of the consideration of the Committee on Privileges and Elections whether they do come within the statute, for the statute asserts in very plain words—

That it shall be the duty of the governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States.

That is not done here in terms; whether it is in substance or not might be worthy of consideration. I repeat, however, that not having any love for technicalities, were there nothing else in this case, I should be inclined to overlook such a mere matter of form as the want of a certificate to the President of the Senate.

Now, I wish to say, in very few words, that I think the credentials of Mr. Spencer, and the credentials, if they are credentials, of Mr. Sykes, should both go to the Committee on Privileges and Elections. I hold this to be the settled practice of the Senate, that where there is but one legislature, no question as to the validity of that legislature, and a gentleman presents himself here with a certificate in due form, purporting to show his election by that legislature to a seat in the Senate, he makes a *prima-facie* case, and is entitled to take his seat here, of course his qualifications being such as the Constitution requires; and if there be reason for contesting his seat, that is to be a matter of subsequent examination; and that for the reason that a *prima-facie* case is a good title, unless a better case is shown to overthrow it, and for the further reason that where an individual comes with a *prima-facie* case it is not right to keep his State in part unrepresented because some contest may be made about the validity of his title. I think that that is reasonable, and I think that that is the

practice of the Senate, and has been from its foundation with scarcely an exception.

There have been some cases that might seem to establish a contrary doctrine; but they do not when carefully examined. The only one that I now recollect of, apart from Shaw's case, which I have not carefully examined, was the case of the Senator from Alabama, [Mr. GOLDTHWAITE.] He came here with credentials perfectly regular, showing an election by the only legislature in Alabama, a legislature whose constitutional validity no man questioned, and he was kept out of his seat for nearly a year, upon simply the remonstrance of a set of—I was going to say—irresponsible memorialists to the Senate, with no pretense that any other man was elected; with no pretense that Mr. GOLDTHWAITE was not the Senator if anybody was chosen; and no pretense that the legislature by which he was elected was not a legal, valid, and constitutional legislature. I thought that was wrong. I battled against it for a long time, and at last successfully, and he was allowed to take his seat.

But, Mr. President, while it is true that the practice of the Senate has been, and rightfully I think, to admit a person whose credentials *prima facie* show his right to a seat, where there is a competent, valid legislature to elect him, and where the State is entitled to representation, it is equally true that where there was no valid legislature to elect him, or where the State was not entitled to representation, the Senate has looked behind the credentials and refused to let the bearer of them, however regular on their face, take his seat. Thus the Senators from Georgia were kept out for a long time, on the ground that the State was not yet entitled to representation, although the State had been declared to be entitled to representation, and had actually been represented a whole session in the other House of Congress.

And so with much more reason must we say, where it is in evidence before us that there are in a State two bodies, each of which claims to be the legislature of the State, and one person is elected by one and another person elected by the other, that we are not concluded by the formal credentials that one of the parties may present signed by the governor of the State, but we have a right to look behind and see whether the legislature, or body called the legislature, that elected the bearer of those credentials, was the proper legislature or not; and that it is which distinguishes this case from those that have preceded it. Here we know that there are two bodies in the State of Alabama, or have been, each claiming to be the legislature of that State. I say we know it; we have the evidence of it on our table in the most authentic form; and in addition to that it is one of those facts of which the Senate historically can take notice, that there were at the time of the election of Mr. Spencer by one of these bodies, and at the time of the election of Mr. Sykes by the other of these bodies, two bodies in Alabama, each of which claimed to be the lawful legislature of that State. And it is a singular fact, if I am not mistaken or misinformed, that this very governor, who certifies to the election of Mr. Spencer, was counted into office by the legislature or the senate of the legislature by which Mr. Sykes was elected. The very power which he got to give a certificate of election to a Senator was derived from a canvass of his vote, and a declaration that he was elected governor of Alabama by the senate of the very legislature by which Mr. Sykes was elected.

Now, Mr. President, in a case of this kind, where two bodies claim each to be the legislature of a State, the Senate, I think, is not at all concluded by the credentials, signed by the governor, that any gentleman may present; but in such a case as that, making an exception to the general rule, it is proper to refer the credentials of both persons claiming to be Senators to the Committee on Privileges and Elections, in order that an examination may be made.

But, sir, this question is a large one, and cannot be too well considered, for we have precisely the same thing in the case of Louisiana. Here are two gentlemen, each claiming to be Senator-elect from the State of Louisiana. One of them, I presume, has the certificate of Governor Kellogg, and how much of a governor, by what right he is governor, by what claim of right he is governor, by what less than shadow of right he is governor, we have the unanimous report of our Committee on Privileges and Elections; and yet a man comes here with credentials signed by him as the governor of the State! Another gentleman comes here with his credentials, not regular, not in form such as the act of Congress requires, but all that, under the circumstances of the case, could be obtained—the certificate of his election by another body calling itself the legislature of Louisiana. Now, are we to seat Mr. Pinchback upon the certificate of Governor Kellogg, when we have the fact before us by the unanimous report of our own committee that Kellogg is only governor there by force of usurpation? When we have that clearly before us, and when there are other circumstances that go to show that the election of Pinchback is utterly and entirely void, are we to stick in the bark in a case like that? No, sir.

The only way for the Senate to act wisely in these two cases is to refer the credentials from both the States, Alabama and Louisiana, to the Committee on Privileges and Elections, and have a report upon the facts of both. I therefore hope, Mr. President, that my friend from Delaware will move to refer the credentials of Mr. Spencer and the credentials of Mr. Sykes to the Committee on Privileges and Elections.

Mr. BAYARD. I am willing to withdraw my motion for that purpose.

Mr. THURMAN. Then I make the motion that the credentials of Mr. Spencer and the memorial and accompanying papers of Mr. Sykes be referred to the Committee on Privileges and Elections.

Mr. SHERMAN. The committees are not yet organized.

Mr. THURMAN. Then they must lie on the table, I think, until such a committee is appointed.

The VICE-PRESIDENT. Does the Senator from Delaware withdraw his motion?

Mr. THURMAN. He withdrew it, thinking there was a committee.

Mr. BAYARD. No such committee has yet been raised by the body, I understand. Therefore, it occurs to me that the proper motion is the one suggested by me originally, that the papers of both these parties, the credentials and records presented by Mr. Sykes and the certificate presented by Mr. Spencer, be printed—but I believe the order has been given for printing—and that the jurisdiction of the question of their election be postponed until these papers shall be returned from the printer, in order that the Senate may have better opportunity to understand the precise facts of the case.

Mr. THURMAN. Allow me to interrupt my friend to make an inquiry. Do not the credentials of Mr. Spencer and the memorial and accompanying papers of Mr. Sykes now lie on the table; and is it not necessary to take them up in order that either one of them may be admitted?

The VICE-PRESIDENT. That motion is necessary, if the Senator desires to take up both cases. They are on the table at this time.

Mr. ALCORN. I moved that the credentials of Hon. George E. Spencer be taken from the table and read for the information of the Senate. I apprehend that my motion was misunderstood, for the reason that it was reported that the credentials were in the hands of the printer. I am informed by the Clerk that the credentials are in his possession, and I ask that they be read for the information of the Senate.

The VICE-PRESIDENT. The Senator from Mississippi moves that the credentials of Mr. Spencer be taken from the table and read.

Mr. BAYARD. Before that motion is put to the Senate, I beg to remind the Chair that I proposed to amend it by including in that reading the credentials of Mr. Sykes.

Mr. ALCORN. If there are any credentials of Mr. Sykes attested by the governor of the State of Alabama and the secretary of state, I have no objection to their being read; but I do protest that it is not proper to read a memorial, and an address, and the argument of counsel, as an amendment to a simple request that credentials shall be read for the information of the Senate; and I therefore ask only that the credentials be read. They are here, an official document for the consideration of the Senate; and now it is proposed to add the reading of a memorial as an amendment to that. You might as well propose to offer to have read, as an amendment, the Congressional Globe for the last session of Congress, or any newspaper that is published in this or any other part of the country. I simply ask that the credentials be read, and I hope that there will be nothing read unless that which is germane. If credentials are offered, signed by the governor of Alabama and the secretary of state, or any one else, I am willing they shall be read.

Mr. BAYARD. It was the suggestion of the Senator from Mississippi alone.

The VICE-PRESIDENT. The Senator from Delaware will pause for a moment. Objection was made to administering the oath to Mr. Spencer by the Senator from Delaware, and a motion entered that the case be postponed until to-morrow or some subsequent day, when the papers could be before the Senate. The Senator from Mississippi called for the reading of the papers in the case of Mr. Spencer. That is the call now before the Senate; and the Chair rules that it is proper that the call should be made, as objection has been made to administering the oath. The question before the Senate is on the motion of the Senator from Delaware to postpone.

Mr. BAYARD. The pending question I presume to be on my motion, the earlier one in point of time, to postpone the consideration of this question until the printer shall have returned those documents which have been given into his custody for the purpose of printing them for the information of the Senate. Now, sir, in speaking of that, I also desire here to make a reply, if reply be necessary, to the remarks of the honorable Senator from Mississippi. He and he alone has spoken of having the memorial and petition of Mr. Sykes read. Certainly I did not.

Mr. CONKLING. The Senator will pardon me. I wish to raise a question of order. I dislike to interrupt the Senator, but I rise to a question of order. A Senator-elect, as he claims, whose credentials lie upon the table, presented himself to be sworn in. Objection was made. The Senator from Mississippi demanded that the credentials should be reported. I insist upon it, as a matter of order, that, without any motion, he is entitled to have these credentials read; and then, if my honorable friend from Delaware wants to postpone them, or to lay them on the table, or to discuss them, doubtless he has a right to do that; but the matter being before the Senate, and it being a matter of privilege, I submit as a question of order that any Senator has a right to demand the reading of these credentials.

The VICE-PRESIDENT. The Chair has decided that the Senator from Mississippi has a right under the pending motion to call for the reading of those papers.

Mr. CONKLING. Let them be read.

Mr. BAYARD. Mr. President, I had a motion before the Senate.

Mr. MORTON. What is the objection to having the credentials read?

Mr. BAYARD. I have no objection to the reading.

The VICE-PRESIDENT. The Senator from Delaware withdraws his objection. The Secretary will read the credentials.

Mr. THURMAN. One word.

Mr. BAYARD. No, sir; I do not withdraw my objection to Mr. Spencer being sworn in.

The VICE-PRESIDENT. The Chair did not so understand; but the Chair understands that the Senator from Delaware withdraws his objection to the reading of the credentials asked for by the Senator from Mississippi. The question before the Senate is on the motion of the Senator from Delaware to postpone the further consideration of the subject until to-morrow.

Mr. THURMAN. That is it.

Mr. CONKLING. Now, let us hear them read.

Mr. THURMAN. Then anybody can ask that the other be read.

Mr. CONKLING. That may be; but both cannot be read at once.

The chief clerk read as follows:

STATE OF ALABAMA:

I, David P. Lewis, governor of the State of Alabama, in pursuance of acts of Congress and the Constitution of the United States, do hereby certify that, on Tuesday, the 3d day of December, A. D. 1872, being the second Tuesday after the meeting and organization of the general assembly of the State of Alabama, both houses of the said general assembly voted for a Senator of the State of Alabama, to represent the said State of Alabama in the Congress of the United States, which said vote was spread upon the journals of each house; and said vote having been compared and counted by the general assembly of the State of Alabama in convention assembled, on Wednesday, the 4th day of December, A. D. 1872, at twelve o'clock meridian, it was ascertained and declared, by said convention of the general assembly of the State of Alabama, that George E. Spencer, having received a majority of all the votes in both houses, was duly elected Senator to represent the State of Alabama in the Congress of the United States for the term of six years, commencing on the 4th day of March, A. D. 1873.

In testimony whereof I have given this certificate under my hand and the great seal of the State of Alabama, this the 4th day of December, anno Domini 1872.

[SEAL.] DAVID P. LEWIS,
Governor of Alabama.

By the governor:

P. RAGLAND,
Secretary of State of the State of Alabama.

Mr. BAYARD. I now ask for the reading of the certificate from the president of the senate and the secretary of the senate of the State of Alabama and the speaker of the house of representatives of the State of Alabama and the clerk of the house of representatives of Alabama, duly attested and before the Senate.

The VICE-PRESIDENT. The Chair understands that those papers are not before the Senate now, are not on the table, but are in the hands of the printer.

Mr. BAYARD. That being the fact, although I believe that I hold in my hand a true and full copy of those credentials and certificates by the officers of the legislature of the State of Alabama, certifying the election of Mr. Francis W. Sykes, yet, as the original paper has, by the action of the Senate, passed into the hands of the officer, for the purpose of being printed for the information of the Senate, I think the strong reason for the propriety of the motion that I made is made manifest to the Senate. These credentials of Mr. Sykes, this transcript of the record of the proceedings of the legislature of Alabama in the premises having passed out of the hands of the Senate temporarily for the purpose of being printed, I ask that the question now be postponed until the papers shall be returned from the printer, in order that the Senate may act advisedly upon it, and have the original paper before it.

Mr. MORTON. Would there be any objection to having that paper read from the printed memorial in the Senator's hands? I presume it is a *verbatim* copy.

Mr. BAYARD. The Senate may, if they choose, take this memorial, which I believe to be entirely correct, as the true statement, although in matters of this kind I must say that I think it is always better to speak in the face and in the presence of the original paper. I am willing for all practical purposes to treat it as if it were the original, and have no disposition to delay the matter on account of the absence of the original, as by an accident probably it is absent. I prefer its presence; but still, if the Senate are willing to accept this copy as a true copy, I do not know that I shall object, although I state that I do so reluctantly upon principle.

The VICE-PRESIDENT. If there be no objection——

Mr. CONKLING. I shall not object to the reading of this paper, certainly, not because it is a copy rather than the original, which I conceive to be a very formal and unimportant matter. I say, however, in the interest of the rules of the Senate, that this paper, if it be read at all, must be read just as the Senator from Delaware would have any other paper read, as a part of his remarks, or would ask to have that read for information by the Secretary, in order to save himself trouble. It is no part of the matter upon which the Senate is acting, and it is not to be read in any sense upon the same footing with the credentials. Why? Because upon its face it is a mere petition, a memorial, which has been presented as a memorial, and, under the rules of the Senate, when it was presented it could not be read, but the rule required the Senator presenting it to give a brief synopsis of its contents. Therefore there is no rule which entitles it to be read as a memorial. And here follows, as a friend reminds me, in a pamphlet very like the other, the argument of the counsel of this petitioner in support of the memorial. I repeat again that he is a memorialist, a petitioner, and nothing else. If the Senator from Delaware wants this paper read for information, I am not going to object to it, and certainly I will not object to his employing the Secretary to read this paper rather than reading it himself, but I do protest, in the interest of the rules of the Senate, that when credentials lie upon the table, and no other credentials lie here touching that seat, the question is whether the person named in those credentials shall be sworn in when objection is made, and it is the right of any Senator to claim, as the Senator from Mississippi has done, the reading of those credentials. Then in argument against the right of the Senator to be sworn in, the Senator from Delaware, or anybody else, has a right to introduce any matter, so that it is relevant and respectful to the Senate, and he has a right to read it, or cause it to be read, unless objection is made, as a part of his remarks. In that view I do not object to it. But if this memorial or argument is to be read as if it were in any way tantamount or equivalent to credentials, or to be treated as credentials, then I do object to it.

Mr. FERRY, of Connecticut. I rise merely for the purpose of obtaining a clear apprehension of the matter in dispute between the Senator from New York and the Senator from Delaware. I understand that the Senator from Delaware desired to have read a document purporting to be the original credentials of F. W. Sykes as a Senator-elect from Alabama.

Mr. BAYARD. That is so, sir.

Mr. FERRY, of Connecticut. That it turned out that that document was not here, having, by the order of the Senate, been sent to the printer, to be printed for the use of the Senate. It was, thereupon, suggested that there was upon our tables a memorial which contained an accurate copy of the credentials of Mr. Sykes, and it was suggested that that copy of the credentials of Mr. Sykes should be read, instead of the original document, which is in the hands of the printer, and to that there seemed to be general assent. Now, the Senator from New York insists that it is not a copy of the credentials of Mr. Sykes that is asked to be read, but this whole document, entitled a memorial, which I do not understand to be the case at all. It simply contains a copy of the credentials, and because the original is not here, and because as in my judgment any Senator has the same right to call for the reading of the credentials of Mr. Sykes that any one had to call for the reading of the credentials of Mr. Spencer, therefore, merely for convenience, we propose to use the copy embodied in this pamphlet, instead of using the original.

Mr. CONKLING. Will my friend allow me to correct him at that point?

Mr. FERRY, of Connecticut. Certainly.

Mr. CONKLING. I make no objection whatever to the copy rather than the original being read. My statement is this: Mr. Sykes has not presented himself to be sworn in; the question is not upon Mr. Sykes; and, in addition to that, there are no credentials of Mr. Sykes here by copy or otherwise. Why? Because I turn to the act of Congress and I find what credentials must be, namely:

It shall be the duty of the governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election.

I take up this paper and I find a memorial, a petition, in which is embodied or set forth, what? Credentials? No, sir. I ask my friend to look at page 2 of the memorial—a paper signed by "R. H. Erwin, president of the senate; Mike L. Wood, secretary of the senate; Lewis M. Stone, speaker of the house of representatives; Ellis Phelan, clerk of the house." I do not stop to appeal to the fact that the existence of these men as such officers is denied, but I look at the statute and find that these cannot be credentials, and they are not presented as credentials, but as a memorial; and then I say that, while I do not object to the reading at all, or the reading at this moment, or the reading from a copy, I insist upon it that the reading is to be, not of credentials, but of a paper which the Senator wants read for information; that is all.

Mr. FERRY, of Connecticut. Very well. Then if I understand the position of the Senator from New York, if the original document were here, he would object to the reading of that document as credentials, proper to be read as such in the Senate of the United States.

Mr. CONKLING. Upon the swearing in of Mr. Spencer.

Mr. FERRY, of Connecticut. Or anybody else. Now, the question whether Mr. Sykes is here or not is immaterial. Here is a matter to be decided by the Senate of the United States as to the admission into this body of a Senator-elect from the State of Alabama. It is claimed that the body named in the credentials of Mr. Spencer as the general assembly of Alabama, which elected Mr. Spencer, was not the legislature of Alabama, and had not the electoral capacity to choose a Senator at all, and there is also, having been presented here in due season, a paper purporting to be credentials of Mr. Sykes, and the matter now is to obtain official knowledge by this body of the contents of the paper presented by Mr. Sykes, and which is the only paper that is presented here as his credentials, by its actual reading. If any other objection is made by the Senator from New York to the reading of this matter from the printed pamphlet before us than would have been made to the reading of the original document, then the matter ought to be postponed until the original document is here.

Mr. CONKLING. Not at all, if my friend will pardon me.

Mr. FERRY, of Connecticut. If there is no reason advanced except such as would be advanced against the original document, then this can be read without harm to anybody.

Mr. CONKLING. Certainly.

Mr. FERRY, of Connecticut. And then the question will arise upon the postponement.

Mr. CONKLING. I only ask my friend there to remember that the original document is a memorial in which this paper is embodied. It never has been separately presented, but is only presented as part of the memorial in which it is recited; that is all.

Mr. FERRY, of Connecticut. I never have seen it.

Mr. BAYARD. I am glad that the Senator from Connecticut asked this question so clearly, and then answered it so precisely. The honorable Senator from New York is in error when he supposes that these credentials of Mr. Sykes form simply a part of the memorial which has been printed and laid on our table. The certificate of Mr. Sykes's election, which is the record of the journals of both houses of the legislature, is an independent paper, in due form, placed in the custody of the Senate, and out of it temporarily by the action of the Senate. It is not part of the memorial of this gentleman before the Senate, although in the printed paper before us, in a more convenient form, it has been so embodied for the purpose of information. But the paper-writing, duly certified, of the election of Mr. Sykes by the legislature of Alabama, as proven by the record of the journals of those two houses, is a paper duly authenticated, separate and distinct in itself, in the custody of the Senate, and only parted with for the purpose of having it printed for the use of the Senate. Those are the facts.

Mr. MORTON. Mr. President, when we speak of the credentials of a Senator, what do we mean? I take it, we mean the legal evidence of his election provided by law. The law provides what shall be the legal evidence of a Senator's election, as well as it provides what shall be the legal evidence of title to a piece of land. It is only *prima-facie* evidence. You can go behind it; you can inquire into any questions that go to the validity of the election afterward; but the law provides that there shall be certain evidence which shall *prima facie* entitle a man to his seat. What is the object of that law? To prevent just such a scene as we have here this morning, to prevent this confusion.

The evidence of a Senator's election, as required by the act of Congress, consists of a certificate by the governor of the State, attested by the secretary of state, and verified by the seal of the State. Those are the three evidences of the election of a Senator, and they are all present in the credentials of Mr. Spencer. Now, sir, there was some purpose in making that enactment, and it ought to have some weight.

Now, what is the proposition? The proposition is to put a mere memorial on the same footing with the credentials provided for by law; to give to a memorial signed by Mr. Sykes the same effect as you give to the governor's certificate and to the seal of the State of Alabama. We have no right to do that, I take it. There must be some overriding reason that would induce us to give to the mere memorial of Mr. Sykes the same effect that you give to the certificate required by the act of Congress.

It seems to me that Mr. Spencer is entitled to be sworn in. He has got the evidence required by the law. If there is good ground of contest, that can be acted upon by the Senate, can go before the committee, and it is very proper for this memorial of Mr. Sykes's and his argument by counsel to go before the committee for full examination; but if you keep Mr. Spencer out until the whole question is settled, you in effect say that the evidence required by law is to have no greater effect than the mere memorial of Mr. Sykes; the object of the law is entirely defeated; there is no rule of action, and no Senator is entitled to his seat here until all questions have been examined, and a man can come forward without any legal evidence at all, and contest a certificate in due form.

Now, sir, what is the rule in the other end of this Capitol? The member who has the certificate takes his seat, and, if there be good ground of contest, that ground is subsequently considered; and the same rule should prevail here.

The Senator from Connecticut [Mr. FERRY] talks about the credentials of Mr. Sykes. What are they? Nothing but his so-called certificate. It is true here is a statement signed by "R. H. Erwin, president of the senate, Mike L. Wood, secretary of the senate, Lewis M. Stone, speaker of the house of representatives, Ellis Phelan, clerk of the house." I am told that, in point of fact, these officers are not the officers they represent themselves to be; but that is immaterial. So far as any evidence of a senatorial election is concerned, these officers are all unknown to the law. They do not give their certificate any more effect by saying they are president of the senate, and so on, than if they attached merely their names without those titles. They are not credentials in the sense of the law. We know of but one kind of credential. What is that? The certificate of the governor, attested by the secretary of state, and verified by the seal of the State. That creates a *prima-facie* title, and if that *prima-facie* title can be overcome by a mere memorial, then the effect of the act of Congress is entirely destroyed.

Mr. THURMAN. Mr. President, the position of the Senator from Indiana amounts to this: that in no case can a person be seated in the Senate unless he has credentials certified by the governor and by the secretary of state. I say that that is not sound doctrine at all. Suppose the governor should refuse to sign the credentials; suppose, for instance, that there had been but one body in Alabama calling itself a legislature of that State; that it was the true and constitutional legislature of that State; that it had elected George E. Spencer to be Senator from that State, and either the governor or the secretary of state had refused to sign the credentials, according to the argument of the Senator from Indiana he could not take his seat; we would keep him out of his seat according to that argument for the want of the mere technical evidence of his election. Why, sir, is the Senator to be told that the commission is merely the evidence of an election or appointment, and is not the election or appointment itself? A man is elected to an office or appointed to an office before he gets his commission, and his commission is merely evidence of that election or that appointment; and I can show the Senator case after case in which an act done by an officer without a commission at all, after his election or appointment, has been held to be valid, because there was no absolute prohibition to his action in the absence of his commission. The commission is merely evidence, but according to the Senator's argument it is the all-sufficient and indispensable thing, and unless it is precisely in the terms prescribed by the act of Congress, no matter how duly a man has been elected Senator, no matter how perfect his right to a seat in this body may be, he cannot take his seat. A recusant governor or a recusant secretary of state can keep him out of his seat. I protest against any such doctrine as that.

But, again, the Senator from New York in effect asks us to judge of the effect of this paper before it is read to the Senate. That is the result of his proposition. Here are certain papers evidencing the action of what is called the legislature of Alabama. Whether it is a correct legislature or not is another question; and, before those papers are read, the Senator from New York insists that they shall not be read as credentials.

Mr. CONKLING. I hope my friend will pardon me there for a moment. I do not see how he can say that. Inasmuch as I do not object to their being read, and nobody has objected to their being read, and inasmuch as we must learn what they are from hearing them read, really I do not see how any harm can arise on the fact that I say they should not be read as credentials. My friend said, a moment ago, that I insisted the Senate should act upon them without knowing what they were. Nobody objects to their being read. If my friend chooses to regard them as credentials before he hears them read, and I choose not to do so, I do not see how anybody suffers from that conflict between us.

Mr. THURMAN. That is exactly what made me wonder that the Senator got up and stopped the reading, which was about to take place, by entering a solemn protest that they should not be read as credentials.

Mr. CONKLING. I did not stop the reading.

Mr. THURMAN. They would have been read immediately but for the Senator rising. If he wishes merely to express his own opinion that they are not credentials, certainly there is no objection to that; but if he wants any action of the Senate to affirm his opinion, then that makes it a very much more serious matter.

Now, sir, I can very well conceive that we would admit a Senator upon precisely such a paper as that. I can very well conceive that if the governor or secretary of state of a State should refuse to discharge his duty to execute the proper credentials required by the act of Congress, we would seat a man upon precisely such a paper as that presented by Mr. Sykes. Suppose there had been no other legislature than that which elected Sykes; suppose there was no question about two legislatures, but that had been the only legislature, and then the governor of Alabama, or his secretary of state, had refused to sign the credentials, so that Sykes was obliged to appear here with nothing but a certificate of the legislative proceedings; who is there here to say that he would not be seated? There is not a man in the Senate who would say any such thing as that.

But what is the use of talking about technicalities or sticking in the bark? We know historically, we know by the papers, we know by the action of the executive department, that there have been two bodies in the State of Alabama, each claiming to be the legislature; that one of those bodies has elected Mr. Spencer, the other body has elected Mr. Sykes. We know that the very governor who has signed the credentials of Mr. Spencer was counted into office by the senate of that body which elected Mr. Sykes. Those are facts that we know, and those facts make a case in which I think it is very proper that both sets of papers should go to the Committee on Privileges and Elections, whenever it shall be appointed, and be considered by that committee.

The only doubt I have in my mind, and I state it frankly, because I will not do any injustice in this business, is this: whether the certificate of the governor does not make out, *prima facie*, that the legislative body which he certifies for was the true legislature. That is the only serious difficulty there is in the whole case: whether or not, looking at the act of Congress, we are not bound to assume, *prima facie*, that that body which the governor certifies is the legislature, is the legislature, until the contrary is shown. But, sir, I do not know that the Senate has been quite so much given to being governed by technicalities or presumptions. It was not governed by any such thing in the case of GOLDTHWAITE, but kept him out of his seat nearly a year, although he had the most perfectly regular credentials, and that not upon any certificate of the speakers of the senate and house of representatives of Alabama, not upon any official certificate of the election of anybody else, for it was not pretended that anybody else was elected——

Mr. STEWART. Allow me to ask the Senator if he thinks that the action of the Senate in that case was right?

Mr. THURMAN. Certainly not; it was very far from being right; but the Senate did it, notwithstanding. It was a monstrous wrong, in my humble judgment; but the Senate did it, notwithstanding. Upon a mere vagabond petition that came here in that case, signed by Tom, Dick, and Harry, who had no official position at all, or most of whom had not, and affirming, not that the legislature which elected Mr. GOLDTHWAITE was not the true legislature, but that there had been frauds in the election among the people themselves, that gentleman was kept out of his seat for nearly a year. I give his colleague credit for saying that he was no party to that wrong.

But, Mr. President, the real question before the Senate is simply this: we know historically, and have evidence before us, that here are two legislatures. The only question for us is simply, does the governor's certificate establish, *prima facie*, that the legislature he certifies for is the true legislature, so that that must be recognized? That, in view of the whole facts of the case, is really the true question before the Senate.

Mr. STEWART. Mr. President, in my opinion, as the Senator from Ohio seems to admit, we must take the governor's certificate, it being regular, and there being no question as to whether he is the governor of the State, as making a *prima-facie* case. It is admitted that there is no precedent against it, except in the case of GOLDTHWAITE, and it is also admitted that the action of the Senate in that case was an error. The case is much stronger now than it was before the passage of the law of 1866. That law prescribed what should be the evidence upon which the Senate would act, and, of course, when we have that evidence, we have a *prima-facie* case. I believe that is the universal rule, that when the law prescribes what shall be evidence in a given case, and you have that evidence, you have at least a *prima-facie* case. It may or may not turn out to be true, but it is always *prima facie* if the law is complied with. The law is substantially complied with in this certificate. It is regular; it is signed by the governor; it is evidence of the facts therein contained, so far as the action of the Senate is concerned, until there shall have been investigation. The authorities are all in favor of the representation of a State upon a *prima-facie* case, and not denying the State the right of representation. They are, I believe, entirely uniform in that respect, with the exception suggested by the Senator from Ohio, namely, the GOLDTHWAITE case, which is repudiated as a precedent.

The importance of that rule is illustrated by the memorial of Mr. Sykes, which I hold in my hand. The errors into which we might be led by departing from the rule are very plainly indicated by this memorial. The president of the senate, who makes the certificate in this memorial, is R. H. Erwin. His name appears to it as president of the senate. It appears by the same memorial that on the 25th day of November, 1872—

> Hon. Alexander McKinstry was in like manner inducted into the office of lieutenant-governor of said State, to which he had been elected by the voters of the State, and so announced by Lieutenant-Governor Moren, upon an opening and publishing of the votes by him, by official act, in the presence of a majority of the members of the general assembly assembled at the capitol of the State, at Montgomery.

Then there is a provision of law which is quoted in this memorial, that—

> The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided; and in case of his absence or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*.

Now, upon the face of this certificate, here is the absence of the lieutenant-governor. It is true that the senate had power to fill the office in case of his absence, if he did not appear there, but he was the regular lieutenant-governor.

Mr. THURMAN. Will the Senator allow me to interrupt him for a moment?

Mr. STEWART. Yes, sir.

Mr. THURMAN. It just occurs to me that there is another case bearing on this—RANSOM'S case—where General RANSOM presented perfectly regular credentials, but was not allowed to be sworn in.

Mr. STEWART. I am informed that Mr. Parsons—and this is only information that comes to me from history; it has been referred to here—is speaker of the house of representatives of Alabama to-day, and there is no contest in Alabama about it; there is only one legislature sitting there, and Mr. Parsons's name does not appear to this certificate. Observe the inconsistencies in which we are likely to be placed. Neither of the gentlemen signing this certificate, as I am informed, is acting either as president of the senate or as speaker of the house of representatives now. If we go into this history, here are important facts. I only state this to show the difficulties which we shall encounter if we discard the evidence which the law prescribes.

The Senator says there are other cases. The other cases referred to, I think, refer to the qualification of the members. When the objection refers to the personal qualification of the member, it must be made *in limine*. If he is personally disqualified, that is something that must be acted upon *in limine;* but if the Senator-elect presenting himself is qualified, and the record that is presented is the record provided by law, he has a complete *prima-facie* case. In Mr. RANSOM'S case and the others, objection was made, I presume, on some point with regard to their qualification.

Mr. BAYARD. O, no; not a particle.

Mr. STEWART. Well, in this case there is no such record-evidence before us as can destroy the plain *prima-facie* case. There is but one legislature in Alabama now. That is a well-recognized, historical fact, if we are going to refer to that, and neither of the gentlemen who sign this paper is presiding over either branch of that legislature. Those who were presiding over the rival legislature are now presiding over the legislature as at present organized, showing that the organization that elected the Senator who presents the regular credentials has been preserved. If, then, we go into the matter beyond a *prima-facie* case, on the evidence before us, we shall simply be led into doing an act of injustice without any probability that the official investigation will not result according to the *prima-facie* case.

Mr. STEVENSON. I think there is a mistake existing in the Senate in regard to the practice of referring credentials which are fair upon their face to a committee for investigation. I have taken some pains to look into the precedents. The first case that I find is one reported in the American State Papers, of Kensey Johns, a Senator from Delaware. He presented himself as a Senator with proper credentials, appointed by the governor. The question arose as to the authority of the governor to appoint. A motion was made to swear him in. That motion, with his credentials, was referred to a select committee, who reported, on the 20th of March, 1794, that he was not eligible, the governor having no power to appoint him in consequence of a meeting of the legislature having intervened since the vacancy, and having adjourned without making an appointment or election. That is one precedent to which I call the attention of the Senator from Nevada, which went to the authority of the body appointing him, the party claiming a seat.

The next case that I find is that of Lanman, of Connecticut.

Mr. CONKLING. If my friend will allow me, did it not appear upon the face of the paper, in other words, did not the date of the attestation and the date of the appointment show that it was in vacation?

Mr. STEVENSON. It did not. A motion was made to swear in Mr. Johns. That motion, with his credentials, was referred to a committee, who some weeks afterward made a report, which the Senator will find in the American State Papers, volume one.

Mr. STEWART. Shall I interrupt the Senator if I call his attention to the distinction between that case and this?

Mr. STEVENSON. No, sir.

Mr. STEWART. The appointment by the governor, under the Constitution, can only be made in exceptional cases, and those cases plainly appeared in the law. It is matter of law when it can be done. Then if the case presented is contradicted by the law, it is not a *prima-facie* case at all.

Mr. STEVENSON. The credentials in Johns's case were regular. There was nothing upon the face of his credentials to show any irregularity. He brought regular credentials from George Read, the governor of Delaware. He presented himself with those credentials, as regular in every respect as the credentials presented here to-day by the gentleman claiming to be Senator from Alabama.

Mr. STEWART. My point is that there was something on the face of the credentials to show that the governor had no power to appoint, and therefore it presented no *prima-facie* case.

Mr. STEVENSON. There was nothing on the face of the credentials to show any want of authority any more than in this case. The memorial of Mr. Sykes here shows that the body which attempted to elect Mr. Spencer was not the legislature of Alabama; and although the credentials of Mr. Spencer may be regular, so were the credentials of Mr. Johns regular. You had, therefore, to go behind the credentials. The committee of the Senate did so, and Mr. Johns was refused his seat.

Mr. STEWART. The Senator has not got my point. The question was presented on the Constitution itself as to the power of the governor. If there was anything in the Constitution or laws appearing before us that Alabama had not at the time a right to elect a Senator, then the certificate would not make a *prima-facie* case.

Mr. STEVENSON. I cannot understand the distinction that the honorable Senator attempts to make. It is a distinction, it seems to me, without a difference. He says you cannot question the power of that body which has the authority to appoint when the credentials are regular. Now, I say that Johns's case does show regular credentials, that he was appointed by the governor.

Mr. STEWART. But the Constitution showed that the governor had no authority to appoint in that case.

Mr. STEVENSON. How was that to appear except by an investigation by a committee? Suppose in this case the committee should report that the body that elected Mr. Spencer had no authority to elect a Senator. You want to bring him in upon his credentials that you say are regular. I say the Senate refused to bring a man in with regular credentials, whose credentials showed no vice in his appointment.

The Senator will have several other cases before I get through. The next case I find is that of Mr. Lanman, who was appointed to take his seat on the 4th of March, 1825. A motion was made by Mr. Holmes, of Maine, to swear him in. That motion was referred, with his credentials, to a select committee, and they decided that the governor had no right to appoint him.

Mr. MORTON. Upon what ground?

Mr. STEVENSON. Upon the ground that a legislature had intervened; but that did not appear on his credentials.

Mr. MORTON. Let me suggest to my friend that the power of appointment on the part of the governor expires when a legislature intervenes, and the intervention of a legislature was a public event

of which the Senate of the United States was bound to take judicial notice, and did not require any proof.

Mr. STEVENSON. What difference does that make upon the question we are now discussing as to the *prima-facie* evidence of credentials? I understand my honorable friend to take the position that when credentials, which are regular upon their face, are presented here, it is the right of the person presenting them to be sworn in. The Senator says it was a fact of which the Senate should take judicial notice. Yes, and I will show him that the Senate also takes judicial notice of the legislature which elects. If you take judicial notice of the point that the governor has no authority to appoint, why will you not take judicial notice that the legislature which elected was divided into two bodies, and that one represents the majority and the other the minority of the duly elected members of that legislature? Why will the Senate take judicial notice of one fact and not of the other? But the simple question comes back whether the Senate has not refused, for want of authority in the appointing power, to recognize credentials which were regular on their face, and where there was no contestant. I say that both in Johns's case and in Lanman's case that was done.

I now come to a still later case. On the 27th of February, 1837, Ambrose H. Sevier presented his credentials as a Senator from the State of Arkansas. Those credentials were regular on their face. It was proposed that he be sworn in, and it was refused. His credentials were referred to a committee of the Senate, who, on the 8th day of March, 1837, reported in his favor, and he was only admitted after the report of that committee by a vote of 26 to 19.

I now come to the case of Mr. Stark, of Oregon, in 1862. There was no doubt that the governor had the authority to appoint Mr. Stark. There was no doubt that Mr. Stark was eligible. There was no doubt that a vacancy existed and that the power of appointment was vested in the governor of Oregon. There was no doubt that the credentials were regular. Mr. Stark, on the 6th day of January, appeared in this chamber and presented his credentials. The distinguished Senator from Maine, now no more, (Mr. Fessenden,) objected to the reception of those credentials, and he presented a memorial, made up of the very loosest hearsay statements of street-conversations prior to Mr. Stark's election, and asked that that memorial, with the credentials, be referred to a committee; and they were referred to the Committee on the Judiciary. An elaborate report was made by the committee, proposing to admit Mr. Stark to his seat. Upon that report a lengthened and able debate took place, and Mr. Stark was not admitted until a month after his credentials were presented. What stronger case could be presented than Mr. Stark's?

Mr. STEWART. I believe there was a question as to his loyalty.

Mr. STEVENSON. Yes, sir; it was a question as to his loyalty; that is, it was said that before his appointment, upon the streets in Portland, he had given vent to some loose exclamations, under a high degree of excitement, that the South ought to succeed, and speeches of that sort.

Mr. SCHURZ. I do not wish to interrupt the Senator from Kentucky, but merely to make a suggestion to him. He just asked, what stronger case can there be than that of Mr. Stark? Is he aware of the case of the Senator from Texas, [Mr. HAMILTON?]

Mr. STEVENSON. No, sir; I am not.

Mr. SCHURZ. Then I will state that case after the Senator from Kentucky is through.

Mr. STEVENSON. It seems to me that the case of Mr. Stark is a case directly in point. He was eligible; the governor had a right to appoint; his credentials were in due form; and yet he was excluded. I will refer to what some of the republican Senators, now in this chamber, said in that debate in regard to the right of the Senate to prevent an applicant from taking a seat when there was reason to believe that the authority under which he claimed his seat was invalid, either on the ground that the governor did not have the right to appoint, or that he himself was not qualified; that it was the right and duty of the Senate, upon mere outside statements, to refer the case to the committee.

Now we come to the case of the Senator from Alabama, [Mr. GOLDTHWAITE.] I read from the proceedings of the Senate on the 4th of March, 1871:

The name of GEORGE GOLDTHWAITE, of Alabama, was called in order in the above list, when,

Mr. SHERMAN. Before the oath is administered to Hon. GEORGE GOLDTHWAITE as Senator from Alabama, I desire to present the memorial of forty-five members of the senate and house of representatives of the legislature of the State of Alabama, containing statements of fact which, if true, would not justify the taking of the oath of office at this time. I ask that the memorial be read, and that the credentials, with the memorial, lie on the table for the present until the Judiciary Committee is formed, with a view to their reference there. Until that is done, I object to the oath being administered.

The credentials were read, and then the memorial was read, and both were laid on the table until the Judiciary Committee was appointed. There was no contest in that case. Nobody doubted that Judge GOLDTHWAITE was eligible; and yet that memorial was read as a matter of right and laid upon the table with the credentials, and both were referred to the committee, and Judge GOLDTHWAITE kept out of his seat for months.

I thought that was wrong in GOLDTHWAITE's case. Why? Because, for the second time in the history of the Government, it was attempted to go back and inquire into the component elements of the legislature by which Judge GOLDTHWAITE had been elected. I deny any such power to the Senate. Whenever that doctrine becomes established, the States of this Confederacy ought to say, "We elect A B a Senator by our will and by the grace of the United States Senate." If the Senate of the United States can go back and inquire into the elements of the legislature of a sovereign State, who in due form, according to law, elect a man who is qualified under the Constitution to take his seat in this chamber, then they become judges of the returns of the respective legislatures thus elected, and they themselves have the absolute power to nullify any election of a Senator. Senators, such a doctrine does not apply to one State alone; it applies to all; and as the guardians of the sovereignty of the respective States which we represent, I beg and entreat you to consider well before you attempt to settle into precedent and into usage such a principle as that which makes the sovereign States of this Union the mere hewers of wood and drawers of water at the behest of the dominant majority, whatever it may be, of this chamber.

Therefore I thought that the action of the Senate in that case was a wrong; but I would have acquiesced in a moment if there had been a separate and divided legislature, or if I had had judicial notice upon which I could rely that there was some vice in that body which elected Judge GOLDTHWAITE—some doubt in regard to the organization or regularity of the legislature which elected him—not of the component elements, but of the fact whether Judge GOLDTHWAITE was eligible, or whether there was a legislature at all, or as to who had received the vote of a majority of the legislature of the State of Alabama.

Then we come to the case of the Senator from North Carolina, [Mr. RANSOM.] We know that he presented his credentials; we know that they were referred; we know that the gentleman who contested his seat, and whose memorial was before the Committee on Elections, had not the slightest semblance of credentials; he did not claim to have them, and he did not claim to have received a majority of the votes of the legislature of the State of North Carolina.

Mr. CONKLING. Who is that?

Mr. STEVENSON. The man who contested Mr. RANSOM'S seat.

Mr. CONKLING. My honorable friend will pardon me; that case he certainly cannot state as bearing on this. Mr. Abbott insisted that long anterior to RANSOM'S election he had been elected, and the question was whether there was any vacancy for Mr. RANSOM or anybody else to fill, and he insisted upon the English rule which would seat a minority candidate, because Vance, who had received a majority of the votes, was, as he insisted, ineligible to the place; therefore he came to us, alleging that that seat already belonged to him, and, if so, of course nobody could be sworn in, and there was no room for credentials. That question was very different from this.

Mr. STEVENSON. I understand the question. The distinguished Senator from New York perhaps did not hear what I said. I said, not that Mr. Abbott did not claim the seat, but that Mr. Abbott did not claim that he had a majority of the legislature. Mr. Abbott claimed that because Vance, who did get a majority, was ineligible, according to the English rule he was entitled to the seat; but did Mr. Abbott have any credentials?

Mr. CONKLING. If my friend will pardon me, I beg to remind him that Mr. Abbott had, as he said, not a contemporaneous election, but a previous one, so that he denied there was any vacancy at all.

Mr. STEVENSON. I admit that Mr. Abbott said so, but I come back to the question which is the pertinent one in this debate: did Mr. Abbott present credentials; and, if he did, whom were they from?

Mr. MORTON. Will my friend allow me to suggest to him that the credentials of Vance were never presented to the Senate, never went before the Committee on Privileges and Elections? Vance was conceded to be ineligible, disqualified under the fourteenth amendment, so that when Abbott's case was considered on a certificate of his election informal in character, yet there were no other credentials to oppose it. Afterward, when the case of RANSOM came before the Senate, there was no question but what RANSOM'S credentials were in proper form; but it was held, in referring his credentials to the committee, that while the credentials would show that he was *prima facie* elected, yet the credentials did not show that there was a vacancy, that the question of vacancy was not to be determined by credentials; and of course that was right.

Mr. STEVENSON. Now, Mr. President, do not let us escape the point in issue. We are discussing the effect and import to be given to credentials. We are discussing how far a man presenting his credentials has a right to be sworn in. Will the Senator tell me what credentials Mr. Abbott had? I never heard of any. If he ever presented any, it escaped my knowledge. I have never yet known that Mr. Abbott, who contested the seat of the present Senator from North Carolina, [Mr. RANSOM,] who came here with regular credentials, or who contested Mr. Vance's seat, ever had any credentials. He had none.

I do not wish to prolong this debate. I only rose to cite several precedents, beginning as early as 1794 and running down to 1871, which bear upon the present question. I have given you several cases which arose when this Senate was in the zenith of its glory for intellect, for experience, for patriotism, where Senators with regular credentials, and with a party majority on their side, were refused the right to be sworn in, but the motions to swear them in, with their credentials regular on their face, were submitted to a committee of the Senate; and in several cases the Senate refused to let those gentle-

men take their seats, although themselves personally qualified to do so, for the want of authority in the appointing power.

Mr. MORTON. I want to suggest to my friend that I believe, until 1866, the law of Congress did not fix what should be the evidence of a Senator's election; that was left to each State before that time; but in 1866 Congress passed a law regulating the elections of Senators, prescribing how they should be conducted, determining what should be the *prima-facie* evidence of the right to a seat. That was done in 1866 for the first time. Before that it was left to each State to elect Senators in their own way, and furnish such evidence of their election as they themselves might prescribe.

Mr. STEVENSON. I will cite the Senator from Indiana to a very celebrated case from his own State, where the seats of both Senators were contested upon a question in regard to the mode of their appointment. Although, in that case, the Senators whose seats were contested were admitted upon the presentation of their credentials, there are gentlemen now in the chamber who resisted that action, and who made just the argument that I am now making, and who cited many of the precedents that I have cited against Senator Bright and Senator Fitch, elected by the legislature of Indiana, and having the regular credentials, signed by the governor, taking their seats in this chamber, and that was prior to 1866.

Mr. President, I think it is much more desirable that we should have some uniform rule, and make that an established rule for future action and for future guidance. Then we shall know exactly where we all stand. Now, for this Senate, having refused to admit Mr. GOLDTHWAITE, to-day to admit Mr. Spencer, would seem to be not a regular or a uniform rule of action.

I care very little what the decision is, except that we shall adhere to a fixed rule of principle and make the precedents unvarying. I admit that you can inquire into the authority of the appointing power, whether a man has been regularly and legally elected, whether he is qualified, and whether he was elected in the mode pointed out by the law. That you can do; but I deny, as was attempted to be done in GOLDTHWAITE'S case, that you can look into the elements of the legislature that elected him. If the Senate thought it proper to refer to a committee the credentials in the case of Mr. Stark, regular on their face, eligible, as he was, his right unquestioned, with no contestant, and to require a report before they would admit him, and if they did the same thing in the case of Judge GOLDTHWAITE, I think it should be done in this case, and that we should adhere to that principle.

Mr. ALCORN. Mr. President, when I called for the reading of the credentials of Mr. Spencer, of Alabama, I had no idea that the call for the reading of those credentials was to call up a debate of the length and magnitude of the one that we have heard. I objected to the motion made by the Senator from Delaware, as an amendment to the call which I had the honor to make. The Senator, if my memory serves me, asked that the credentials, and papers accompanying them, of Mr. Sykes, be also read.

Mr. BAYARD. The Senator is mistaken on that subject. I asked that the certificate of election of Mr. Sykes might be read at the same time. The Senator misunderstood my language.

Mr. ALCORN. Then I stand corrected. It may have been that I took my impression from the fact that at the time the Senator from Delaware presented what he called the credentials of Mr. Sykes, he presented them in the form of credentials and accompanying papers, being a memorial, and they were placed before the Senate in the form of a memorial to the Senate.

Now, sir, what are the facts in this case? The Senator from Kentucky who has just taken his seat calls the Senate of the United States to account for the course the Senate has seen proper to pursue heretofore upon the question of admitting Senators, and he arraigns the Senate for the course pursued towards the Senator from Alabama, [Mr. GOLDTHWAITE,] and he complains that the Senator from Alabama was for a long time kept out of his seat in the Senate when he had the proper credentials here which should have entitled him to be sworn in. Strange to say, the Senator uses that as an argument to-day why the credentials of Mr. Spencer, from the same State of Alabama, are not sufficient to entitle him to be sworn into his seat. Sir, each and every complaint that the Senator from Kentucky makes is an argument in truth in favor of having Mr. Spencer, the Senator from Alabama, sworn to-day upon the credentials that he presents.

Under the law of 1866 Congress undertakes to lay down what shall be necessary to entitle a Senator to take his seat; that he shall have the certificate of the governor of the State; and that certificate of the governor comes here entitling him, as *prima-facie* evidence, to enter upon the discharge of his duties. It is like a patent to a piece of land in an action of ejectment. You offer the patent, and it is *prima-facie* evidence that the title is good. You may go behind that patent, however, and show that it was fraudulently issued, that it was improperly issued, and that the consideration upon which it issued has failed, or any other reason that attaches to the legality or the validity of the patent; but that is a question which goes to the jury. So, in this case, if there be any who offer objections to the *prima-facie* case presented, that *prima-facie* evidence which Congress has said is sufficient for them for the time being, the matter goes to the Committee on Privileges and Elections, to be there examined and reported upon; and if the proof goes to show that the Senator who has been sworn in is not entitled to his seat, that his certificate of election was procured by fraud, or that the legislature undertaking to elect him to the seat was not a legislature under the forms of the constitution of the State, the committee can so report. Suppose the majority was not a proper one constituting a quorum of each body of the legislature: that is a question to be considered before the Committee on Privileges and Elections. The reference goes to the whole question—goes to the foundation of the subject. Here we do not go any further than simply the certificate of election, under the law of the State from which the Senator comes, attested, as it is, by the secretary of state.

Now, sir, what are the facts with regard to this case? Only one governor, so far as I know, presides in Alabama to-day. There is but one governor in the State of Alabama certified as elected at the last election. There has been no contest in Alabama with regard to the governor of the State, and we all agree to that. It is known—the Senate has judicial knowledge of the fact—that there were what purported to be two legislatures there. We know, judicially, that the legislature recognized by the governor of the State is that legislature which elected Mr. Spencer to his seat in the Senate, and we do judicially know the fact that that legislature which elected Mr. Sykes to a seat in the Senate has ceased to exist; that it has been absorbed by the legislature which elected Mr. Spencer; that the governor presides to-day as he did at the time this certificate was given; that the president of the senate and the speaker of the house of representatives of that legislature are the same officers to-day that they were when the certificate of election was given; and we do judicially know the fact that there is no other legislature in Alabama to-day that contests the authority of this legislature now, and we do judicially know the fact, and I commend this to the attention of the Senate, that the supreme court of Alabama has decided that the legislature over which the governor presides to-day is the legislature of Alabama, and that its acts are entitled to full faith and credit.

Mr. SAULSBURY. Will the Senator allow me to ask him a question? Does he say that the legislature that now exists in the State of Alabama is the same legislature, composed of the same members, that elected Mr. Spencer?

Mr. ALCORN. I will not say that they were, for I understand that there has been a remodeling of the legislature; but I understand the fact to be that a quorum of each branch of that legislature that elected Mr. Spencer to the Senate is to-day in each branch of the legislature recognized as the legislature of the State of Alabama.

Mr. SAULSBURY. I ask the question, is it the same legislature, composed of the same members, that now is the recognized legislature of Alabama, that elected Mr. Spencer to this body?

Mr. ALCORN. I will not say that it is, nor will I say that it is necessary to show that it is. It is sufficient for me to show that the legislature of Alabama had existence as a body, organized at the time this election took place, and, if called upon to show that fact, that it is the same to-day that it was then. That there are persons in this legislature to-day who were not in the legislature at the time the election took place, is no reason why the credentials can be assailed, even if that question were before the Senate. It may have been changed; some members may have died, others may have been chosen to take their places, and it may be the fact that the legislature has changed many of its members; but the organization that was in existence at the time this certificate was given is precisely the same now, with the same president of the senate, with the same speaker of the house of representatives, that there was at the time when this election took place.

But remember, Mr. President, that I take the position that, in order to entitle the Senator from Alabama to be sworn in, it is only necessary, under the law of 1866, that he present his certificate of election certified to by the governor of the State of Alabama, and that upon that he has made out a *prima-facie* case and is entitled to be sworn in here; and I say that all other questions with regard to the organization of the legislature, and the facts with regard to the legislature of Alabama, are proper to go before the Committee on Privileges and Elections, and there a hearing can be had, and that committee can go to the foundation; if need be, it can examine the credentials of members of the legislature, as I hold, and it can examine (as they did upon the question of the State of Louisiana) who compose the legislature, and whether it is a legal body or not.

But there is no one here to-day to controvert the fact of the legality and constitutionality of the legislature of Alabama; no one here to contest with Mr. Spencer the fact that there is no other body than the legislature that elected him now in session in the State of Alabama. But at the same time that you protest against Mr. Spencer being sworn you complain of the action of Congress, that it has heretofore refused to swear in Senators who came, as he has come, with a certificate of election in their hands, and asked to be sworn in.

Mr. STEVENSON. On a wholly different ground, though, if the Senator pleases.

Mr. ALCORN. I understand the ground to be the same.

Mr. STEVENSON. I have been very unfortunate, then, and perhaps it is my fault that the Senator did not comprehend me. I undertook to say that the reason why we voted against the majority upon the application of Judge GOLDTHWAITE to be sworn in, we insisting that he should be and the majority denying that right, was not upon the subject of credentials at all, not upon the authority of the legislature at all, not upon the ground of eligibility at all, but because in that action the memorialists attempted to go into the composition and eligibility of members of the legislature which elected him.

Mr. ALCORN. Then, I ask, what is the state of the case to-day? The memorialist here comes and attacks the organization of the legislature that the governor certifies elected Mr. Spencer. The governor of the State of Alabama certifies that Spencer was elected. He certifies it as governor of the State of Alabama, and the secretary of state attests it as the secretary of state of Alabama; and then here comes a memorialist who undertakes to attack that organization and show that that legislature was not constitutionally organized; that in truth and in fact it was not the legislature of the State of Alabama. There may be a distinction between the cases, but if there is I cannot observe it. It is on account, doubtless, of my obtuseness, but the distinction lies just so far down that I am not able to reach it as a point of fact.

If it is charged—and I am not here to say that it is not true—that the Senate in the past has assumed, during the period of revolution, an inquisitorial character, and that it has refused to admit Senators on credentials for reasons pertaining, if you please, to the question of the reconstruction of the States, to the question of elegibility under the fourteenth amendment, I am one of those who stand here prepared to leave all those questions behind. I am prepared to throw those acts of the Senate behind, and say that they are not entitled to consideration as precedents; but that we shall put our back to the past and our faces to the future, and that we shall recognize nothing which partook of the asperities or the animosities of the war as a reason why we should not go back to the recognition of a plain enactment of the Congress of the United States.

The law of Congress provides that this shall be sufficient to entitle a Senator to recognition here upon the floor of Congress. Mr. Spencer comes and holds in his hand that which the law of Congress says is sufficient to entitle him, under a *prima-facie* case, to be sworn in to-day. There stand those outside who believe that his election is improper, not according to the laws of Alabama, and not in accordance with the constitution of the State of Alabama. I express no opinion on that subject. I hold myself here without any opinion on that subject. Let that question go, in its regular course, to the Committee on Privileges and Elections; let it there be investigated, and when they report on that question let the Senate take such action as that committee may recommend, or such other action as the Senate may regard as proper in the premises. But in the mean time I ask that Alabama be not deprived of her right to representation upon the floor of the Senate. She is entitled to this. She has sent here, by the governor, accompanied by the proper certificate and seal of office, one who proposes to take to-day the place of Senator and hold it until he is shown not to be entitled legally to hold that office, or to hold it until it is shown that another is entitled to it above himself; and then the Senate can act upon that question, not as it is called to-day to act on a *prima-facie* case.

NOTIFICATION TO THE PRESIDENT.

Mr. HAMLIN. Mr. President, the committee of the Senate charged with the duty of waiting upon the President of the United States and informing him that a quorum of this body has convened in pursuance of his proclamation, have discharged that duty. The President of the United States said that, as at present advised, he would have no communication to make to the Senate except certain executive communications, which he would communicate by message at an early day.

PAPERS WITHDRAWN.

On motion of Mr. FERRY, of Michigan, it was

Ordered, That Commander John Waters have leave to withdraw his petition and papers from the files of the Senate.

ELECTION OF SENATOR CALDWELL.

Mr. MORTON. I ask the unanimous consent of the Senate to offer a Senate resolution; and I will preface it by the remark that supposing the Senate will be here but a few days, and in discharge of the duty imposed upon me at the last session as the chairman of the Committee on Privileges and Elections, and in pursuance of an understanding had just before the adjournment, I now offer the following resolution, and I shall ask the Senate to-morrow morning to proceed to its consideration. I ask that it be read.

The chief clerk read the resolution, as follows:

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.

TRADE WITH CANADA.

Mr. MORTON. I offer another Senate resolution, which I ask to have read for information. I desire to make a single remark in regard to it. I am not going to ask for its passage now.

The chief clerk read as follows:

Resolved. That the Secretary of the Treasury be instructed to report to the Senate, at its next session in December, the amount of imports from the provinces composing the Dominion of Canada to the United States for the years 1871 and 1872, and the amount of exports to the same provinces from the United States for the same years, and the amount of imports and exports between the United States and the same provinces for the two years preceding the termination of the reciprocity treaty.

Mr. MORTON. I shall ask to have the resolution laid on the table now; but if the session shall be prolonged for some days, I shall ask the Senate to take it up from the table, for the purpose of enabling me to submit some remarks upon the question of the relations between the Dominion of Canada and England and this country.

The VICE-PRESIDENT. The resolution will be laid upon the table.

SENATOR FROM ALABAMA.

The Senate resumed the consideration of the credentials of George E. Spencer as Senator from Alabama, the pending question being on the motion to postpone, made by Mr. BAYARD.

Mr. HOWE. Mr. President, I believe the pending question is on the motion of the Senator from Delaware to postpone. I rise mainly to say that I hope that motion will be agreed to. For one, I am not prepared to enter upon the discussion of the main question, which seems to be already under consideration, and still less prepared to enter upon the decision of it. I think the question a grave one—much graver than has yet been intimated. I think it involves, as presented already, not only the right of Alabama here in the Senate, but the right of every other State; not only the question of Mr. Spencer's or Mr. Sykes's title to a seat here, but the question of the title of every one of us to a seat here.

I say I am not prepared to enter upon the discussion of the subject, because, until to-day, I had not seen the papers which I now find upon my desk, and which are upon the desk of every other Senator. I have had no opportunity to look into them. I have not had an opportunity to look into the precedents. I confess I have not a very profound regard for legislative precedents. I fear I lack some of the veneration which I ought to cherish for the conduct of those who have gone before us.

The Senator from Maine [Mr. HAMLIN] said just now that he was inclined to think that the precedents were almost uniformly those which sanctioned the administering of the oath to him who has been called to-day, and has been called heretofore a *prima-facie* case, and then trying the question of his title afterward. He admitted that there might be some precedents to the contrary. The Senator from Kentucky [Mr. STEVENSON] has cited a very formidable array of precedents, many of which seem to be to the contrary of the rule as asserted by the Senator from Maine. My distinguished friend from Nevada [Mr. STEWART] shakes his head.

Mr. STEWART. Not one of them, except GOLDTHWAITE'S case, is at all relevant. I think that is in point.

Mr. HOWE. I am speaking, I trust, with becoming diffidence; I know where I am speaking; I said many of the cases cited by the Senator from Kentucky seemed to be in conflict with the precedents asserted by the Senator from Maine. Of course, if the Senator from Nevada had not shaken his head, I should not have come to any definite conclusion upon the subject until I had heard him; but it is very certain that, having shaken his head, I shall not come to any such conclusion until I have heard him. I myself, without any very accurate recollection, and certainly with no extensive reading, am profoundly impressed with the notion that you can find precedents in our history, brief as it is, which will sanction anything that any one Senator here wants to do in this particular case, and almost anything that the whole of us could do, if we were to do our best or our worst. I say, sir, I am afraid I have not as much veneration for precedents as I ought to have. I profess to have some regard for law, when I know what it is, and I mean to pay it decent respect.

Now, as I understand the law, the fundamental law, the supreme law, it accords to the State of Alabama the right to be represented here by two of her citizens, not by any two who happen to come here, but by the two who shall be selected for that purpose; by whom? Not by the governor, not by the secretary of state, but by the legislature of the State. Only the legislature of the State can select those Senators.

I am told that an act of Congress was passed some six or seven years ago, declaring what the governor of a State should do in the case of the election of a Senator; that the governor of the State should certify to that fact; that the secretary of state should countersign; and that the seal of the State should be employed on the credentials of the Senator-elect. That is all very proper, I concede; but after all, I think, on reflection, we shall conclude that not the signature of the governor, nor the signature of the secretary of state, nor the seal of the State, nor all these added, will make a Senator. I take it these little ceremonials are very inconsequential unless they are preceded by an election by the legislature of the State.

But Senators say, I have heard several of them say, that the conjunction of these three little things—these two signatures and that seal—constitute what they call a *prima-facie* case, or *prima-facie* title to a seat, and, as my friend from Mississippi [Mr. ALCORN] expressed it just now, it was like a patent to a piece of land; wherever that patent was shown it made a *prima-facie* case of title, not conclusive. Well, suppose it is so; suppose these signatures and this seal are the equivalent of a patent to a piece of land; the court which is trying an action of ejectment never says, when a party shows a patent, "Here is a *prima-facie* title, and now I will put the party holding the patent in possession of the land, and then I will try the question of title to it afterward." The judge receives the patent, to be sure, as a piece of evidence, but before he passes judgment upon the right he hears what can be said in contradiction of the patent.

But it is argued here, as I understand, that we should pay so much respect, so much deference, to this *prima-facie* title, as it is called, that we should actually award the seat upon it.

Mr. CONKLING. No.

Mr. HOWE. Then I have misunderstood the course of the debate. I have understood that because one individual brings here this certificate signed by a governor and a secretary of state, or purporting to be signed by a governor and a secretary of state, and to have the seal, we were to admit the party holding that piece of paper to the seat.

Mr. CONKLING. We only allow him to become the sitting member; the seat to be contested afterward.

Mr. HOWE. Then, the proposition is that we allow him to become the sitting member. In my careless and loose way of expression, I said we should award the seat. The Senator says, "No, but allow him to become the sitting member." I suppose by that he is to sit, not in a seat, but somewhere else; otherwise we should award him the seat by allowing him to become a sitting Senator.

Mr. CONKLING. My friend will pardon me. He is to be the sitting member pending the time when the Senate is engaged in awarding the seat.

Mr. HOWE. I understood that limitation, and that is the trouble. We say we do not know whether Alabama sent this man here or not, but we say we will take him out of respect to form and make a Senator of him for the time being. Well, that would not be so very bad a thing if it were not followed by this other consequence, that we reserve to ourselves the right to reconsider and reject his title to that seat after we have admitted him to it, after we have administered the oath to him which each one of us has taken.

I was inclined to think myself that before we allow any man to take a seat here we ought to know whether he comes here as the representative of a State or not; and when we have examined that question and settled it, it seems to me that that is an adjudication, and I was inclined to think (and it was upon this point that I wanted a little time for consideration) that neither this Senate nor a succeeding Senate ought to go back of our judgment. When some man comes here, any man claiming to be the select man of a State, and presenting what you call *prima-facie* evidence of that fact, and when no man in the State says anything to the contrary, and no one else anywhere says anything to the contrary, I think you ought to administer the oath to that man. But if there is a question raised, if it is said that that signature of the governor is forged, and that seal of the secretary was stolen, or the impression of it, or if it is said in any credible way that the man himself was not eligible; if any fair question is raised upon the validity of this *prima-facie* case, it has always seemed to me that the Senate ought to stop and determine that question, and when it was once adjudicated it was adjudicated for all time.

This question was suggested to me very soon after I took my seat in this body, when the case of Mr. Stark, from Oregon, was before the Senate. It was suggested very forcibly the other day, when a committee of this Senate proposed a resolution which, if I remember, declares in terms that a seat which has been occupied by a gentleman acting as a member, with all the sanction upon him that rests upon every one of you—a seat which had been occupied for some years—was vacant. I was led then to speculate, not to investigate, but to speculate in my own mind how it could be that that seat to which a State had accredited one of its citizens by certain evidences of title upon which the Senate had passed, and had declared them sufficient, was still vacant. I do not know that it can be so.

Mr. CONKLING. May I ask a question?

Mr. HOWE. Certainly.

Mr. CONKLING. The rule which my honorable friend is contending for, I submit to him, would not make such cases as he now refers to any fewer than they are, because in the case to which he alludes nobody contested; the Senator took his seat as he would under the rule which the Senator thinks should prevail; and long afterward arose the matter which has been made the occasion of assault upon the Senator's right to sit. On the other hand, I submit to my friend, that if his rule prevails, that whenever a contest is notified to the Senate there is to be no sitting member until that contest is resolved, the Senate would virtually commit to every person in every State the right, by perhaps only a *pro-forma* contest, to hold in abeyance the right of the man who held the credentials, until in the lapse of time the committee of the body had been able to decide one way or the other the contested cases and to reach even the last case.

Now I conceive, and this is the only additional remark I want to make, that the inconvenience of such a rule, the obvious greater security and convenience of the other rule, lies at the foundation of its adoption, and constitutes much of that foundation. If it be said that when I come with credentials specific and described by the statute, I may sit down for the time being, sit down conditionally, with the right to all comers to unseat me if they can, no great inconvenience is likely to result, especially in the case of a contest in bad faith; but once say that no man whose seat is contested shall ever become the sitting member until that contest ultimates, and I say it is a sort of reward offered, in all turbulent times of faction and party, for every man who would spite another, or who would accomplish a purpose by it, to say, "I contest that seat, I present a memorial contesting it," and thus hold in abeyance the right of every member of the Senate, and every member of the House, if the rule could prevail there, until the appropriate committee could go through and decide all the cases.

Mr. HOWE. Mr. President, I admit that the tribunal which passes upon the right of Senators to their seats, like the tribunal which passes upon your title to your homestead, like the tribunals which pass upon all rights of life, of person, or of property, may be wicked and may abuse the great powers reposed in it by the law. But, sir, we cannot get over the fact that the Constitution has vested in this body the prerogative of trying the right of its own members to the seats they claim here. You may abuse and trifle with that power. The Constitution, or those who made the Constitution, supposed you would be less likely to trifle with it than any other tribunal they had thought of; but if it is true, as it certainly is true, as suggested by the Senator from New York, that if you adopt the rule which I have suggested, the Senate may lend itself in some evil time, by delaying a trial, to the nefarious purpose of keeping an honest and rightful claimant out of his seat, then what?

Mr. CONKLING. If my friend will pardon me, I put a case where the Senate not only acts in good faith, but with the utmost possible diligence. Here are seventy-four men; one-third of them come in at a time. Here is one Committee of Privileges and Elections. Every new-comer, every man who proposes himself to be sworn in on the 4th of March, finds himself confronted by a petition signed by some man saying, "I contest that seat." Now, the Committee on Privileges and Elections is to sit down and go through, with all the assiduity which it can employ, and decide these cases, and the man can only take his seat who holds the credentials, one by one, as each case is passed upon. Without the Senate being guilty even of negligence or delay, or consulting its own convenience, sitting day and night, and going as fast as possible, if such were the rule in parliamentary bodies, particularly in a body so numerous as the House of Representatives, where all the members come in afresh every two years, it seems to me very great inconvenience would occur.

Mr. HOWE. Let us see. I am, in spite of myself, being drawn into something of a debate here, which I did not mean; but let us see for a moment. Suppose that rule I have suggested—I do not insist upon it; I do not know that it is the right rule—be adopted, and suppose the Senator from New York should by and by be provided with credentials, and should offer them here; and suppose some man as malicious as myself should rise, or, not being permitted to speak to the Senate himself, should send a memorial here, questioning the validity of those credentials, that being a malicious act on my part, an entirely groundless act; and suppose the rule to be adopted that those credentials and my memorial go to this committee; the very next morning they take up the credentials before the Senate meets; there are the credentials in the very form in which the law requires New York to speak. What opposes these credentials? The declaration of some unknown man offering no testimony whatever, a mere denial that those credentials are just and true. That is all. That is the case that the committee would have to pass upon. Now, does my honorable friend suppose that in that case the Committee on Privileges and Elections are going to deliberate through a whole session, through a whole Congress, through the official life of a Senator, before they pass upon that case; for when the Senate met the next morning the Committee on Privileges and Elections, I take it, would report? But if the case was not exactly that; if the outside protestant should make the committee believe that behind his protest there was evidence to be adduced and which could be adduced within a reasonable time, which would impair the apparently good title presented by the Senator, would it not be the duty of the committee in that case to wait a reasonable time to hear that evidence? In the mean time the consequence is very clear: New York would not have a Senator here to which she is entitled. But suppose the committee or the Senate should jump to the contrary conclusion and say "We will have New York represented somehow, by somebody, and inasmuch as we do not know who it is that New York really wants to represent her here, but do know who has got the certificate of the governor, and who has got possession of the seal of the secretary of state, we will take that man." You do not respect the rights of New York when you admit him to a seat here; on the contrary, you trample upon, you outrage, the rights of New York when, out of any respect for forms, you admit to a seat here as her representative a man whom she has not sent here by the voice of her legislature.

Clearly the right thing to be done is to admit the man selected by the State and nobody else. When a dispute arises who the man is, the question is whether we should try it before we admit anybody, or whether we should admit somebody and try it afterward. Let me say once more that I do not mean to insist that the rule I have suggested is the true rule, but it has always seemed to me that if the question was a new one, it is the rule that I should be very much inclined to insist upon. I do not know but that we are precluded by precedents from adopting it. As I now regard it, if I should find myself forced by the strength of precedents to adopt a different rule, I think I should regret the fact.

Mr. SCHURZ. Mr. President, the Senator from Wisconsin [Mr. HOWE] tells us that he is not in love with legislative precedents; neither am I. I think a great many things have been done which ought not to serve as a rule for our future action; but precedents after all are good things, sometimes, to shed light upon the reasoning of gentlemen at different times and under different circumstances; so they are in this instance. It has been said here that precedent is altogether against the reference to a committee of the credentials of gentlemen who, with regular credentials signed by the respective State executives, present themselves here for seats in the Senate. I find that recent precedents are almost uniformly the other way. In

fact, since I came into the Senate I do not remember a single case where a seat was contested and where the credentials presented were considered of sufficient force to entitle him who presented them to a seat in the Senate during the contest—not one.

Let us go back two years, to the 4th of March, 1871. I find in the journal of the Senate the following:

Mr. SHERMAN presented a protest, signed by forty-five members of the senate and house of representatives of the legislature of the State of Alabama, against the admission of GEORGE GOLDTHWAITE to a seat in the Senate as a Senator from said State; which was read.

After debate,

On motion by Mr. SHERMAN,

Ordered, That the protest, with the credentials of Mr. GOLDTHWAITE, lie upon the table.

Mr. FLANAGAN here submitted a motion that the oaths prescribed by law be administered by the Vice-President to MORGAN C. HAMILTON, whose credentials as Senator-elect from the State of Texas were presented on the 13th of July, 1870.

Mr. MORTON presented a certified copy of a joint resolution of the legislature of the State of Texas, approved January 26, 1871, providing for the election of a United States Senator from that State on the 24th day of January, 1871, for the term of six years, commencing on the 4th day of March, 1871, and declaring the election of MORGAN C. HAMILTON, on the 22d of February, 1870, as Senator for said term, illegal; which was read.

On motion by Mr. MORTON,

Ordered, That the resolution of the legislature of the State of Texas and the credentials of Mr. MORGAN C. HAMILTON and Mr. Joseph J. Reynolds lie on the table.

The fact is that on that day neither Mr. GOLDTHWAITE nor Mr. HAMILTON was sworn in. We remember also that both those gentlemen were armed with the proper credentials from the governors of their respective States, and that as to the regularity of the credentials no question was raised; and yet, nevertheless, in the one case, upon the ground of a mere memorial signed by some members of the legislature, and in the other case upon credentials not signed by the governor of Texas, presented here by a contestant for Mr. HAMILTON'S seat, neither Mr. HAMILTON nor Mr. GOLDTHWAITE was sworn in, but both cases were laid over for further investigation. I find in the journal of the Senate of March 13, 1871, first session Forty-second Congress, pages 34, 35, nine days after the presentation of the credentials and the opening of the session, the following:

On motion by Mr. ANTHONY,

Ordered, That the credentials of Foster Blodgett, and the memorial of members of the general assembly of the State of Georgia against the admission of said Blodgett to a seat in the Senate of the United States as a Senator from that State, be referred to the Committee on Privileges and Elections.

I admit that this is not a case in point; but further:

Ordered, That the credentials of GEORGE GOLDTHWAITE, and the protest of members of the legislature of the State of Alabama against the election of said GOLDTHWAITE as a Senator of the United States by the legislature of said State, be referred to the Committee on Privileges and Elections.

And the same order was made in the case of Mr. HAMILTON. So, I think, I have shown that just two years ago, instead of following the rule from alleged precedents that a gentleman armed with proper certificates shall be sworn in and seated, we adopted just the opposite rule. Now, I repeat, I do not say that that precedent should be always recognized as a good rule to govern our action. There may be cases in which, as the Senator from New York observed, objections may be made to the seating of a Senator, of a very trivial character, when it would be very wrong to deny him his seat.

Mr. MORTON. Will the Senator allow me to make a statement in regard to Mr. HAMILTON'S case?

Mr. SCHURZ. Certainly.

Mr. MORTON. The Senator undoubtedly wants to be correct in regard to the facts.

Mr. SCHURZ. Yes.

Mr. MORTON. Mr. HAMILTON was elected by the first legislature after reconstruction. He was elected for the short term, one day, and I think on the next day elected for the long term. Perhaps both elections were on the same day, but I think not. Afterward, and after another legislature had been elected, and, I think, after another governor had been elected, though I am not sure about that——

Mr. SCHURZ. I think the Senator is wrong in that.

Mr. MORTON. I am going to state. Afterward the legislature elected Mr. Reynolds to fill the vacancy.

Mr. SCHURZ. It was not another but the same legislature.

Mr. MORTON. And passed a joint resolution declaring the election of Mr. HAMILTON for the long term to be void. The election was certified in the usual form by the governor, and the credentials came here in that way; that is say, the credentials were prepared, the governor's certificate drawn out, but it was not signed by him, through inadvertence. The governor telegraphed to the President of the Senate that he had intended to sign the credentials of General Reynolds, but his signature had been omitted by inadvertence. When the question came before the Senate and the committee, it was considered just as if General Reynolds's credentials had been signed by the governor; so that it was one certificate of the governor against another certificate of the governor, and the question was, which of these two certificates should prevail—totally unlike the case we have here.

Mr. SCHURZ. It was never denied that Mr. HAMILTON had been elected at the proper time, according to the law governing senatorial elections.

Mr. MORTON. That is what the Senate found; but the legislature of Texas thought not, and both of them were certified by the governor.

Mr. SCHURZ. I remember the case myself. It was a notorious fact at the time, and subsequently proven, that Mr. HAMILTON'S credentials were signed by the governor, and Mr. Reynolds's were not, although I will admit that a letter was here stating that the governor would sign them.

Mr. STEWART. The precise point in the case was this: The legislature met before the State had been re-admitted to representation. It elected Mr. HAMILTON for the short term and for the long term. The same legislature again convened before the short term had expired, but after the State had been re-organized and the Senators admitted, and it was claimed, the State not having been admitted at the time. that the only election she could make would be the election for the short term to fill the vacancy; that it could not elect for the long term to commence after the State was admitted. I have the report of the committee here. They held that the fact of the State not having been admitted to representation when the election occurred was immaterial; that it was the legislature elected next preceding the expiration of the term which was to choose the Senator, and that the act of admitting a State related back, and it stood the same as all other legislatures, just as a Territory would, and that it stood on the same ground. The point raised, however, was as to the power of that legislature to elect for a term that was to commence after the admission of the State.

Mr. SCHURZ. At any rate one fact is not questioned, and that is, that Mr. HAMILTON presented himself here with the regular credentials signed by the governor.

Mr. CONKLING. The question was upon the State, and not upon the candidate.

Mr. SCHURZ. But the State was also regularly admitted into the Union when Mr. HAMILTON and Mr. Reynolds presented themselves.

Mr. STEWART. But it was not at the time of the election.

Mr. CONKLING. A question was whether it could be treated as the Territories had been, where Senators had been elected by a territorial legislature, and their election had been held to become good when the State was admitted, or whether it did not fall within that category. So the Senator will see it was not a question of credentials, not a question of election, but a question whether any power existed in the world to elect anybody.

Mr. SCHURZ. Is there not a similar question connected with this Alabama case? I will not make an argument upon its merits, for I have to admit that I have merely glanced over this memorial, and am not sufficiently conversant with its statements to form an opinion satisfactory to myself. Neither will I adopt the rule of the Senator from Wisconsin, that whenever a contest occurs the gentleman who presents the regular certificate should, under all circumstances, be kept out of his seat until the contest is decided; but I do think that, where allegations are made putting his right to that seat gravely in question, he ought not to be seated on the mere ground of his credentials.

One reason is the following:

Nobody will doubt that the sitting member has a very great advantage over the contestant; that as long as the contest lasts he is practically a Senator of the United States; casts his vote as one of the Senators of his State; draws the salary of a Senator, and exercises a certain influence; that therefore it is his interest to draw out the contest as long as possible, especially if his case is a bad one; while, on the other hand, if, grave allegations being found against the candidate armed with regular credentials, we do not seat either contestant, but keep them both out, it is the interest of both to advance and push on the contest as rapidly as possible. Whether in this instance the allegations are grave enough to keep out both, I am not now ready to affirm, and I suppose a majority of the Senate have not sufficiently looked into the matter; but I think it is not asking too much that we should make haste slowly in this case, just as we have done in all others within my memory; that is to say, allegations being presented which some of us at least think are grave enough to keep the gentleman who claims the seat on the ground of a regular certificate out of his seat, we should, at any rate, be given time to study the subject until we can form, each one for himself, a clear judgment of the question we have to deal with. I hope, therefore, that the motion for a postponement will be agreed to.

Mr. FRELINGHUYSEN. I agree with the Senator from Wisconsin that this is not a question whether Mr. Spencer has got the governor's certificate or not, but it is a question whether Mr. Spencer was elected by the legislature of Alabama. We have made certain rules by which we are to ascertain whether the legislature of Alabama have elected Mr. Spencer, and by which we have said we would be bound. The rule is, that the person who comes with the certificate of the governor, duly authenticated, stating that the legislature of Alabama has elected him as a Senator, is to be received as Senator; not that he is to be received as Senator provided no man from the State of Alabama contests his seat, but that, *prima facie*, if he has the certificate of the governor, duly authenticated, that he has been elected by the legislature, we are to assume by that evidence that he has been so elected.

Now, Mr. President, this case is peculiar in this: there is no member of the Senate who questions that the individual assuming to act as governor on the certificate is the governor of Alabama. That is a certain, fixed fact. Now, *prima facie*, I insist that the body which that admitted governer says is the legislature must, for these purposes, be accepted by the Senate as the legislature of Alabama. If the case of Alabama was like the case of Louisiana, where historically we

know there are two persons claiming to act as governor, we should have no certain basis upon which to rest the case; but here there is no doubt that the person who assumes to act as governor is the governor, and we are bound to accept for this purpose the legislature which he certifies to be the legislature as the legislature of Alabama, and to admit the State of Alabama to representation on this floor.

Mr. TIPTON. I have no disposition to enter into the discussion of this question, but as reference has been made to precedents in connection with it, I wish to say this: The Senate has admitted a member without any certificate, and one of our number now taking part in this discussion has no single fragment of evidence before this body that he has been elected by any body a Senator of the United States. Under these circumstances, a gentleman comes here from Alabama, and brings some evidence, certainly, of an election. It may not be the highest evidence that might be furnished from the officers of a State, but he comes here, as I understand, for I have not looked into the document, with the testimony of the presiding officers of the State senate and the State house of representatives attesting the fact of his election. That is more testimony than is contained in the case of a gentleman who presents himself here and is sworn in without any certificate from the governor of his State or the presiding officers of the legislature.

But we do not, with all this testimony in his behalf, ask for the admission of Mr. Sykes. We only ask that action be suspended in the case, and that the question be referred to the Committee on Privileges and Elections. That is a very modest demand. If it is competent to admit a Senator to a seat in this body without any credentials whatever, simply because you and I and all of us believe that he has received an election, how much more competent is it, and how much more modest is the request, that the credentials that have the attestation that the credentials of Mr. Sykes have, shall simply be referred to the Committee on Privileges and Elections, with the other credentials, that we may ascertain who has the real *prima-facie* right to the seat from the State of Alabama.

Mr. ALCORN. I desire to say a single word in reply to the position that was assumed by the Senator from Missouri in answer to that of the Senator from Wisconsin. The Senator from Missouri takes the position that a protest should not, in all cases, be sufficient to delay the question of qualification. I take the position that there must be a rule established, for the sufficiency of objections cannot be ascertained until inquired into. No one can tell whether the objections taken to the election are fallacious or real, until the question has been inquired into by a competent authority. Therefore it is that the petition or the remonstrance——

Mr. SCHURZ. Will the Senator from Mississippi permit me to state what I really did say, or meant to say?

Mr. ALCORN. Yes, sir.

Mr. SCHURZ. I said that if by our action we made it generally known that any objection on the part of anybody might keep out of his seat a gentleman presenting regular certificates and credentials from the governor of his State, it would be a very dangerous practice; but I said also that if we made the rule that upon the ground of these credentials we seated the member at once, irrespective of the merits of the case that might be brought against him, it would be giving him a great advantage over his opponent, and make it his interest to prolong the contest as much as possible. I concluded, therefore, that the safest plan would be in certain cases when we, in our discretion, considered the case against a gentleman presenting himself with proper credentials, grave enough, not to seat him during the contest; but, when we considered the allegations trivial, to seat him. Necessarily we must exercise considerable discretion in such matters. Furthermore, I concluded that in this case a majority of the Senate, probably, not having looked into the argument laid upon our tables this morning, we were not able to satisfy ourselves whether the allegations in this case were grave enough to keep Mr. Spencer out of his seat, or whether they were so trivial that, consistently with our convictions of duty, we might admit him as the sitting member, and I therefore expressed the hope that the case might be postponed.

Mr. ALCORN. I am sure I do not know whether the paper, the protest, the memorial that is now upon the table of the Senate, is well founded or not. I claim to have no opinion upon that subject, and I shall not make up my opinion upon that subject until I have fully investigated the case. But I rise now to protest against a rule that would permit the Senate to deprive one-third of the States, if you please, or of the representative power of the Senate, of its right to sit in judgment here upon any question that might come before the Senate. Suppose in a time of high political excitement, if you please, upon the going out of an old Congress, the President was under articles of impeachment, and a majority of the Senate should find that by keeping out one-third of the members they could go forward to work out their purposes upon that question of impeachment, is there a Senator here who stands ready to affirm the position that a remonstrance against the admission of a Senator who comes certified by the governor of a State shall be sufficient to withhold from him his right to participate as a Senator upon the decision of that question? I hold that, be the precedent what it may in the Senate on the subject, if that precedent has been established, I, for one, stand ready to break it down and say it shall be no precedent for me. When, under the law of Congress, a Senator-elect comes here with a certificate of the governor in his hands, a governor whose authority no one stands ready to impeach or assail, with a legislature sitting in the State recognized by the governor, he is *prima facie* entitled to a seat in this body and to be sworn in, and no safe rule can be adopted by the Senate to depart from the principle I here lay down. Any departure from this principle goes to the extreme that the honorable Senator from Wisconsin lays down, and that is the extreme limit of the case. His position is good if his principle is recognized.

In the logic of the Senator from Missouri there is a limp. He says, in certain cases, in trivial cases, fallacious cases, there should be no delay; but who is to judge of that? How can we judge of the fallacy of a protest here, until we have ascertained that fallacy by an examination into the case? There is no person to decide. First, upon the memorial or the remonstrance of any party, under the position assumed by the Senator from Wisconsin, we are called upon to send to distant States for witnesses, to California if you please, and it might be that the dominant majority of the Senate would have an object (for while the Senate is a high, exalted body, it is not held to be above the passions of men, and we must confine it by and hold it to certain rules laid down, regarding the passions of men as facts) in keeping out Senators-elect from California and from Oregon. These Senators coming fresh from the people might be able to turn the balance on a grave and important question; and how easy would it be to file a protest here assailing the organization of the legislature or the election of the governor, in order that the majority in the Senate might go forward and accomplish its purpose on some question vital to the peace of this nation.

Sir, I enter my protest against any such construction as this; against adhering to any such precedent as this. If the Senate has heretofore recognized any such policy, if it has recognized any such precedents, then I say that I stand here ready to-day, so far as my vote goes, to trample them under my feet. When a Senator-elect comes here asking to be sworn, presenting credentials in due form, under the act of Congress, certified to by the governor whose authority and whose prerogative there is none to dispute, I demand in the name of the State from which he comes that he shall be sworn and admitted to his seat. If there be those who protest; if there be those who have pleas to enter, let them enter their pleas and let them be heard, and if it turns out that there has been fraud, that there has been wrong, that we have done violence, if you please, under the authority of a certificate of the governor, we stand ready to right that wrong. Whether Mr. Spencer has been properly elected, I know not; whether the contestant is the proper person, I know not, and I do not ask to know. I only know the fact that the credentials read at the President's desk are in due form of law; they have the attestation that we require and have declared to be necessary to the admission of a Senator to be sworn upon this floor; and further than that I do not claim, and to-day will not further inquire.

Mr. STEWART obtained the floor.

Mr. CONKLING. Before my friend proceeds I ask him to indulge me one moment. Of the credentials received yesterday, upon which Senators were sworn in, twelve are in my hand, and not one of them is addressed to the President of the Senate. I call attention to that fact in answer to the criticism made by the honorable Senator from Ohio, not now in his seat, [Mr. THURMAN.] He said Senator Spencer's credentials were not addressed to the Presiding Officer of the Senate. Here are twelve of these credentials which we have received, and upon which Senators have been sworn in, not one of which was addressed to the President of the Senate, all of them coming, I suppose, as did Mr. Spencer's, in an envelope addressed to the Presiding Officer of this body.

Mr. STEWART. Mr. President, I have, in a hurried manner, looked over the precedents that have been cited. I had looked over them on a former occasion, and was somewhat familiar with them. I undertake to say that there is no case, so far as I have heard in the debate, cited that is in point as against the admission of Mr. Spencer, with the exception of the GOLDTHWAITE case, and I think it is admitted on all hands that an error was committed in that case. I will state, as briefly as I can, what a few of these cases were.

The case of Kensey Johns was a case where a vacancy had occurred, and the legislature had met and failed to elect, and the governor appointed. The question arose as to the power of the governor to appoint in such a case, the Constitution providing that when a vacancy happened the governor might appoint. The Senate held that in that case it was a regular vacancy, and not a vacancy "happening" in the meaning of the Constitution, and consequently they did not admit Mr. Johns. They held that although the credentials were regular still they were bound to take judicial cognizance of the Constitution and of the fact that the legislature had met, and those facts were then all before them, destroying the *prima-facie* case, and raising the question of the power of the governor.

Lanman's case was precisely a similar case. Sevier's case, I think, was precisely the same, but it was decided exactly the other way. There the legislature of Arkansas met before the State was admitted, and they elected Mr. Sevier and his colleague. Sevier drew the short term, which only lasted about a year, and expired before a meeting of the legislature. It was held in that case that the vacancy "happened" within the meaning of the Constitution. I believe it was the same as the others, and I think if the decision in the other two cases was right this one was wrong.

Mr. CAMERON. I ask the Senator to give way to me to make a motion.

Mr. STEWART. I will in a few moments.

These cases all arose upon the theory that there was not a *prima-facie* case, because upon the law and certificate it appeared that the claimant was not entitled to a seat. That was the point made in those cases. There are innumerable cases, from the foundation of the Government, which have been cited in the books, where the party was admitted on the presentation of credentials, and those cases were cited in Stark's case. Mr. Bayard, in reply to Judge Trumbull, drew a distinction in the case that was perfectly conclusive as to the previous cases. He laid down the rule that there was not an exception to it, and maintained himself completely upon that point. But the Senate said, "Here is a personal objection, and it does not fall within the rule; here is a question that goes to the qualification." Objection was raised to Stark that he was not loyal, and it was held that that did not fall within the rule. That was the decision in the Stark case. So far, the debate shows, Mr. Bayard had a clear case upon the precedents that were given, and nobody was able to furnish a precedent where there was a *prima-facie* case, and the party was qualified, that he had not been admitted to his seat. But the distinction was drawn in Stark's case that here was a personal objection and a disqualification on account of disloyalty. Cases of disqualification of the person had arisen before that, such as alienage, not having been a citizen nine years, or something of that kind. Those cases had arisen and were met *in limine;* but where a party was qualified it was not shown that a case had occurred where he was excluded.

The Senator from Ohio [Mr. THURMAN] examined this subject most thoroughly in the GOLDTHWAITE case. This was after the subject had been referred to the committee. I think the argument of the Senator from Ohio in that case satisfied every member of the Senate that the Senate had done wrong in referring the case; but when the case was understood, Mr. GOLDTHWAITE was admitted to his seat.

In the case of Mr. HAMILTON the question arose in the minds of some Senators whether the State at the time had any right to elect a Senator. That was the case as presented. It was regular, as the committee afterward held.

The case of STOCKTON I recollect very well. There I do not know but pretty nearly a majority of the legislature, certainly a large number of the legislature, sent a protest here, which was presented at the same time with the credentials; but the Senator was sworn in, and afterward, upon an investigation, it was held that he was not entitled to the seat for the reason that he was not elected.

With the exception of the GOLDTHWAITE case, I am unable to find a single precedent against allowing the party who has a *prima-facie* case to take his seat in the first instance. If the law on its face, or the concurrent history of the country, of which the Senate is bound to take judicial cognizance, such as the meeting of a legislature, shows that the applicant is not entitled to a seat, then he has not a *prima-facie* case. Even if there were precedents to the contrary, it will be admitted that it is a safer rule to receive the Senator upon a *prima-facie* case and have the contest afterward, particularly in a case like this, where the legislature that elected the memorialist has ceased to exist and has been absorbed, has gone into the other body, where the officers who participated in the election of the Senator who presents his credentials, the lieutenant-governor and speaker, are all acting in that legislature. The contesting power has ceased to exist. That we know, as a historical fact, if I may be allowed to refer to attested facts; so that there is very little doubt in this case that the applicant will be received at the proper time. I repeat, there is very little doubt, upon the whole state of the case, that the Senator who presents his credentials will ultimately be found entitled to the seat. He presents a *prima-facie* case, and I submit that the safe and fair rule is to admit him.

Mr. GOLDTHWAITE. I call for the reading of the credentials of Mr. Sykes.

The VICE-PRESIDENT. Pending the question of postponement, the Senator from Delaware asked for the reading of the credentials in the case of Mr. Sykes. Is the Senate ready for the question on the reading of the credentials?

The question being put, it was decided in the affirmative.

Mr. BAYARD. I understand that the original paper has now been returned to the Senate.

Mr. CAMERON. I wish Senators would give way for a moment. I desire to have an executive session for a very short time. However, I will wait until this paper is read.

Mr. CONKLING. I should like to make an appeal to my honorable friend. We can dispose of this matter much more quickly now than by taking it up to-morrow and going over it afresh. My impression is that the debate is nearly exhausted. So many Senators have been heard that those remaining probably will be able to say what they want to say without our sitting to an inconvenient hour. Unless the Senator has some special wish for an executive session, I think it would be a greater economy of time to act upon this subject now.

The VICE-PRESIDENT. Does the Senator from Pennsylvania move to go into executive session?

Mr. CAMERON. I should be very glad, indeed, to give way to my friend from New York; but, in addition to the importance of having an executive session, some little time is needed for the formation of the committees of the Senate.

Mr. CARPENTER. What was the question last put to the Senate?

The VICE-PRESIDENT. Unless a motion is made to go into executive session, the Secretary will proceed to read the paper which has been ordered to be read.

Mr. CAMERON. I give way until that paper is read.

The chief clerk read as follows:

Be it remembered that on Tuesday, the 3d day of December, A. D. 1872, it being the second Tuesday after the meeting and organization of the general assembly of the State of Alabama, the senate of said general assembly, in the senate chamber, at the capitol, at Montgomery, openly and by a *viva-voce* vote of each senator present, proceeded to name a person for Senator in Congress from the State of Alabama for the term beginning on the 4th day of March, A. D. 1873; that the house of representatives of said general assembly, on said 3d day of December, failed to name a person for Senator in Congress as aforesaid, there being no quorum present in said house; that on the succeeding day, at twelve o'clock meridian, the two houses of said general assembly met in the hall of the house of representatives, in the said capitol, at Montgomery, in joint assembly, when the journal of each house was read, and it appearing that the same person had not received a majority of all the votes cast in each house, the joint assembly then proceeded to choose openly, and by a *viva-voce* vote of each member present, a person for the purpose aforesaid, and no person having received a majority of all the votes cast on said first day, the said two houses, in joint assembly, adjourned until twelve o'clock meridian of the succeeding day, and continued to meet and adjourn upon each succeeding day as aforesaid, until Tuesday, the 10th day of December, A. D. 1872, upon which day, by a *viva-voce* vote of each member present, Francis W. Sykes, of Lawrence County, received sixty-nine votes for Senator in Congress as aforesaid, that being all the votes, a majority of all the members elected to both houses of the said general assembly, and a quorum of each house being present and voting. Thereupon the said Francis W. Sykes was duly declared duly elected Senator in Congress from the State of Alabama, for the term aforesaid, as prescribed by the Constitution and laws.

In witness whereof the president of the senate has hereunto set his hand, attested by the secretary of the senate, and the speaker of the house of representatives has also set his hand, attested by the clerk of the house of representatives, at Montgomery, Alabama, this the 11th day of December, A. D. 1872.

R. H. ERWIN,
President of the Senate.

Attest: MIKE L. WOOD,
Secretary of the Senate.

LEWIS M. STONE,
Speaker of the House of Representatives.

Attest: ELLIS PHELAN,
Clerk of the House.

Mr. BAYARD. Now, Mr. President, there has been read, and is now before the Senate, not a memorial or a petition of Mr. Sykes, but the certificate of his election, taken from the records spread upon the journals of the only body on earth that can elect a Senator for the State of Alabama. I do not propose to state in a general proposition the cases in which alone the Senate will instantly swear a member in upon the presentation of a certificate. There is no necessity in this case for attempting the definition of the abstract proposition. All generalities are dangerous. I do not propose to base this case upon a mere abstract generality in respect to the right of Senators instantly to be sworn in. There is much to be said upon the idea that no State should be for an hour unrepresented on this floor when the formalities of law indicate that her representative is present, ready to be qualified into office.

But, sir, this is no case of that kind. The precedents which have been read, with delicate and careful discriminations between them, are entirely unnecessary for the present case. The facts of the case are too robust to need *finesse*, to need technical argument. They are before the Senate and before the country. What are the facts that the Senate is called upon to consider? Mr. Spencer presents himself to be sworn in. He has a certificate from the governor of the State of Alabama. I shall presently consider the terms of that certificate, not simply the fact that it is not directed to the President of the Senate, but it will appear upon an examination of that certificate that nowhere does it state that a quorum of either house that elected him were present and voted. Most carefully has that essential fact been omitted from the certificate. While I am on this subject I may as well refer to the law, and to the certificate which is alleged to have been made in accordance with the law. The act of Congress of July 25, 1866, requires, without reading the prior portion, that—

Each house shall openly, by a *viva-voce* vote of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for who shall have a majority of the whole number of votes cast in each house shall be entered on the journal of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place, as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected Senator to represent said State in the Congress of the United States.

Then follows a provision that in case the two houses shall not have so elected, they shall then in joint assembly proceed to choose "by a *viva-voce* vote of each member present." Then what is required?

And the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected.

Now, sir, let me see what this certificate says, and I draw the attention of the Senator from Indiana, [Mr. MORTON,] who I see is paying attention to this portion of my remarks, to it. It declares:

Both houses of the said general assembly voted—

How, is not stated—

for a Senator of the State of Alabama, to represent the said State of Alabama in the Congress of the United States, which said vote was spread upon the journals of each house; and said vote having been compared and counted by the general assembly of the State of Alabama in convention assembled—

Meaning the general assembly—

on Wednesday, the 4th day of December, anno Domini 1872, at twelve o'clock meridian, it was ascertained and declared by said convention of the general assembly of the State of Alabama, that George E. Spencer, having received a majority of all the votes of both houses—

There they stop. They do not declare that a majority of all the members elected to both houses were present and voting; nor could that have been truthfully alleged to be the case. Omitting that fact, they say—

having received a majority of all the votes of both houses, was duly elected Senator.

Now, what is the requirement of the law? Not only that he should have received a majority of the votes of both houses, but a majority of all the members elected should be present and voting. Here I draw the attention of the Senate to the fact that nowhere, by intendment or by expression, does it appear that a quorum of that legislature was ever present or participated in these proceedings.

Mr. CONKLING. Will it be disagreeable to my friend if I interrupt him for one moment? If it will not, I beg to call his attention——

Mr. BAYARD. I have the certificate before me; I had it copied, so that I cannot be mistaken about it.

Mr. CONKLING. I do not wish to interrupt the Senator, if it is disagreeable to him.

Mr. BAYARD. I shall be through in a few moments, if it makes no difference to the Senator from New York.

Mr. CONKLING. I do not understand whether my friend objects to my informing him of a fact or not.

Mr. BAYARD. O, no; I do not object to a fact, of course.

Mr. CONKLING. The fact I wish to bring to his attention is this: I have been looking at the credentials (I have not looked at all of them) of the Senators who were sworn in yesterday, and so far as I have looked, I have not found one which states that a quorum of the two houses were present and voting. On the contrary, this certificate in Mr. Spencer's case is the most particular on that point of all the credentials which so far I have found; and that recites that a majority of all the votes, not "of both houses," as the Senator read, but a majority "of all the votes in both houses," if that makes any difference, were cast for Mr. Spencer.

Mr. BAYARD. Yes, sir; and if the Senator wants something fuller in regard to that I will refer him to the credentials of Mr. Sykes, and there he will find, in the credentials of Mr. Sykes, that on the 10th day of December, 1872—

By a *viva-voce* vote of each member present, Francis W. Sykes, of Lawrence County, received sixty-nine votes for Senator in Congress as aforesaid, that being all the votes, a majority of all the members elected to both houses of the said general assembly, and a quorum of each house being present and voting.

There was no contest in the cases referred to by the Senator from New York. He, himself, with the consent given, upon the most distinct moral certainty of his election, of everybody present, was sworn in without any credentials yesterday. But suppose there had been a contest of that honorable Senator's seat; suppose there had been a contest with a certificate such as I have here read; what would he then have said? Would he not then have said that all the requisites of the law should formally be complied with in such a case as that?

Now, Mr. President, the Senate must compare these two cases. They must first consider what expression of the voice of the State of Alabama is here before them to inform them whether of two men one has been elected. I have shown you that, by the certificate of this general assembly, the law of the United States regulating the election of Senators in Congress was complied with, according to the certificate of the officers of the bodies who alone can elect a Senator; but the governor who signs a certificate does not in any line or by any word of his certificate attempt to certify a fact which could not be certified by him, because it would not be true, and certainly the rule of construction is that, as to what does not appear and as to what does not exist, the law is the same.

Now, sir, who is David P. Lewis? The governor of Alabama. What did David P. Lewis, the governor of Alabama, declare?

On Saturday, the 23d of November, 1872, the two houses of the general assembly, at the hour appointed, again assembled in the hall of the house, when and where the presiding officer of the senate, in their presence, completed the opening of the returns for the election of governor, lieutenant-governor, and other executive officers of the State, and then and there published and declared that the returns established that Hon. David P. Lewis had received the highest number of votes for governor, and Hon. Alexander McKinstry the highest number of votes for lieutenant-governor, at the election held on the Tuesday after the first Monday of November, 1872, and they were declared elected to said offices.

Thereupon a committee from the senate and the house was directed by the convention to be appointed to inform those gentlemen of their election and inquire when it would suit their pleasure to be installed in their respective offices. A joint committee was accordingly raised, who did communicate to them the resolution of the convention of the two houses.

Sir, the legislature which so acted, which so counted Governor Lewis into his office, is the same legislature that to-day informs the Senate by their certificate that Francis W. Sykes was elected to the Senate of the United States. But after Governor Lewis had taken his seat, after he had accepted the returns of that legislature as the voice to nominate him into induction into office by declaring the count to have been made in accordance with law, he saw fit to address his communications to another and distinct body of men, organized, as is alleged, not in accordance with the laws of that State. On page 38 of this memorial which has been laid upon our tables—I read this for the information of the Senate—will be found a communication from Governor Lewis to Messrs. Martin and others. He proceeded to recognize this spontaneously created legislature, one that now has no existence, which has been fused with the legislature that elected Sykes, under the suggestion of the Attorney-General of the United States speaking for the executive branch of this Government. To show the state of facts, let me read from Governor Lewis's own declarations, his own letter:

I am denied the pleasure customary on induction into office, of meeting the general assembly of the State harmonious as an integral body, distinct only in the two houses which compose it as a constitutional assembly. For the first time in the history of our State, two bodies of men are assembled in the city of Montgomery, each claiming to be the general assembly of the State of Alabama, meeting at different places, having different officers, and each claiming a constitutional quorum of members, elected by a lawful majority of their respective constituents.

The length of time which this anomaly has existed leaves no room for me to hope that these claims can be adjusted by agreement between the bodies themselves. Such a triumph of reason and conciliation would have afforded a guarantee of harmony in future action that would have been most gratifying to every right-minded man in the State. It is the absence of this, and kindred circumstances, that add pain to the unpleasant duty now devolved upon me, to determine, by executive recognition, which of the two bodies is the constitutional general assembly of the State of Alabama.

He then proceeds to recite some of the facts that influenced his mind in making this decision, and I refer only to the close of his remarks:

It is true that the means possessed by this department of ascertaining the evidence necessary to its action are limited and imperfect.

The necessity for prompt action, and the want of power, preclude a full investigation, and legislative action for contesting disputed seats will afford a means of rectifying any error in the indispensable action demanded at my hands. The action of this department, by its recognition, only renders the body so recognized *de facto* the general assembly of the State. The forum for contesting the ultimate right to seats is elsewhere.

Here, then, we have from Governor Lewis, whose certificate is now relied upon as entitling Mr. Spencer to his seat, in the light of all the other facts accompanying it, the statement that the legislature so recognized by him is the legislature *de facto*, and not *de jure*. Now, I ask the Senate, can a member of this body be elected by a legislature *de facto* only?

Mr. MORTON. What is the date of that letter from Governor Lewis?

Mr. BAYARD. November 25, 1872, after he was elected, after he was inaugurated, after he had been declared elected by the count of the legislature that elected Mr. Sykes. Let that question be considered by the Senate. Are they prepared to declare that a governor shall certify (whether he does it in due form or not I waive for the present) the election of a Senator by a body that is a legislature *de facto* only, and not *de jure*? Can a legislature *de facto* choose a member of this body? Let any man who is a lawyer in this body answer that question in the affirmative if he can; and yet that is what the Senate must answer in the affirmative before they can seat a member in this body upon a certificate, by a governor, of an election by a body who are not *de jure* the legislature of the State, and declared not to be so by the very individual who has certified the election. Sir, if the case stood by itself, alone, the Senate would not and could not commit itself to such a proposition, that a body *de facto* can elect a member to this Senate. From such a dishonest foundation nothing legal can spring. The growth must partake of the nature of the soil from which it springs. There must be law for the basis or there can be no law for the fruits; therefore, if this case stood alone on the fact that a man came here claiming to be elected by a legislature *de facto* only, the Senate would reject him upon that fact appearing.

But that is only half of this case. Just as it appears that one man is elected by a legislature *de facto*, we find that the same governor who certifies him to have been so elected, is himself a certified governor by a legislature *de jure*, under whose count he takes his seat—under whose count he finds his title to his place.

Talk of a *prima-facie* case in a case like this! Why, sir, the case is stronger upon one side than the other. *Prima facie*, under Governor Lewis's own statement, he has certified to a legal impossibility, which is the election by a legislature *de facto* of a Senator of the United States. I therefore ask that this case be referred, when a committee shall have been raised by this body, and certainly one will have to be, or should be, that the case shall go before them in order that we may have this question fully examined. Here are two men, each claiming a seat—the one, as it turns out, claiming to be elected by a legislature *de facto* only, and he certified not in due form of law, and with no allegation on the part of the certifying officer that a quorum of the legislature were present and voted at the election; the other certified to have been elected to the same seat in due form by the legislature, in accordance with its records. The Senate cannot shut their eyes to the fact that it is no mere technical question; it is not the question of the momentary occupancy of the seat, it is the broad and grave question whether, in the face of facts so strong as these, the Senate of the United States will shut their eyes to those truths which are historic, to those truths which are proven by the records, the records being before them, the records declaring that Mr. Spencer could not have been at any time the chosen Senator by a lawful legislature of the State of Alabama. The governor, who signs the certificate, declares they were not, because he himself declares and recognizes them in his public communications as being a legislature *de facto* only. And will not the Senate take further notice of the historic fact that under the suggestion of the executive branch of this Govern-

ment, through the Attorney-General of the United States, there has been a fusion of the legislature, which does not to-day contain anything like a quorum of those who voted to elect Mr. Spencer at any time?

These are the facts, which I believe are not disputable. The Senate knows them. In the face of these facts, in the face of these records, as they are now before the Senate, as at last we have got the credentials, so called, of each of these parties before the Senate, and they know precisely the recognition which Governor Lewis has given the legislature that elected Mr. Sykes, by accepting his office from their committees, under their count, as the regular officers of the State, as he himself has publicly declared by his letter addressed to the legislature that he recognizes this, I may term it revolutionary body, as the legislature *de facto* only, will the Senate by their votes declare that a legislature recognized by the governor, who certifies to the Senator's election as a legislature *de facto* only, is competent under the laws of this country to choose a Senator for a sovereign State?

Mr. STEWART. I simply wish to enter a protest against the Senate receiving as facts the statements here made. On the contrary, so far from there not being a quorum of the legislature that elected Senator Spencer in the present legislature, there is a quorum of the whole legislature that participated in his election in the legislature as now organized, and that, too, after three deaths. There is still a quorum of that legislature in the present legislature, and seven majority, as I understand. That is my information, that those who elected him now constitute a majority of the legislature now in session in Alabama.

Mr. BAYARD. Will the Senator state his authority for that assertion? I am willing to give mine. Of course, we wish to obtain information on this subject.

Mr. STEWART. The Senator-elect, Mr. Spencer, informs me of the fact; and not only that: I have been watching the public prints and the contests there, and I know that both bodies are republican and are so organized, and that the same officers that presided over the body that elected Mr. Spencer are still holding office there. If the majority had been the other way, they would have their own speaker.

Mr. BAYARD. There is an issue of fact here which I am not competent to settle; but issues of fact are very simple things. Time can always settle them properly. I understand from three gentlemen who are here present from the State of Alabama that I am correct in my assertion.

Mr. MORTON. This controversy very clearly demonstrates the necessity of having some rule prescribed by law, of accepting some form of evidence which shall entitle a Senator *prima facie* to his seat. The law intended to accomplish that. If it has failed to do it, it is because of the infirmity of the law, or rather the weakness of those who attempted to prescribe such a rule.

The Senator from Delaware has read a letter here from Governor Lewis, dated the 25th day of November, 1872, in which he declined to recognize the court-house legislature, so called, as being the legislature of Alabama. The Senator ought to have gone further and stated the fact that in three or four days after that time Governor Lewis became satisfied that he had made a mistake, that that was the legislature, and he then recognized it as such, and recognized it in giving this certificate of election, which took place on the 4th of December. I have had placed in my hands within a few minutes a dispatch from Montgomery, Alabama, dated March 3, the day before yesterday, stating that—

> The supreme court decides the court-house assembly to be the general assembly of Alabama.

That was the assembly which elected Mr. Spencer. The question came before that court, as I understand it, upon a law passed by what was called the court-house legislature, but I shall not now go into the merits. I intimate no opinion upon the merits of this question.

Mr. BAYARD. May I ask the Senator a question of fact?

Mr. MORTON. Yes, sir.

Mr. BAYARD. I have been informed that, since the fusion legislature was organized, under a suggestion of Mr. Attorney-General Williams, out of both sides, composed of portions of the two former rival bodies, that legislature has treated as nullities all the acts of the legislature whose action terminated in the election as certified by Governor Lewis. I am informed that, as a matter of fact, the fusion legislature, the one recognized and created under a suggestion of the Attorney-General, has treated as nullities all the acts of the other legislature, which Mr. Lewis had recognized, prior to that time, as the legislature *de facto*. And when the honorable Senator says that I ought to have gone further and have stated that, whereas Governor Lewis, on the 25th of November, did distinctly and formally assure this legislature that they were only *de facto* the general assembly of the State, subsequently he revoked that opinion. Sir, in my opinion he never did revoke it, and he stands here to-day upon the fallacy that a *de facto* legislature can lawfully elect a Senator of the United States.

Mr. MORTON. Why, Mr. President, the governor certainly did revoke that opinion. I understand he revoked it in various ways. Here is the evidence of it. Here is the evidence of it in the paper by which he certifies that Mr. Spencer was elected by the legislature of Alabama.

Mr. CONKLING. And also that he received a majority of all the votes in both houses.

Mr. MORTON. Mr. President, the fact stated by the Senator from Delaware, and which he has no doubt been informed is true, would be important if it were true, on the final examination of this case as it may come before the Senate; but I am informed by Mr. Spencer himself, who must be presumed to know what the facts are, that the Senator from Delaware has been misinformed, and that the legislature of Alabama, since the fusion, or since the Sykes legislature has been merged in the court-house legislature, has not treated the acts of the other as invalid before that time. If Mr. Spencer is correct, the Senator from Delaware has been misinformed. But this is not the time and place to go into that. That comes up on an examination of the merits.

The case stands simply thus, that Mr. Spencer is certified to as being elected in accordance with the requirements of the law of Congress. Shall we submit to the requirements of the law of Congress, or shall we permit a mere memorialist, so far as now appears, to overcome the effect of a law of Congress by a petition sent to this body? If there is to be any rule at all, we must take that prescribed by the act of Congress. There can be no other safe rule. If the Senate may have departed from that in times past, I think it was an error. A Senator suggests, "Never but once." It is not necessary to consider the merit of that precedent now.

I wish to call the attention of the Senator from Delaware to the criticism he made upon these credentials, and I submit to that Senator that he is mistaken in the effect of the language, and that the credentials are stronger in terms than they need be, and stronger in terms than the one upon which I was sworn in only yesterday, or the day before, and I think I was elected lawfully.

Mr. BAYARD. Your seat had no contestant.

Mr. MORTON. But we are not now speaking on the ground of contest, but speaking of the terms of the credentials. I will first read the law and then read the certificate, and I think the Senator will become satisfied himself that the certificate is stronger than it need be in point of affirmation.

The law provides that the two houses shall vote separately, and then that they shall meet on the second day in joint convention, and if, when they meet on the second day in joint convention, it appears that any one person has received a majority of the votes of each house the day before, they shall simply declare the result, and they have no voting to do, but simply attest that result. But if it does not appear that one person received a majority of each house the day before, then they shall vote. Now, how many are required to be present on the second day? Simply a majority of the whole number of the members of the legislature. There may not be a single senator present, and yet the joint convention is good provided the number of members of the house is great enough to be a majority of both houses. For example, the legislature of Indiana consists of one hundred and fifty members—one hundred members of the house and fifty members of the senate. Now, if on the second day there are seventy-six members of the house present and not a single senator, that is a good joint convention, and they can proceed to elect a Senator if it was not done before. It may consist entirely of the members of one house if there be a majority of the whole number of both houses present. Does the Senator understand my proposition?

Mr. BAYARD. I do, but I cannot agree to it.

Mr. MORTON. I think it is correct. I will read the law:

> But if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required by this act, the joint assembly shall then proceed to choose, by a *viva-voce* vote of each member present, a person for the purpose aforesaid, and a person having a majority of all the votes of the said joint assembly—

Not a majority of each house, but a majority of all the votes of the joint assembly—

> a majority of all the members elected to both houses being present and voting.

That was the very mischief to be avoided, to prevent the breaking up of a quorum, to prevent one house from defeating the election of a Senator, as had occurred in my State and other States, and this law requires simply a majority of all the members. If all the members are one hundred and fifty senators and representatives both, and there are seventy-six representatives present and no senator, then if thirty-nine representatives vote for one man, he is elected, because he has a majority of the joint assembly, and in the joint assembly there is a majority of the members elected to both houses.

Mr. BAYARD. Still, ought not the certificate to allege the fact just stated?

Mr. MORTON. I was just going to come to that. The certificate goes further than it need. In the first place, it goes on to state that the two houses met separately and voted on the first day, and that the vote was spread on the record, and then—

> Both houses of the said general assembly voted for a Senator of the State of Alabama, to represent the said State of Alabama in the Congress of the United States, which said vote was spread upon the journals of each house, and said vote having been compared and counted by the general assembly of the State of Alabama in convention assembled, on Wednesday, the 4th day of December, anno Domini 1872, at twelve o'clock meridian, it was ascertained and declared by said convention of the general assembly of the State of Alabama, that George E. Spencer, having received a majority of all the votes in both houses, was duly elected—

If the word "both" there was changed to "each" there would be no question about it that there was an election on the first day; but taking the word "both" there as evidently used in the sense of

"each," it means that he received a majority of all the votes in each house. The word "both" is evidently used in that sense, and it requires a very sharp criticism to make it read anything else. But now read on—

was duly elected Senator.

Now, I take it for granted that my friend's criticism is correct; that the word "both" does not mean "each;" that he simply had a majority of all the votes, counting them in any body. If you treat this as a certificate of election on the second day, in joint convention, it is unquestionably good, and shows more votes than are necessary, because it shows that Mr. Spencer had a majority of the votes of both houses in joint convention on the second day. So, take it either way, the certificate is perfect.

Mr. President, this is all I have to say.

Mr. ANTHONY. I move that the Senate do now adjourn. ["O, no."]

Mr. MORTON and others. Let us finish this matter.

Mr. ANTHONY. I withdraw the motion.

Mr. FERRY, of Connecticut. Mr. President, I hope that Senators will not insist upon taking the final question on this proceeding to-day. I am myself still in doubt as to what ought to be my vote upon the question of admitting Mr. Spencer to a seat, as having presented a *prima-facie* case to the Senate. The differences as to fact which have been exhibited here, the differences as to precedent, the large number of precedents, running through many years of the history of the country, that have been presented, all seem to me to make it necessary that Senators should have some little opportunity upon a question really so grave as this to consider what has been laid before us to-day, and to examine the precedents which have been set; for it is not a trivial question merely as to whether Mr. Spencer shall be permitted to take his seat while an inquiry is pending before the Committee on Privileges and Elections; but the question which is raised here is as to the capacity of a body of men in the State of Alabama to assemble together and elect a Senator of the United States, and whether that capacity is one which we can recognize as being lawful. If there were no question about the legislature; if there were not two bodies claiming to be general assemblies of the State of Alabama, a very different case would be presented here. The very grave question as to whether, under the law of 1866, the certificate of the lawful governor of the State shall be held to be such evidence of the lawfulness of the legislature described in that certificate as the electing body of the Senator presenting himself, seems to me to require some little consideration. I know I certainly feel as if I required consideration in order to enable me to decide correctly upon this question, and I know that every Senator in this body desires to do in this matter simply what is right. I hope we shall not be pressed to a vote at once.

Mr. THURMAN. I do not rise to argue the case, but to express the hope that it may lie over until to-morrow for further consideration. But before that is done I wish to make one statement of the fact as I understand it to be, and if I am wrong I shall desire to be corrected.

I understand the facts of this case to be that the legislature which assembled at the State-house was recognized by the then governor of the State, Governor Lindsay. To that body he sent his annual message, so that that body has the recognition of the executive of that State. Furthermore, the senate of that body, containing, unquestionably as I understood, and undeniably, a majority of members entitled to their seats, and who still hold their seats in the legislature since both bodies have been merged, proceeded to canvass the votes for State officers pursuant to the constitution of Alabama, and upon that canvass declared Mr. Lewis to be elected governor of that State, some other person to be elected lieutenant-governor, and some other persons elected to other offices provided for by the constitution of that State. Those officers thus declared by that body to be elected were sworn in upon that canvass. If that was not a legal senate, then the votes for governor have never been legally canvassed in that State, and Governor Lewis has never been lawfully declared governor of Alabama, and so with the other officers, the votes for whom were canvassed at the same time. So that this very governor who gives a certificate to Mr. Spencer holds his office upon the theory that the senate of the State-house legislature, that legislature which elected Mr. Sykes, was the lawful senate of the State of Alabama.

Well, sir, that is not all. That body passed a law which received the approval of the governor of the State, Governor Lindsay, and is a law of the State of Alabama, and thus, having exercised those functions of a legislature, assembled at the proper place, received the message of the governor of the State, canvassed the votes for governor and other State officers, declared the result of that canvass, and received the oaths of those persons thus declared to be elected. After all that, and with the fact undenied, as I understand it, that the senate of that State legislature contained a majority of the legally elected senators of Alabama, it is now said that it is to be treated as simply an illegal mob! Well, sir, what then took place? This very same Governor Lewis, who holds his office of governor by the canvass of that State-house legislature, turned around within a day or two after he had been thus declared to be elected, and had taken the oath of office, in pursuance of the canvass thus made, and repudiated the body that canvassed the votes and declared him elected, and recognized a certain body of men, sitting in the United States court-house in the city of Montgomery, as the legislature of that State.

Now, sir, it does seem to me that in such a case as that we are bound to send these credentials on both sides to the Committee on Privileges and Elections. I repeat what I have said before, that there is but one legislature about whose constitutional existence there is no question whatsoever. Then the certificate of the governor makes a *prima-facie* case, and entitles the person holding that certificate to a seat in this body, and if his election is contested, it must be contested after he has taken his seat; but where there are two bodies, each claiming to be the legislature, that rule cannot apply.

I said when I was up before this morning that the only doubt I had in my mind was whether the certificate of Governor Lewis is not *prima-facie* evidence that the body which elected Mr. Spencer is the legal legislature of that State. I admit there is room for discussion upon that proposition; but it does seem to me that, looking at the facts as we have them before us, we can say that that *prima-facie* case does not exist, and that we are not bound to seat Mr. Spencer. I cannot say that these credentials, in view of the facts I have just stated to the Senate, and others that I might state, do make a *prima-facie* case.

I said in the argument on the resolution to admit Mr. GOLDTHWAITE that there was no case in the history of the country up to that time in which a Senator, holding a proper certificate of election by a proper legislature of a State entitled to representation in the Senate, had been denied his seat *prima facie* upon presenting his certificate. I believed that I was correct in that statement, though some of my friends told me I was not. I still think that I was. But at the same time that I was of that opinion, the Senate was of a different opinion, for they kept Mr. GOLDTHWAITE out of his seat for one year, or very nearly one year, although he had a certificate of electon as perfect as any member on the floor, and although there was no question whatsoever that the legislature by which he was elected was a legal, constitutional legislature.

Then, sir, came the case of the Senator from North Carolina, [Mr. RANSOM,] who also held a certificate of election from the acknowledged governor of the State of North Carolina, by the legislature of North Carolina, there being but one, and no question as to its constitutional validity; and yet upon a memorial of Mr. Abbott, accompanied with a transcript of legislative proceedings, just as here we have a transcript of the proceedings in Alabama, Mr. RANSOM was kept out of his seat for months. So it will not do to say that the Senate, at least in late years, is absolutely and positively committed to the doctrine that under all circumstances the certificate of the governor is to be received as *prima-facie* evidence that the person is entitled to his seat.

Mr. President, it seems to me that if ever there was a case that ought to go to the committee to be examined, this is one, and I pray Senators to beware how they seat Mr. Spencer, because the decision they make in this case may come up in judgment against them when they come to the case of Louisiana. It is very true there is a difference between the two cases. It is very true that Mr. Lewis is unquestionably governor of Alabama, and I think it is equally true that Mr. Kellogg is not governor of Louisiana. That, I think, is the case in regard to these two States, and it makes a very broad difference indeed; but, nevertheless, this will be cited for the purpose of admitting to a seat here a person who simply holds a certificate of Mr. Kellogg, of Louisiana. I think that all these cases, those from Louisiana and those from Alabama, should go to the committee and let the committee make a report.

Mr. STEWART. I do not understand the facts to be as stated by the Senator from Ohio, and I wish to have an understanding of what are the facts. I suppose it is true that the legislature that met in the State-house did canvass the votes for State officers. They were presided over by the old officers who were going out; but that, I think, is an immaterial thing altogether. It is not a question of the election of governor, or whether the votes were properly counted or not. All admit that Governor Lewis is governor of Alabama. It was so palpable that a majority of the legislature had met in another place, that the governor was bound to recognize them, and did recognize them, as the legislature, and they proceeded to elect Mr. Spencer. There was a majority of all the members elected to each house present in each house and voting at the time. That is undoubtedly the fact. That subsequently they came together with a portion of those who pretended to act in that body which elected Mr. Sykes, and that some of them left by the unanimous vote of all concerned, leaving those who elected Mr. Spencer a majority in each house. Retaining the officers that had been elected by them does not affect the case, except to show conclusively that they investigated the facts, and that, not only did the body that elected Mr. Spencer decide it, but the other body also decided it by going in and accepting the situation. The validity of that body has been decided by the supreme court of the State, and there is a majority to-day in that legislature who voted for Mr. Spencer, so that the action of the State is perfectly conclusive. Here were two bodies of men, each claiming to be the legislature, the governor recognizing one and nobody recognizing the other. The body not recognized by the governor, being in the minority, went into the other body, fused with it, and remained in the minority, and are in the minority to-day. They themselves, by going in with the others, admit that the majority were right, and its action becomes the unanimous action of the legislature, of all concerned. Its validity was upheld by the supreme court of the State. I repeat that I am informed that the legislature which is in session to-day contains a majority of men who voted for Mr. Spencer, notwithstanding there have been three deaths. The minority went

into that legislature and ratified the action of the governor in recognizing it, and ratified the action of the legislature that elected Mr. Spencer by going in and fusing with them and occupying seats there. The body that elected Mr. Spencer was recognized by the governor first. Subsequently it was recognized by the body of men who elected Mr. Sykes.

Mr. CASSERLY. I ask the Senator from Nevada if that is not just as broad as it is long; whether the court-house legislature, by fusing with the State-house legislature, did not acknowledge the validity of the latter?

Mr. STEWART. No; it is longer than it is broad, because there were more of the legislature who elected Mr. Spencer than of the other; the other went into the minority, and it is the majority that has a right to elect, and not the minority. They preserved the same organization—the same officers; they had the majority, showing that they had the right to act; and their action is the action now of all. They have all come to the conclusion that the body that elected Mr. Spencer was the right one, and they are working there with them.

The essence of the thing is that the majority of the legislature elected Mr. Spencer, and the fact that a minority attempted to elect another man shows that they were attempting to disorganize. The governor recognized the majority, and the minority attempted to elect a man, but subsequently the minority were bound to recognize the majority, and did so; and it does not look very well to ask that the action of the minority that attempted to elect a Senator should be put ahead of the action of the majority. That is the fact.

Mr. SAULSBURY. Mr. President, it is very evident that this matter ought to be referred to some committee, a special committee or the standing Committee on Privileges and Elections.

What are the facts presented in this case? The legislature of the State of Alabama consists of one hundred members of the lower house and thirty-three members of the senate. The legislature which elected Mr. Sykes had nineteen senators and fifty-four members of the house when it organized. That legislature was recognized by Governor Lindsay, then the governor of Alabama. Each house had a lawful quorum, organized under the laws of the State, and was recognized by Governor Lindsay, then the acknowledged governor of Alabama. Thus organized, it proceeded to count the votes, and declared the election of Governor Lewis. Governor Lewis, by accepting the office thus conferred upon him, recognized the legal existence of that as the legal legislature of Alabama. That legislature proceeded to count the votes for the State officers that now hold, and are to-day holding, their offices by virtue of an election at the hands of the very legislature that elected Mr. Sykes, the state treasurer, the auditor, and the other officers. They enacted general public laws that are yet in existence; whereas the body, claiming to be a legislative body, which elected Mr. Spencer was constituted of men eleven of whom held no certificate of election, and who have been ruled out by the present fusion legislature as men who never were entitled to sit in any legislative body. Two of the senators who assisted in the election of Mr. Spencer are not members of the present legislature because they hold no certificate of election, and, under the advice of the Attorney-General of the United States, they were declared wanting in qualifications and do not to-day constitute part of the senate of the State of Alabama. And such is the fact, I am informed, in regard to members of the lower house who assisted in the election of Mr. Spencer.

With such a state of facts staring us in the face we are bound to take historical notice of them. We know the fact—we cannot plead ignorance of the fact—that those two legislative bodies have been fused, and that the members holding certificates of election now constitute the true legislature, and that after excluding the men who held no certificates there never was a quorum in the legislature that elected Mr. Spencer.

Personally, I have no unkind feelings toward Mr. Spencer; his conduct has been courteous and gentlemanly. If I were to decide this question upon individual merits, being acquainted with Mr. Spencer and not with Mr. Sykes, I should naturally be inclined to go in favor of the man with whom my relations have always been friendly and kind; but looking at this as a question affecting the interests of the people of Alabama, as a question affecting the rights of the people of this whole country, (because if Mr. Spencer is not legally entitled to cast his vote here he has no right to come in and by his vote nullify the votes of gentlemen who are entitled to seats in this body and to vote upon the public laws of this country,) I must act on it according to my judgment of the law and the facts.

And now with this state of facts staring us in the face, how can we justify ourselves before the world, how can we justify ourselves before the people of this country in seating in our body a gentleman when the facts of the case clearly show that the legislative body which conferred upon him an election was wholly illegal, has gone out of existence, and has never been recognized as a legislative body *de jure* by even Governor Lewis or anybody else?

These facts are patent; the country knows them; and with the precedent which has been referred to where gentlemen differing in their politics from the majority on this floor have been denied the right, on the presentation of certificates properly signed by governors, to be sworn in until the matter was passed upon by the proper committee, if the majority of this body, having the power to do it, admit Mr. Spencer in violation of the precedents and of the rules which they established in reference to political opponents, with the protest of the minority on this floor against it, what will be the judgment? It will be that there is a determination, right or wrong, to continue the majority of this Senate by seating gentlemen who have no claims to seats, or at least seating them before their claims have been investigated, and that against the protest of gentlemen here who believe they are not entitled to have seats in this body.

I hope that the Senate, in justice to its own reputation, in justice to the people of Alabama, in justice to the people of this whole country, will fail to seat as a member of this body Mr. Spencer or Mr. Anybody else until, by the judgment of the Senate, after investigation, he has been declared legally entitled to his seat. As a member of this body I cannot consent that Mr. Spencer, for whom I have a kindly feeling, shall take his seat in this chamber under this state of facts, until some competent committee of this House have pronounced upon his case.

Mr. CASSERLY. Mr. President——

Mr. CAMERON. Will the Senator give way for a moment?

Mr. CASSERLY. Certainly.

Mr. CAMERON. I tried a little while ago to get an executive session. It is too late for that now, and therefore I move that the Senate adjourn.

Mr. GOLDTHWAITE. Will the gentleman withdraw that motion for a moment? ["No."]

The motion was agreed to; and (at four o'clock and twenty-seven minutes p. m.) the Senate adjourned.

IN THE SENATE.

FRIDAY, *March* 7, 1873.

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

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

Hon. JOHN P. STOCKTON, from the State of New Jersey, appeared in his seat to-day.

ELECTION OF CHAPLAIN.

Mr. MORTON. I offer the following resolution, and ask for its present consideration:

Resolved, That Rev. J. P. Newman, D. D., be, and he is hereby, appointed Chaplain to the Senate.

The resolution was considered by unanimous consent and agreed to.

PAPERS WITHDRAWN.

On motion of Mr. PRATT, it was

Ordered, That Anne E. Spurgeon have leave to withdraw from the files of the Senate her petition and papers pertaining to her application for a pension.

On motion of Mr. PRATT, it was

Ordered, That Andrew Johnson have leave to withdraw his petition and papers relative to an application for a pension from the files of the Senate.

On motion of Mr. SCHURZ it was

Ordered, That D. L. Duffy have leave to withdraw his petition and papers from the files of the Senate.

Mr. WINDOM. I ask to have the following order made:

Ordered, That John Lamb have leave to withdraw his petition and papers from the files of the Senate.

Mr. SCOTT. I think there was an adverse report in that case.

Mr. BUCKINGHAM. Then I suggest that copies of the papers be left.

Mr. WINDOM. There is no objection to leaving copies.

The VICE-PRESIDENT. That is the usual order. The order will be made with that modification.

Mr. WINDOM. Very well.

ORDER OF BUSINESS.

The VICE-PRESIDENT. If there be no further Senate resolutions to be offered, the resolution submitted yesterday by the Senator from Indiana, [Mr. MORTON,] and laid on the table, will now be called up.

Mr. MORTON. I will not ask to have that resolution taken up this morning.

Mr. HOWE. Does not the unfinished business of yesterday come up now?

The VICE-PRESIDENT. During the morning hour morning business is first in order.

Mr. HOWE. Is there a morning hour during an executive session?

The VICE-PRESIDENT. The Chair believes that in an executive session of the Senate petitions and Senate resolutions would be first in order in the morning hour.

Mr. HOWE. I did not suppose that anything in the nature of legislative business could be transacted during a merely executive session of the Senate. I have no sort of objection, if there are petitions or resolutions to be submitted.

The VICE-PRESIDENT. The Chair will inform the Senator from Wisconsin that it would not be in order at an executive session for bills to be introduced or acted upon, but petitions and Senate resolutions are in order. This is an open session of the Senate.

CREDENTIALS.

Mr. HAMLIN. Mr. President, I rise for the purpose of presenting the credentials of the Senator from New York, [Mr. CONKLING,] which have now been received. I ask that they be read.

The chief clerk read the credentials of Hon. ROSCOE CONKLING, chosen by the legislature of New York a Senator from that State for the term beginning March 4, 1873; and they were ordered to be filed.

SENATOR FROM ALABAMA.

The VICE-PRESIDENT. If there be no Senate resolutions, the Senate will resume the consideration of the motion of the Senator from Delaware [Mr. BAYARD] to postpone the question of administering the oath of office to Mr. Spencer as Senator-elect from Alabama.

Mr. HOWE. That motion was to postpone until to-morrow, I think.

Mr. BAYARD. The Senator is right. The papers which the Senate had sent to the printer have not yet been returned; that is to say, the entire bulk of papers sent. One portion of the papers sent, or, rather, one of the papers included in those sent, was the certificate of election of Mr. Sykes, signed by the officers of the two houses of the Alabama legislature. That came back. The original paper is now here on the table of the Clerk; but the other papers in the case, the exhibits, &c., have not yet been returned; so that the reason for the postponement, I conceive, still exists.

Mr. HOWE. Mr. President, considering that motion still before the Senate, I will submit a very few remarks upon it in addition to what I said yesterday. But I must say, to begin with, that since yesterday I have changed front. Yesterday I was in favor of the motion to postpone, and so said, for the reason that I had not had time to read what was submitted to the Senate by that citizen of Alabama who appears here against the right of Mr. Spencer. I was in favor of postponement because I wanted an opportunity to hear what was alleged against the right of Mr. Spencer. To-day I do not want any further postponement, because I have had an opportunity to read the counter-allegations. Therefore, I am prepared to-day, as I was not yesterday, to act upon the application of these contestants for a seat in the Senate.

But upon the other question on which I commented somewhat yesterday, I have not changed front. I still think, as I thought yesterday, that when an issue is raised upon the right of any applicant to a seat here, that issue should be heard and should be determined by the Senate, not after, but before, you decide it; not after, but before, the Senate awards the seat. That was what I suggested yesterday. A night's reflection has rather confirmed than shaken that view. I was a little surprised yesterday to find that it was a view entertained by no single person in the Senate, so far as I could discover, except myself. I think there was a very general admission on the part of the Senate that whenever a man came here with what was called a *prima-facie* title, with some exceptions, which different Senators stated differently, that *prima-facie* title should be respected, and the holder of it should be admitted to a seat, and then the Senate should take up the question, and try and determine it, whether that was a good or a false title.

No two Senators seemed to have the same view as to the limitations which should be imposed upon this rule. My distinguished friend from Missouri [Mr. SCHURZ] thought the *prima-facie* title should be respected by the Senate unless there were grave reasons for distrusting it. If there were grave reasons for distrusting it, then we should set it aside and try the truth of the case before we decided it. I did not quite like that limitation, because it seemed to me a little too indefinite. It did not seem to amount to a limitation at all. Of course, each Senator must judge for himself what was the gravity of the reasons for questioning this certificate. If my friend thinks in any given case there are grave reasons for questioning the authenticity of a certificate, that authorizes him to disregard the certificate. If I think, in the same case, that the reasons are trivial, that authorizes me to respect the certificate, to venerate the certificate.

The Senator from Ohio, whom I do not see in his seat, [Mr. THURMAN,] had a somewhat different rule, and a simpler one. If I understood his statement of it, it amounted to about this: that the Senate was bound to respect the certificate of a governor and the seal of the State when it was held by Senator GOLDTHWAITE, but was not under the slightest obligation to respect it when it was held by Senator Spencer. That rule has the advantage of extreme simplicity; it is quite intelligible; there is no need of any one's mistaking it. In that respect it has the advantage, I think, of the rule suggested by the Senator from Missouri. But I do not quite like either of them.

My friend from New Jersey [Mr. FRELINGHUYSEN] had still another rule, even plainer, simpler, than that urged by the Senator from Ohio. His rule is that you should respect the certificate in all cases. Whoever brings here a certificate of a governor, countersigned by the secretary of state, and bearing upon its face the seal of the State, saying that he has been chosen by the State as a member of this body, that man, no matter what can be said to the contrary, must be allowed to step to your chair, sir, and to take upon himself the oath of a Senator, to take his seat among us, the Senators; to take upon himself the obligations of a Senator, though he may in fact never have had a vote though in fact his name may never have been mentioned in any legislative body having authority to choose a Senator. If he has got that piece of paper, we must take off our hats to the paper; we must clothe him with the prerogatives of a Senator for the time being, and let him wear those prerogatives until the Senate has tried the question of the validity of that certificate.

Now, Mr. President, I do not like that rule. The Senator from New Jersey urged that your statute imposed that rule upon us. I think he is mistaken in his view of the statute. The statute does not say any such thing. It does not declare what is the effect of that certificate. The statute simply says that whoever comes here claiming a Senator's seat should bring with him such evidence of his right. But I understand it to be merely directory, not mandatory at all; and I think the usage of the Senate sanctions that construction of the statute.

I think the Senator from Nebraska [Mr. TIPTON] made a just commentary upon that rule. If the statute is mandatory, if it does mean to tell us that he who would have a seat here must bring such evidence, and whoever brings such evidence must be allowed to take his seat for the time being—if the statute means that, then the Senate acted in direct violation of the statute when, for a year, or something like a year, it kept the Senator from Alabama [Mr. GOLDTHWAITE] out of his seat, who had just such a certificate; and it acted in just as palpable violation of that statute when, only a few days since, it called to your desk and administered the oath to my distinguished friend, the Senator from New York, [Mr. CONKLING,] who had not a scrap of paper about him, unless it was bank-note paper, or something of that sort. [Laughter.]

Mr. President, my view is different from any of these. I say once more I think the time to try this question of title is when it is put in issue; try it always before you award the seat, and not afterward. I do not like the idea of according a seat to a man, and then going on to try whether he has a right to it or not. It is not quite so bad as hanging a man and then trying him; but, in principle, it seems to me just as illogical and just as unreasonable. But when shall you consider the title put in issue? I think it is put in issue whenever it is so disputed as that you and I do not know what the truth about it is. No matter what sort of evidence a man brings here, or what the form of the evidence is, if you know a State having authority to choose a Senator has sent him here, that is evidence enough for you to act upon; it is evidence enough for me to act upon; and we have never hesitated to act upon it; it is satisfactory. On the other hand, no matter what may be the form of evidence brought here by an applicant for a seat, if you do not believe that that form of evidence is accorded to him by a State, or if you doubt upon the point, then I think you ought to stop and be informed before you accord him the seat.

Mr. President, I said that since the adjournment I had looked into this memorial which is laid upon our tables. I may be mistaken about it; but my conclusion upon reading this memorial is, that it does not assign the slightest reason in the world why Mr. Spencer should not take his seat here. It does not amount to an allegation that Mr. Spencer is not elected. It does not amount to an affirmation that the memorialist is elected. What does it say? In two sentences, if I understand it, it says simply this: that a body of men equal in number to a quorum of the Alabama legislature, each one of whom held a certificate of election, assembled one day and in one place, and cast their ballots for the memorialist. It does not say that those certificates were rightfully accorded to the holders. On the contrary, as I understand it, it admits that a portion of those certificates, absolutely necessary to make up a quorum of the legislature, were stolen, or, what is equivalent to that, obtained without, I will not say the color of right, because, perhaps, it was the color of right, but it was so extremely faint a color that whoever reads the papers will hardly catch its hue; and that is what I understand to be the case urged here against him who holds the certificate.

But now, in view of this case, I think the attitude of Senators who participated in the debate yesterday was a little peculiar. Here is a citizen of Alabama coming here with a regular certificate, and a portion of the Senate say, "Pay respect to that certificate; no matter what is behind it, give him his seat;" and another portion of the Senate say, "No; it will not do to accord that seat upon a mere certificate, for here is another man who comes from Alabama and says the certificate was not rightly accorded to its holder." But, when you go back to see out of what this controversy arose, we find that that committee who sent the memorialist here was a committee standing upon just this certificate, and that the other body which assumed to be the legislature of Alabama, and which sent Mr. Spencer here and obtained for him the certificate which he holds, were acting, a portion of them, without such a certificate. If, then, this certificate, this *prima-facie* case, is entitled to all that veneration which my friend from New Jersey and my friend from Indiana urge, why were not those men in Montgomery, who held just such papers, the legislature of Alabama? You say they did not represent the people of their respective districts. Well, I think that was a very good reason; but they had the certificates. On the contrary, I want to say to my friends on the other side of the chamber, if certificates are good for the time being, if the people of Alabama ought to have respect for that Montgomery committee simply because they held the certificates of the secretary of state, if these certificates, these *prima-facie* cases, are entitled to such respect and such veneration, what have they to say against the right of Mr. Spencer to take his seat here to-day, or yesterday? He has the certificate in due and ample form.

Mr. President, I think if I had been a member of the Alabama legislature I should not have paid any more respect to those certificates than was paid to them by the government of the State, and I do not pay such implicit respect to the certificate held by Mr. Spencer, presented at your desk, as some of my friends think ought to be paid to it. I respect it as a *prima-facie* title, if you like that expres-

sion. I respect it because it is the best title here urged, and am willing to vote upon it, because I do not find anything urged in the memorial which invalidates that certificate.

ADJOURNMENT SINE DIE.

Mr. CONKLING. Mr. President, I ask permission to offer the following resolution, to lie on the table:

Resolved, That on Tuesday, March 11, 1873, at two o'clock p. m., the President of the Senate adjourn the Senate *sine die*.

Mr. MORTON. I object to the consideration of the resolution to-day.

Mr. CONKLING. I do not ask that it be considered to-day. I offer it to lie on the table.

ALABAMA LEGISLATURE.

Mr. COOPER. I offer the following resolution, and ask for its present consideration:

Resolved, That the President be requested, if not incompatible with the public interest, to furnish the Senate with the correspondence between the Attorney-General of the United States and certain parties in the State of Alabama, in relation to the fusion of the two bodies there existing, each claiming to be the legislature of said State.

Mr. CONKLING. I have no objection to the resolution, excepting this: I object to it if its passage is to be madean argument for deferring action upon the question now pending until all this correspondence is sent here and printed. I do not believe myself that our duty or the public interest requires this session of the Senate to continue a great while; and I must object to anything which tends unnecessarily to prolong it. Therefore, I suggest that the resolution lie over.

Mr. COOPER. Mr. President, I offered the resolution at this time to avoid the very thing suggested by the Senator from New York, to obtain the correspondence as soon as possible, so that we might have all the light upon this question which can be shed upon it. It was with no intention to delay, but with the earnest desire to arrive at the facts connected with the whole matter.

Mr. CONKLING. I beg to say to my friend that, if he wants the correspondence for use upon any question other than this, it will be just as well for him to have the resolution passed at a later day of this session, because the information will come in the recess and cannot be utilized until the next session of Congress. If he wants it, in order that we may wait to receive it and have it printed at this session before we act on this case, then I object to it.

Mr. COOPER. I have no use for it in the world except upon this case.

Mr. CONKLING. Then I object to it. Let the resolution lie over.

The VICE-PRESIDENT. The Senator from New York objects to the present consideration of the resolution, and it will lie over.

SENATOR FROM ALABAMA.

Mr. GOLDTHWAITE. I would like to inquire whether the documents accompanying the memorial of Mr. Sykes, presented a few days since, have been printed, and are before the Senate.

The VICE-PRESIDENT. The Chair is informed that a portion of them have been returned from the printing-office, but not the whole.

Mr. GOLDTHWAITE. Can we be informed when the remaining papers will probably be before the Senate?

The VICE-PRESIDENT. The Chair is informed that they will be here on Saturday, to-morrow morning.

Mr. GOLDTHWAITE. I should very much prefer to have all the papers before the Senate in this case, in order that this body may determine, as it will have to do, the effect of the certificate which has been already offered and laid on the table by Mr. Spencer as *prima-facie* evidence of his title to a seat. What I want the other papers for is in order that the Senate may consider whether those papers, (giving to the certificate the full effect which is claimed for it as being *prima-facie* evidence of Mr. Spencer's right,) upon a full consideration of the other evidence which will be before the Senate, are not sufficient to destroy the presumption arising from the certificate. I will, therefore, postpone any remarks of my own until those papers are before the Senate.

The VICE-PRESIDENT. The question now is on the motion made by the Senator from Delaware, to postpone the consideration of the subject until to-morrow.

Mr. BAYARD. Until the papers referred to are before the Senate in the Sykes case, which will be to-morrow, as we are informed, I will merely remark, in regard to what fell from the honorable Senator from Wisconsin, [Mr. HOWE,] who has been discussing this matter this morning, that his remarks must have satisfied the Senate that it is essential, before they can pass judgment on this case, that the facts should be before them. They now have a part of the case, but not the whole. They have what we admit to be a *prima-facie* case; but whether that first face of these proceedings is not to be changed by subsequent and other matter is a question for them to consider. They cannot look at this case in part. They cannot look at this case in fragments. They must take it as a whole. They must construe and consider their duty under the law by the light of all the facts; and until the exhibit and the papers connected with the case of Mr. Sykes are before the Senate, they will not have that information which will prevent cavil as to facts.

There was yesterday a challenge, to some facts which I stated upon information, thrown out by the Senator from Nevada, [Mr. STEWART,] who, in very short terms, arraigned the facts I stated as inaccurate. His informant, one of the contesting parties to the cause, was giving him verbal information. On the other hand, there were parties in the chamber giving me information. Now, a great many of the facts alleged on either side are to be settled by the record, and that record will be contained in a public document which will be on our tables to-morrow morning. For that reason I ask a postponement, with no desire to delay the decision of the Senate one instant of time after there shall have been an opportunity for proper discussion. So far from being a waste of time, this will be the wisest bestowal of time. We cannot too carefully consider these questions of a right to a seat in this body, with all its high powers and equal responsibilities. It is not simply a question concerning the individual who claims a seat; to him the effect is most trivial as compared with the result on the rights of the people of his State and the rights of the people of all the other States.

It must not be hurried through; there must be deliberation upon it; and if the matter is to go over until to-morrow, I shall defer some remarks that I proposed to make in reply to the criticisms of the Senator from Indiana upon the act of Congress. I will defer them until the case shall come fully before the Senate. They will not be of great length. My motion before the Senate is to postpone this case until to-morrow morning, and I ask that the question be put on it.

Mr. THURMAN. Before the vote is taken I wish to correct an error into which I fell yesterday from not having in my hand the authentic information now before me. I said yesterday, in the course of the remarks which I submitted, that the senate of Alabama—the undeniable, lawful senate of Alabama—had counted the votes, showing Governor Lewis to be elected. I find, upon looking at the constitution of that State, and the facts in this case, that it is not the senate that counts the vote, but it is counted in the presence of both houses, and that the vote was counted in the presence of both houses, there being nineteen senators present, which was a majority of the senate, that body consisting of thirty-three, and there being fifty-three members of the house of representatives present, which was a quorum, that body consisting of one hundred members, so that really the case is stronger than I supposed it to be yesterday. The votes were counted in the presence of a majority of the two houses, in strict pursuance of the constitution of the State of Alabama, and Mr. Lewis was declared to be elected governor, and another gentleman, whose name I do not at this moment recollect, was declared to be elected lieutenant-governor; and upon that canvass and declaration of the votes made in the legislature by which Mr. Sykes was afterward elected, Governor Lewis took his seat as governor of Alabama, and the other gentleman took his seat as presiding officer of the senate, as the lieutenant-governor of that State.

Mr. CASSERLY. After all that has been said, it may be that I ought not to add a word to this debate; yet, upon a question like this, of so much moment in every view, it is perhaps the duty of each member not to withhold any contribution to the just solution of it which he thinks he can make. I have listened to the debate with great attention; and I have earnestly considered the whole subject. It is a very important one.

We have here two claimants for the vacant place of Senator for the State of Alabama. One of them, lately a Senator here from that State, relies upon a certificate of the governor of the State, certifying to an election by one body claiming to be the legislature of the State. The other claimant is here relying upon the certificate of another body claiming to be the legislature of the State. The question to be decided is one of interest, undoubtedly, to the claimants themselves, but it has an importance far beyond that, because it involves the right of the State of Alabama to be represented in the Senate rightly under her own constitution and laws and the Constitution and laws of the United States. Therefore I have listened with the utmost attention to everything that was said on either side. I have given to all that I heard and all that I could gather elsewhere the most studious and impartial consideration. I have finally arrived at a solution which is satisfactory, at least, to myself. It is the more satisfactory that it enables me for the present, and for the purpose of the vote which I shall give at the present stage of the matter, to put aside all the questions of law or of fact, either as to the manner in which the governor of the State received his title to his office, or as to the legality of the two rival organizations, each claiming to be the legislature of Alabama.

It seems to me entirely idle to say that we have now within our reach any sufficient means for determining the question of the legality of the two rival legislatures. Yet that question is the essential question in this case. The certificate of the governor is nothing but a form; the seal of the State is nothing but a form. The substantial thing, the essential thing, and the only substantial and essential thing about the whole matter, is the election of the Senator for Alabama. Whether that election was good, or good for nothing, depends upon the question whether it was an election made by a lawful legislature, a legislature competent to elect. Yet this, which is the very question upon which everything turns, happens to be one as to which we are wholly destitute of the means for arriving at a just judgment.

Now, sir, for the purpose of what I have to say I shall assume that the certificate of the governor of Alabama, upon which Mr. Spencer relies, is sufficient in form, and that Mr. Lewis, who gave it, was the lawful governor of the State. I shall also assume, for the same pur-

pose, that such a certificate makes a *prima-facie* case in favor of its holder, Mr. Spencer. That *prima-facie* case, however, is a mere presumption of fact. It is not a conclusive presumption in any degree whatever. It is liable at all times to be rebutted by contrary presumption. Down to this point it seems to me that there is no controversy between me and anybody who has yet spoken on the subject. Any division of opinion to arise must be as to what I am to say next.

The question is, have we here the contrary presumptions to rebut—I do not say to destroy, but for the time being to rebut—the presumption of a *prima-facie* case in favor of Mr. Spencer arising upon the face of the governor's certificate? I think we have. I freely admit that it is not every idle rumor or loose allegation; it is not every charge of irrelevant matter, or of relevant matter made by irresponsible parties, which should be entertained here as against the certificate of the governor of a State showing the election of a Senator. It must be something which, in its nature and in the character of those making it, is sufficiently definite and grave to put the Senate upon inquiry; to authorize it, nay, to oblige it, to institute an examination, so that before it acts it may be satisfied both as to the facts and the law. Have we not just such a case here? Who will say that, upon these conflicting credentials, the certificate of the governor of Alabama on the one hand, and the certificate of the body claiming to be, and by many believed to be, the lawful legislature of the State on the other hand, we have not enough, and more than enough, to put the Senate upon inquiry; to oblige it to examine before it acts; to oblige it to refer this case to a proper committee to ascertain and report the facts and the law? That cannot be denied. I think that is the proper test of when the *prima-facie* presumption in favor of the governor's certificate must be held to be suspended until the Senate can inquire and satisfy itself as to the judgment to be rendered; and that, sir, seems to me to be the principle which reconciles the recent decisions at least, by this House, in similar cases.

In the case of the Senator from Alabama, now in his seat, [Mr. GOLDTHWAITE,] he held the certificate of an officer admitted to be the governor, showing an election by a legislature which was admitted all around to be the lawful legislature, and the only legislature, in the State of Alabama, and he was here the sole claimant, without any opposition or contest as to his title. Yet, sir, upon a protest, or something in that nature, sent here, purporting to be signed by members of the legislature of Alabama, not the act in any sense of the legislature itself, his credentials were referred to a committee, and he himself was kept out of his seat, and the State of Alabama was deprived of her full representation in this body for ten or twelve months. That must have been upon the idea that the *prima-facie* case made by the governor's certificate was for the time being suspended by the allegations on the other side. I think the Senate went very far indeed, too far, in that case. I voted against the reference; I voted against the exclusion of the Senator from Alabama from his seat in this body. That case was the very strongest of all the recent precedents in this body that can be cited.

Another case was the case of the election of the Senator from Texas, [Mr. HAMILTON.] He was here with a regular certificate of the governor of the State, showing an election by the legislature of the State. The Senate allowed the *prima-facie* presumption arising upon that certificate to be overcome by a telegram from the governor of the State that a void paper in the hands of General Reynolds had not been signed by him through inadvertence, and that he meant to issue to him the same kind of certificate in every respect that he had previously issued to Mr. HAMILTON.

The next and latest case was the case of the Senator from North Carolina, [Mr. RANSOM.] He came here with the certificate of the governor of the State, certifying to an election by the legislature of North Carolina. There was no controversy as to the title of the governor, none as to the power of the legislature; and yet do we not all remember that his case was referred to a committee, where it remained a long time? It was not until after the lapse of many, many weeks that he was admitted to his seat.

In the last two cases, as in the first case, the Senate decided that the *prima-facie* presumption arising from a certificate of the admitted governor, regular and sufficient in form, should be overcome in the one case by a telegram from the governor, or purporting to be from him—a most dangerous precedent, as it seems to me—and in the other case by a mere contest promoted by an antagonist backed by something in the form of remonstrance or protest from a portion of the members of the legislature of North Carolina.

In this case we have every element that existed in any of the contests of which I have just spoken in which the Senate uniformly adopted the course of a reference to a committee to inquire and report. We not only have every element that was there, but we have more. We have the solemn certificate of a body purporting to be the general assembly of the State of Alabama, declaring the election of another person than the person who holds the governor's certificate. I speak, of course, of Mr. Sykes.

The question is, shall a state of facts in the present case much more potent to overcome the technical presumption of the governor's certificate, than those which in the three cases I have cited were held sufficient by the Senate to hang up the governor's certificate for weeks and months in our committee, be held insufficient now to send the present case to a committee for examination?

That is the question for the Senate to decide, whether the rule works but one way.

We shall not adequately weigh the facts that cut down the *prima-facie* case made by the governor's certificate unless we keep in mind the circumstances that surround the case. Alabama was in a semi-revolutionary condition at the time of the alleged election of Mr. Spencer. She had two legislatures, and a governor who took his title from one legislature, and then took sides with the other. The case before us is not to be tried by ordinary rules. It is anomalous. To apply to it the ordinary rules of interpretation of statutes and certificates would be a solecism, or worse. The only safety is in remitting both claimants to our committee for its inquiry and report.

There is nothing in the idea that has been so much insisted upon by the Senator from New York, [Mr. CONKLING,] and I believe by the Senator from Indiana, [Mr. MORTON,] that Mr. Sykes is here as a mere "memorialist," not as a Senator. Why, sir, is not such talk the worst word-catching? Is it not the merest hair-splitting that ever was? Mr. Sykes is here claiming to be a Senator from the State of Alabama. He presents his memorial, setting forth his credentials from the Alabama legislature with the other grounds upon which he claims the seat, in respectful and proper terms. He is not to be deprived of his right to a seat in this body because he has resorted to an unusual mode of asserting it. It is unusual, doubtless, but it is by no means an unsatisfactory mode. On the contrary, it has relieved some of us at least of a good deal of labor in ascertaining the grounds on which he relies, that he has taken the pains to spread them so fully before us. A State is not to lose her Senator in this body because one, two, or three Senators, however able and eminent, seek to cry him down as a "memorialist." The right of every citizen, the humblest as well as the highest, to address the Senate of the United States by memorial in defense of his rights, or in the assertion of the rights of others, is absolute and indefeasible. It is too substantial a thing to be frittered away by a phrase in the mouth of any Senator.

On these views I rest my vote. Here is a case of so much gravity and difficulty, in which no Senator knows the essential facts, as to put the Senate upon inquiry, to call for a reference and investigation by a committee. It is, therefore, a case sufficient to overcome the *prima-facie* presumption of the certificate of the governor; therefore I shall vote for the motion to refer to a committee, or I shall vote for a postponement until to-morrow, to give us all, myself included, further time for the examination necessary to enable us to form a judgment.

This is the safe course. It casts no imputation on either claimant. It is our only security against doing a wrong to either, and, what is more vital, to the State of Alabama, and to the Senate as a part of the Congress of the United States.

There is nothing in the practice of the House of Representatives, as alleged, of admitting every person who presents himself with the certificate of the proper officer. From the great number of that House any other course would be impracticable. The case in that House is a case of necessity; and yet even there, as everywhere in the instance of a legislative body, it is a very grievous evil, even though it be a choice of evils, that one or more men shall sit in a legislative body and help to make laws, even in cases where the passage of the act depends on their votes, and yet it shall turn out finally that the claim under which they sat there was utterly null and void from the beginning. The smaller the body the greater the evil. In the Senate it is an evil so great that it is difficult to say that it is not a paramount consideration.

The VICE-PRESIDENT. The question is on the motion of the Senator from Delaware, to postpone the administration of the oath to Mr. Spencer until to-morrow.

Mr. BAYARD. I ask pardon of the Chair; but, as it was my motion, I think the Chair misapprehends it. It was to postpone the consideration of the case, not the administration of the oath.

The VICE-PRESIDENT. The Chair will put it in that form if that is the precise motion. The question is on the motion to postpone.

Mr. BAYARD. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. BAYARD. I cannot forbear to state to the Senate again that it is understood, it having been stated by the clerk at the desk, that the papers originally laid before the Senate, and sent by its order to the hands of the printer, have not yet been returned, but will be here to-morrow morning.

Mr. CONKLING. It is also understood by me that every element that enters into this judgment is before us, and has been for two days at least.

Mr. BAYARD. That is the understanding of the Senator from New York. I beg leave to disclaim that as being mine, or that of many others around me.

Mr. CONKLING. When I speak of my understanding, I speak for myself, and not for my honorable friend from Delaware; and therefore I said that my understanding was, and is, that every element of which our judgment can be composed is before us, and, I repeat, I speak only for myself.

The question being taken by yeas and nays, resulted—yeas 24, nays 32; as follows:

YEAS—Messrs. Bayard, Bogy, Casserly, Cooper, Cragin, Davis, Dennis, Fenton, Ferry of Connecticut, Goldthwaite, Hamilton of Maryland, Hamilton of Texas, Kelly, McCreery, Merrimon, Norwood, Ransom, Saulsbury, Schurz, Scott, Stevenson, Stockton, Thurman, and Tipton—24.

NAYS—Messrs. Alcorn, Ames, Brownlow, Buckingham, Caldwell, Cameron, Chandler, Clayton, Conkling, Conover, Dorsey, Ferry of Michigan, Flanagan,

Frelinghuysen, Gilbert, Hamlin, Howe, Ingalls, Lewis, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pratt, Ramsey, Sargent, Stewart, Wadleigh, West, and Windom—32.

ABSENT—Messrs. Allison, Anthony, Boreman, Carpenter, Edmunds, Hitchcock, Johnson, Jones, Patterson, Robertson, Sherman, Sprague, Sumner, and Wright—14.

So the motion was not agreed to.

Mr. BAYARD. I now move that the credentials of Mr. Spencer, as Senator from Alabama, and those of Mr. Sykes, claiming also a seat in this body as Senator from the same State, be referred to a committee of the Senate—and there being as yet no standing committees appointed by this body, I move that it be a special committee—who shall consider and report to the Senate upon the title of each of these contestants.

The VICE-PRESIDENT. The Senator from Delaware moves that the case——

Mr. BAYARD. Before that question is taken I desire to submit some remarks.

The VICE-PRESIDENT. The Chair will state the question. The Senator from Delaware moves that the cases of Mr. Spencer and Mr. Sykes be referred to a special committee of this body.

Mr. BAYARD. Of five.

The VICE-PRESIDENT. A special committee of five members.

Mr. BAYARD. Mr. President, the last vote which was announced signified the intention of the Senate not to postpone the consideration of this question until the papers should come in; but I still trust that they will see the necessity of submitting these varied claims for the same seat to the scrutiny and consideration usually given to measures before they are reported for the action of the entire body.

I do not propose to reiterate at any length the propositions which I yesterday submitted to the Senate, but merely to refer to some of the propositions which were submitted by the honorable Senator from Indiana [Mr. MORTON] yesterday, and to which, owing to the late stage of the debate, I did not then reply, and yet which I think it important should be corrected; and I trust that I may even have from him a reconsideration of his opinion in regard to the act of Congress under which legislatures elect Senators to this body.

It was stated by the honorable Senator, that in the joint assembly contemplated by the act of Congress, which means the assembly of the two houses of the legislature, to use his words, "There may not be a single senator present, and yet the joint convention is good, provided the number of members of the house is great enough to be a majority of both houses."

He stated that proposition very distinctly, and I dissented from it at the time. Upon reflection I continue my dissent, and I submit to the honorable Senator that he entirely destroys the essential meaning of the plain words of the act when he declares that a joint assembly can be composed of members of one house alone. The word "joint," in itself, has an express, emphatic meaning, signifying the union of two or more bodies, or parts. It could not be joint if there was only a simple integer; it must be the union of integers. Therefore when the honorable Senator declares that there can be a meeting of a legislature, to be called a joint assembly of both houses, with no member of one of the houses present, it seems to me, with all due respect to him, I will not term it an absurdity, but I say it is a flat contradiction of the natural and essential meaning of the words of the statute. He was driven to such a construction in order to overcome the manifest defects of the certificate presented here on behalf of Mr. Spencer. I stated yesterday that this certificate nowhere declares that the houses voted together, or that they voted separately; it nowhere declares that there was a quorum of either branch of the legislature present at the time of the vote; and having the paper before me, I reiterate the statement.

It is here declared that "both houses of the general assembly voted for a Senator from the State of Alabama to represent the said State of Alabama in the Congress of the United States." That is the statement, that "both houses" voted. How did they vote? Did they vote according to the act of Congress—each house openly by a *viva-voce* vote of each member—for a person who, to be chosen, must have a majority of the whole number of votes cast in the house? Sir, that does not appear; it cannot be implied; and yet it is essential where the election took place by each house in the absence of the other. We are left entirely in the dark whether, when it says both houses voted, it means that they respectively voted in their respective chambers; nor does it give you any information as to whether a quorum was present. There being no statement, and no justifiable presumption in a case of this kind, because here the law is mandatory, what are we to do? I say the law of 1866 is not simply a declaratory act; there is a mandatory process prescribed by the law which must be followed, or no election can ensue. Here, under the mandatory provisions of this act, calling for an election by each house, each member voting *viva voce*, a majority of each being required to be present, there is no allegation upon the part of this certificate that such an election was ever held by each house separately. No statement appearing that the houses voted separately and elected, we come to what is then required by the act—that they shall meet in joint assembly for the purpose of electing by a joint ballot; and there, as I pointed out yesterday, the certificate is fatally defective, stopping short at the very point of the essence of this election. The certificate states that "George E. Spencer, having received a majority of all the votes in both houses, was duly elected Senator." That is not the act of Congress. That is not in accordance with the mandatory provisions of this law, because it requires that he should receive the votes of a majority of all the members elected, both houses being present and voting. There is nothing on the face of this paper to show that a majority of either house or of both houses was ever present and voted.

Are we to be forced to the construction of the honorable Senator from Indiana, that one house alone, having within itself a numerical majority of the membership of both houses, may elect a Senator? Let me give you his language:

> The legislature of Indiana consists of one hundred and fifty members—one hundred members of the house and fifty members of the senate. Now if, on the second day, there are seventy-six members of the house present, and not a single senator, that is a good joint convention, and they can proceed to elect a Senator.

Sir, to call such an assemblage a joint convention is an abuse of terms. I know that this act was intended to prevent the effect of a factious majority in one branch of the assembly refusing to meet in joint convention; but to say that a joint assembly can consist of members of one house alone is simply to destroy the necessary meaning of words and the intent which the law of Congress was framed to effectuate.

So much for that proposition, which I deny, that you can turn a meeting of a single house into a joint meeting of two houses by simply giving notice to one house, if they do not choose to attend. There must be a majority of the entire legislature, and that majority must be composed, in part, of members of each house; otherwise it is a simple abuse of language, a denial of the just force of words, to say that a joint assembly can consist of the members of a single house.

But, Mr. President, as I said, the Senator from Nevada [Mr. STEWART] yesterday very positively questioned the accuracy of the statements I made in regard to the composition of the bodies, each claiming to be the legislature, that elected these two contestants. I said then, and I now repeat, upon what I believe to be accurate information, that in the legislature which voted for and elected Mr. Spencer to a seat in this body there was not a constitutional majority of members having certificates, and therefore there was not a constitutional quorum of members; but that, in the case of Mr. Sykes, the legislature which elected him had a quorum, under the constitution of Alabama, of members, who all held certificates of election. Those facts, I understood yesterday, were questioned by the Senator from Nevada. As they were not my own facts, but stated on information, I repaired for confirmation or correction to the source from which I originally received them, and I am authorized to state them again.

Reference was made yesterday to the composition of the fusion legislature, as to what it was, as to how it was composed, and what its action had been. A knowledge of those facts ought to affect the action of the Senate in the present case, and therefore I ask to have read from the desk of the Clerk a letter directed to Hon. George H. Williams, Attorney-General of the United States, signed by Mr. Hamilton, senator from Mobile; Mr. Erwin, senator from Wilcox; Mr. Anderson, representative from Mobile; Mr. Manning, representative from Mobile; Mr. Doster, senator from Autauga and Elmore; and Mr. Doster is a well-known member of the republican party. I desire to have this letter read, in order that the Senate may apprehend the character and action of the true legislature formed, if I may so call them, of the capitol legislature and the court-house legislature, which were fused into the present legislature of Alabama. I desire to have the letter read.

The chief clerk read as follows:

MONTGOMERY, *December* 23, 1872.

SIR: The manner in which the compromise suggested by yourself, with the approval of the President, for the settlement of the dispute in relation to the general assembly of Alabama, has been attempted to be carried out by the majority of the court-house party, induces this second appeal to you and the President.

This appeal, though at the request mainly of the capitol assembly, is not confined to them; it is made also at the request of gentlemen who are republican in politics, and who, prior to the proposed settlement, were members of the organization at the United States court-house.

This application is made because, in the judgment of the applicants, the good faith they expected, and which they conceive you had a right to look for in the carrying out of the scheme, has not been exhibited by the majority of the court-house party.

The undersigned have been appointed a committee to put you in possession of the facts attending the attempted settlement of these legislative difficulties. This duty they now perform by calling your attention to the accompanying statement of facts, as they have occurred in the two houses on and since Tuesday the 17th instant.

You will observe that both parties accepted your plan and agreed to carry it into effect as a full settlement of the dispute; that Tuesday, the 17th instant, was named by common consent as the day on which the persons authorized to convene as members were to assemble in their respective rooms in the capitol and carry into effect the settlement.

You will observe that in the house of representatives a temporary organization was made on that day, and the persons therein then seated as members were the persons indicated in your plan. In the senate on that day the lieutenant-governor took the chair, and the persons seated as senators were precisely those indicated in your plan.

In the house adjournments were had till Friday, the 20th instant, on the plea that the evidence needed to make the count, as to the seats from Marengo County, had not arrived. In the senate, on the 17th instant, it was announced by members from each political party that an agreement had been come to in relation to the disputed seats whereby the count by tellers would not be required, but senators from those districts would take their seats in accordance with what it was admitted the count by tellers would show to have been the "actual vote cast."

To carry this arrangement into effect, an adjournment of the senate was had until the next day. On the next day, the 18th instant, this arrangement was carried into effect in the senate. Under it the republican senator from Marengo was seated in place of the democratic senator from that county, who held the regular certificate of election; the democratic senator from the Conecuh district retained his seat; the right to contest, under the law, being retained by the retiring claimants, respectively.

The same proposal was made in the house of representatives as to the Marengo seats, to wit, the members from that county, holding certificates, would waive the actual count, and admit a count which would show the numerical majority, upon the precinct-inspectors' returns, to be in favor of their opponents, and would retire, retaining the right to contest under the law.

For reasons unknown to the undersigned, this proposal was not accepted in the house till Friday, the 20th instant. It was accepted on that day, and the republican claimants of the seats from Marengo County thereupon took their seats as members of the house.

By this agreement, carried into effect in the two houses, the right of parties to seats was ascertained upon the principle proposed by you. In each, by consent, the parties having the majority of votes cast were, in virtue thereof, allowed to take their seats, and become members in all respects the same as if they had been furnished with a regular certificate of election by the officer authorized by law to give that document.

The result to be obtained by your plan was reached. The mode only was waived, and it was waived by common consent. In effect, then, your plan was carried out; its literal execution only was waived, but without the slightest change of result, and this only in order the more speedily to reach the result which would have followed its literal execution. This is abundantly shown by the proceedings of the two houses, by their resolutions, and particularly in the senate by the terms of the paper, caused to be entered on its journal by the lieutenant-governor, *ex officio* its presiding officer. In each house this was apparently accepted by all as a full performance of the agreement of compromise. It was certainly regarded by these applicants as a full settlement of all the disputed questions.

Immediately upon this agreement being adopted, a permanent organization was made in each house. In the senate this result was reached on Wednesday, the 18th December. It thereupon elected its officers, (its presiding officer appointed by the constitution being then in the chair,) and, by resolution, notified the house of its organization. The lieutenant-governor congratulated the senate upon the happy settlement of the dispute, which had delayed the public business, and stated that he then took his seat as president of the senate. He began the call of the senatorial districts for the presentation of bills, and only ceased upon the inquiry whether it was competent for the senate so to proceed till informed of the organization of the house of representatives.

The same result was reached in the house of representatives on Friday, the 20th December. A permanent speaker was then elected, and also a clerk and other officers.

The undersigned and their associates were well pleased at this settlement of past disputes, and with great satisfaction looked forward to the performance of the duties with which they were intrusted, which the affairs of the State so imperatively demanded.

Their hopes have been disappointed.

On the morning of Thursday, the 19th December, after the roll of the senate had been called, and the journal had been read and approved, the lieutenant-governor, from the chair, announced that according to his construction of the agreement the senate was not yet organized, and could do no business till the contests for the seats from the Marengo and Conecuh districts were decided.

This position was in direct contradiction to former rulings and acts of the same officer, and in conflict with decisions by the senate itself. That officer refused to permit an appeal from his decision, on the plea that he was acting, not as president of the senate, but as lieutenant-governor, charged with the duty of organizing the senate, and a decision of senators, if contrary to his, would be the decision merely by a majority of a mere convention, without the power or authority of a senate. A desire still, if possible, to secure harmony, induced those who were opposed to this view to waive pressing their appeal, and see if an adjustment were yet practicable.

With this purpose a resolution was passed for the appointment of a committee of two from each party to take testimony and report upon the legality of the title of the respective claimants of the seats in the senate from the districts of Marengo and Conecuh, as in the case of a contest under the constitution and laws of the State.

It was hoped the lieutenant-governor stood alone in this strained construction of the agreement of compromise. Since then, however, the speaker of the house of representatives has announced the same decision—the more striking and strange on his part, because he has been elected and sworn in as permanent speaker—and if his decision on this point be correct, he has decided himself out of his office, for, by the agreement, no permanent officer could be elected by the house till these contests had been decided, and on this theory they have not been decided.

The proceedings of both branches of the assembly show that they have each passed through the temporary organization of their bodies, as proposed in your plan, and have each permanently organized themselves by the election of their necessary officers. This was done in each by the common consent of all the members. To these steps no objection was made from any quarter, as, indeed, no objection could properly be made. The two branches of the assembly have thus construed the agreement for themselves, and with the concurrence of the presiding officers; and this construction is in plain accord with the plain and literal meaning of the agreement.

The dispute that existed was in relation to the parties who should occupy certain seats. One set of claimants held the customary evidence of right to the seat, the other insisted this form of evidence rested on a fraud, and that they should be seated. To settle this contest you, in behalf of the President, suggested that the certificated members should take their seats, but should not vote (our remarks do not apply to the seats from Barbour County, for they are not at all involved in the present aspect of the case) on any question; that a temporary organization only should be made in the house. The senate not requiring any election for its president, who is appointed by law, no occasion existed to provide for its temporary organization. To ascertain the persons who should vote and act as members in the disputed seats, you suggested should be the first business transacted, and this should be effected by taking the "actual vote cast," as returned by precinct inspectors, in place of the report by the county supervisors of elections, as furnished to the secretary of state. The machinery to ascertain this actual vote cast was the appointment of tellers, one from each political party in each house. Here, then, was the contest, and here the mode of settling it. The mode of settlement was clearly a secondary matter. The settlement of this contest was the principal thing. The plan says, "When such contest is determined, the house shall make a permanent organization in the usual way." In the senate the contests were for two seats from two senatorial districts, and the right of the claimants to sit was to be ascertained in the same manner as provided for the "house contest." "Nor shall the senate do any other business before these contests are settled."

These contests, both in senate and house, have been settled; they have been settled by agreement, and have been settled in such way that the "persons found to have the highest number of votes" for senators and representatives have been seated in their respective houses.

These contests are the contests provided for in the plan of compromise proposed and accepted; they are the only contests provided for; they could be the only contests provided for; they were the only contests that stood in the way of harmony originally; they were all that could, with any shadow of excuse, stand in the way of the organization of the general assembly of Alabama in the capitol on the first day of the session.

The inevitable result of the bare perusal of the argument of compromise—and this view is only strengthened by consideration of the document—is, that when the members from Marengo and Conecuh were seated in their respective houses upon the agreement hereinbefore mentioned, all the conditions were complied with, and the two houses were in a condition to proceed with their regular organization and business.

If the plan of the Attorney-General could bear such construction, which it cannot, it would be disrespectful to that officer and to the President to suppose that he intended to impose upon claimants of seats in the general assembly any such rule as that they should waive their constitutional right to test the legality of their opponents' election, or intended to compel the houses of the assembly to disclaim their constitutional right and duty to judge of the elections of their members. No such design can be imputed to those officers. They very properly might, and they did, suggest for consideration, a plan whereby the *prima-facie* right to sit could be tested, in such manner that a majority of votes should seat the member, and so remove cavil and distrust; but it cannot be supposed that they would undertake to interfere with the indisputable right of a State and the member of a State legislature, by dictating a waiver of right and duty.

In every aspect in which the matter can be regarded, the undersigned and their associates can discover no ground for the later construction put on this agreement by the leaders of the court-house party, and can find no excuse for their conduct in departing from the construction they themselves at first placed upon it, in permitting, without objection, the election of permanent officers by the house, and the announcement by the senate to the house that it was permanently organized and ready to proceed with business.

The undersigned and their associates are not informed of the motives and objects which led to this new departure. They declare that no excuse for so doing can be found in the conduct of themselves or their friends. They have scrupulously and industriously done all in their power to carry into effect the compromise agreed upon; they have attended, day by day, at the appointed place, to bring about a union of all the members entitled to form the general assembly; they have of themselves, and apart from the other members of the two houses, done nothing whereby harmony of feeling could be disturbed or suspicion excited; they have in good faith endeavored to conform in each and every particular to the objects sought to be secured, and to effect a permanent union into one indisputable general assembly of all the persons entitled as members thereof.

The undersigned regret that they cannot so speak of the conduct of the other party.

That party has attempted to preserve their separate organization, at the very time they were seeming to unite with us in forming a general assembly under the plan of compromise. During a part of each day they have met with us in the capitol and proceeded as if with the view to effect the proposed fusion, while during the same day, at other hours, they held sessions as of the general assembly at the court-house, in this city, and proceeded to enact bills into laws (as they call them) which vitally affect the financial and other interests of the State. These sessions appear to have been held with closed doors, and secretly, at least not publicly and openly, and without public report of their proceedings. These proceedings have been with the knowledge and apparently with the approval of the governor of the State, and this, though that officer himself earnestly by message advised the adoption of the scheme proposed by yourself, and well knew the steps that were in progress in the two houses in the capitol to effect the compromise he so earnestly recommended. These sessions were held daily at the United States court-house, during the whole time the joint sessions were held in the capitol.

The undersigned have not the means of laying before you the journal of the proceedings of that party, nor are they perfectly informed of all its acts.

They state, however, that the governor addressed to that party at least one message in writing, a copy of which is hereto attached, while he made no communication of any kind to the houses assembled in the capitol. They state that no excuse can be found for this course on his part in the financial condition of the State which could not as well have been considered and provided for by the general assembly of the State. That assembly was and is as anxious to provide for the commercial honor of the State as Governor Lewis can be, and would cheerfully have foregone the pleasures of home in order to meet the exigency of the occasion. The failure in assuring its co-operation does not rest with us, nor with the undersigned and their associates.

His message bears date the 20th December. On that day both houses of the general assembly were fully organized, and well prepared and entirely willing to attend to any business that might be brought before them. It is needless to say they far more truly represented the people and the property of Alabama than did or could the fragmentary bodies which pretended to sit as the general assembly of Alabama in the United States court-room.

It will be observed that the senate was organized in the capitol on 18th December; the house of representatives on the 20th. Adopting in this respect a liberal interpretation of your plan of settlement, by its terms, on that day the officers of the former distinct organizations ceased any longer to be officers. By adopting your plan, they each then became *functus officio*.

There are now found in the office of the secretary of state, at Montgomery, three documents, which purport to be acts passed by the organization at the court-house—they form no part of the proceedings of the assembly at the capitol, and were never made known to it—all enacted since 17th December, and approved on 21st December.

They are believed to have been adopted by that organization on Saturday, the 21st, at a time when there were not present a quorum of their members even as they had organized and seated them. It is known that on the night of Friday the senators from Russell and Autauga, who had formed a part of their senate before the 17th, were not present, though urged to attend and form a quorum to pass at least one of these bills. These gentlemen, though republicans, have declined to act further with that party. They conceive they are bound by the compromise which they accepted, at least till they see it will not be carried out by the members of the former capitol organization, and good faith required them to abstain from further assembling with a mere fragment of the whole. They did not attend at the passage of these bills.

Of these bills, one is an act increasing the present rate of taxation 100 per cent.; another authorizes the issue of additional State bonds to the amount of $2,000,000, to be sold or hypothecated by the governor; the third authorizes a sale by the governor of the Alabama and Chattanooga Railroad, in whose affairs the State is implicated to the amount of several millions, and which has already been sold by the former governor, and about which matter a great deal of public solicitude exists.

It will be observed that this attempted legislation is of no trifling or unimportant character. It affects the largest interest of the State. It was not had in open and public session of an undisputed general assembly, but by a mere fragment of the houses then in daily session at the capitol, aided by others who have no claim to seats under the agreement which had been adopted, and was had by men who pretended, at the very time that they were so acting, to be carrying into effect this plan of compromise, and for this purpose were daily assembling as members of another general assembly at the capitol.

The undersigned and their associates cannot in these facts discover that good faith in effecting the compromise, which they conceive that both themselves and the President and Attorney-General had a right to expect at the hands of that body.

The undersigned do not propose to characterize such conduct by any language of their own; they present the facts to speak for themselves.

The undersigned and their associates conceive that, in this address to you, they are but performing a duty, springing out of the relation that the circumstances of the case have created between you and the general assembly of Alabama. They conceive that when, with the approval of the President, you proposed to the governor of the State "a plan of compromising the difficulty" growing out of "two organizations at Montgomery, claiming to be the general assembly of the State," you did not suppose it possible that the plan would be accepted, and yet "the difficulty" be industriously cultivated by one party to the disadvantage of the other, so as to nullify the compromise you proposed and defeat the settlement you were at pains to accomplish.

They do, therefore, respectfully invite you to a consideration of the facts herein stated. They request your action in such form as your wisdom may approve, to secure the end which, through your agency, appeared upon the point of being effected, and which will result in one legislature, about whose validity no question can be made, to the satisfaction of the good people of the State.

Very respectfully, your obedient servants,

P. HAMILTON,
Senator, Mobile.
R. H. ERWIN,
Senator, Wilcox.
D. C. ANDERSON,
Representative, Mobile.
A. R. MANNING,
Representative, Mobile.
C. S. D. DOSTER,
Senator, Autauga and Elmore.

Hon. GEORGE H. WILLIAMS,
Attorney-General United States.

Mr. BAYARD. Mr. President, my object in having this paper read was to exhibit to the Senate, by undeniable information, the anomalous and utterly confused condition of affairs that may be said even now to exist in the State of Alabama. I do not propose to recapitulate the history of these irregularities; it would be too long; it would be unnecessary, perhaps; but briefly let me refer to the fact that there were two rival bodies, each claiming to be the veritable legislature of the State of Alabama; that although Mr. Lewis received his own certification of election at the hands of one of those bodies that sat in the usual seat of legislation, the capitol at Montgomery, Alabama, yet he instantly turned round and recognized the rival body, and acted with them until a suggestion emanating from the executive branch of this Government, through the Attorney-General, proposed a settlement of the difference between the certificated and uncertificated members of the legislature, and a proposition was made in accordance therewith for their fusion. That fusion was carried out fairly and fully on the part of that legislature which sat in the capitol of the State of Alabama, but was not carried out or acted upon in good faith by the other body which occupied the court-house, and whom the governor had recognized as the legislature; for it seems that after Mr. Parsons, the speaker of the house, had been re-elected to his place by the fusion legislature, acknowledging the composition of that body to be regular, and receiving his authority and position under it, he and those who acted with him, being a part of the court-house legislature, were in the habit, after sitting during the day in the performance of legislative duties in the capitol, of adjourning by night at an irregular time to the court-house and there holding secret sessions, passing other bills, before what was really a mere faction and not a legislative body.

The value of Governor Lewis's certificate may be ascertained by the fact that he has recognized and approved bills passed in secret by this factious fragment of a legislature, acting in direct bad faith to the agreement made under the suggestion of the Attorney-General of the United States, that he has approved bills passed by them increasing the taxes of the people of that State 100 per cent., bills appropriating $2,000,000 to be negotiated or hypothecated by the governor, and one other bill, the purport of which I do not at this instant remember, but a bill of an exceedingly important character; and yet, approving the action of this factious fragment meeting in the court-house, he has since that time approved measures of the fusion legislature meeting at the capitol. Now, sir, when you have a governor who by his public action approves as acts of legislation measures passed by two legislatures while both are in session, after he has promised to recognize but one, what is to be the value of his certificate as to the election of a Senator to this body? Why, sir, if he had done in regard to the senatorial certificate as he has done in regard to the legislation of his State, we should have two certificates from the same governor of the election of two different persons to the same seat in the Senate!

I say this, because the Senate cannot escape from the fact that no longer do the certificates stand here as *prima facie* the truth of history in the recital of the acts of the legislature, but they show you that all has been confusion, and that when by a most anomalous proceeding on the part of the Executive of this country, acting through the Attorney-General, a suggestion is made for the reconcilement of differences, when that has been acted upon so that these two bodies meet and fuse themselves into an acknowledged legislature which is in session to-day, the Senate cannot undertake to act upon a certificate (I do not care whether it be of Mr. Sykes or of Mr. Spencer) of either one of two mere fragments of a legislature at one time proposing to act independently, but finally confessing the irregularity of their action and voluntarily fusing into a single body.

I do not propose to enter into a discussion of the rightfulness of Mr. Sykes's claim to take a seat, or of Mr. Spencer's right to take a seat, beyond this, to show to the Senate that there is no *prima-facie* case, or if there was, that which might under other circumstances be considered a *prima-facie* title to a seat, cannot, looking at the whole state of affairs before you, be considered entitled at all to such action upon your part as will place in this body, without examination and without question, a person who shall have the right to vote as for a State, not simply affecting that State, but affecting all others, the rights of the State that I represent as well as of every other State in this Union.

Sir, the question is too grave for such treatment. I cannot understand how the Senate can satisfy themselves to cut this tangled web of faction, of intrigue, of irregularly exercised power on the part of the General Government of the United States, by saying they will seat one of two men, when so much of irregularity, such an undeniable absence of regularity and authority, marks every feature which preceded and accompanied this so-called election.

I do not mean to say what shall be the result of the action of this fusion legislature; that is not the question; but I do mean to say that you have no right to give greater weight to one of those fragments which now compose this legislature than to the action of the other, and yet that is the proposition. How Senators, in the face of such a record, of such a statement as is presented by this long communication which has been read to the Senate, can undertake to seat a man in this body for one instant, and give him the powers and the privileges in the government of this country which a seat in this body implies and carries with it—how they can do that in the face of the history of affairs in the State of Alabama, as portrayed by the evidence now before them, is something that I cannot see. It is too dangerous, Senators. I know that we live in times abnormal, in times revolutionary; but I appeal to Senators, do not add to the difficulties of legislation here by gravely putting upon the record your willingness to decide without a hearing, to decide without knowledge, to decide in the face of such gross irregularities as certainly will not make your action legal, except so far as your mere will may conduce to that effect.

Mr. MORTON. Mr. President, the Senator from Delaware has had a long statement read, purporting to be a history of the compromise between the pretended legislature which elected Mr. Sykes and the legal legislature, as decided by the supreme court, which elected Mr. Spencer. I do not propose to go into the argument of the questions arising from that statement, nor to undertake to correct that statement at this time in its allegations of fact. All that would properly arise before a committee, and the Senator has moved that all these papers and credentials be referred to a special committee, of which I should be very glad, if there is to be a reference at all; but I think it proper to give to the country a little history that goes behind that statement, and let us understand what are the merits of this claim, set up here with so much earnestness and with such elaborate statement on the part of Mr. Sykes.

The State of Alabama at the last election voted for General Grant by about 10,000 majority. In regard to the genuineness of that majority there is no dispute, and has not been. Mr. Lewis, the republican candidate for governor and the other candidates on the same ticket with him, were elected by average majorities of 9,000; and, as we have been told, this pretended legislature, that elected Mr. Sykes, counted the vote and declared Mr. Lewis elected by about 9,000 majority. In other words, the State of Alabama was confessedly largely republican, as clearly so as Kentucky is democratic. But the legislature was close between the parties, owing to the way in which the State was apportioned, the counties being divided off into representative and senatorial districts, and the political complexion of the legislature depended upon the vote of two counties, Marengo and Barbour. If the republican candidates were elected in those two counties, the legislature would have a republican majority in each branch. If the democratic candidates were elected in those two counties, there would be a democratic majority in each branch, and so there was a contest made after the election, more than before, to secure democratic representatives and senators from those two counties. Those counties were republican. I have the official vote here, certified to officially by the returning-officers of the county of Marengo, all of them democrats, showing that the total republican vote in that county was 3,122, and the total democratic vote 2,064; giving a republican majority of 1,058. There was no sort of doubt that the republican candidates for the legislature, as well as for State officers and presidential electors, were elected in that county; but an attempt was made to secure the return of democratic representatives and senator—three representatives and one senator—by a fraud that I will now describe.

After the election was over a bill was filed in the county court. They have, I believe, a court of chancery, and a judge in that, called the chancellor. A bill was filed before the chancellor to restrain the returning-board from counting the votes in one precinct that gave a very large republican majority. As finally counted, the vote stood on an average, for the republican candidates in that precinct, 750, and for the democratic candidates, 182. It appeared that the polls had been manipulated in other townships in that county in such a way that by throwing out that precinct the democratic candidate would be returned. A bill was filed, as I have stated, to prevent the returning-officers from counting the vote in that precinct, and an injunction was granted by the chancellor.

Then the returning-officers went on to count the votes in the other townships, and they returned the democratic candidates for the legislature as elected by a very small majority. They immediately certified that return to the secretary of state, and he at once issued certificates of election to the democratic candidates as having been elected. About a week afterward the chancellor dissolved the injunction, and the returning-officers were required to count the votes of that township along with the rest. The result was that the republican candidates were elected by a considerable majority, and the returning-officers then certified a supplemental return to the secretary of state upon which he was called on to issue certificates of election to the republican candidates; but he refused to do so; he had already given the certificates to the others, and refused to recognize the supplemental and true returns, of which I have a certified copy now

before me. In that way they secured four members of the legislature in the county of Barbour.

Perhaps I have made one error in my statement. The majority that I have read, of 1,058, is in the county of Marengo, and this lawsuit took place in Barbour County. The republican majority in Barbour is about 750 instead of being 1,058; but in all other respects my statement is correct, that when the supplemental return was sent to the secretary of state, certified to by a democratic returning-board, it showed all the republican candidates elected, and that they were entitled to the certificates, but the democratic candidates had got them, and refused to give them up and held on to them.

Now I come to the county of Marengo, where the republican majority is 1,058; where a box was thrown out in a large republican precinct by the returning-officers, and by throwing out that box they gave a small majority to the democratic candidates for the legislature, three representatives and one senator, making four members of the legislature in that county, and eight in the two counties. There was no question that the republican candidates were elected. The return of the others was made by throwing out a box on technical and insufficient grounds; and afterward when the two legislatures were merged, after the union had taken place under the advice of the Attorney-General, every member of that body, every democrat and every republican, voted to seat the republican candidates both from Marengo and from Barbour; so that the supposed majority or apparent majority of the democratic candidates was absolutely a downright fraud. Nothing in Louisiana, that my friend from Delaware so eloquently denounced, was more wicked than this fraud, and while my friend cannot brook even the appearance of fraud in Louisiana, he ought not inadvertently to give countenance to it in Alabama.

Mr. BAYARD. Why, Mr. President, the honorable Senator has just told us what I think is a very natural fact, that when the fraud was exposed the democrats are those that put their feet upon it. The very instant the legislature has fused and regularity is restored, the wrong is corrected, and I thank God that I do not know anywhere where the democracy approve of fraud committed in their behalf. I only wish that example would be followed by some other people.

Mr. MORTON. The Senator's congratulation of himself is a little too sudden, and I think I can show to him that the foundation for it is not very good. They succeeded by getting an apparent majority in that legislature, and they held on to it just so long as they could. With a perfect knowledge that the republican candidates in those two counties were elected, they went on and attempted to organize the legislature with a democratic majority in each branch, and did constitute what was called the capitol legislature. They retained those spurious members in that body until, I believe, some time in the month of January, when, finding that the court-house legislature was recognized by the governor, by the State officers, and by the courts, and that their claims were gone, they then did give up their pretended organization, and went into the court-house legislature; they merged their existence into the other body; and it was a part of that agreement that the votes should be fairly counted. They did consent to it finally, but under great stress of weather, and after long delay, under the circumstances I have described.

Mr. President, there was a third senator, from the district, I believe, of Conecuh, the republican candidate being clearly elected, but the returning-officers threw out the votes from a new county called Escambia upon a technicality. If I am correctly informed, the technicality was that the name of the senator was printed on the same ticket with those of the State officers. Upon an insufficient ground the vote was thrown out and the democratic candidate returned as elected. After this organization took place, or after the capitol legislature had given up the ghost, and its members had voluntarily gone into the court-house legislature, there was a contest made in regard to the senator from the district of Conecuh, and the republican candidate was put into the place to which he was elected, and the other man was turned out as having no right there.

Now, when you come right down to the question of fact, Alabama was republican; a republican legislature was fairly and honestly elected; but certain persons secured seats in the capitol legislature by means of fraudulent certificates and the fraudulent conduct of returning-officers, all of which was afterward confessed so far as the two counties of Marengo and Barbour were concerned. They did not make confession in regard to the senator from the district of Conecuh, but that case was tried upon a contest and settled in favor of the republican candidate.

Mr. President, I did not wish to refer to politics in this connection at all. These questions ought to be settled on considerations higher than party considerations; but when the Senator from Delaware talks about intrigue and faction and cabal and irregularity, I beg leave to call his attention to the plain history of this case, that the democratic majority in the so-called capitol legislature was secured by the fraudulent means of which I have spoken, and that that fact has since been confessed upon the record; that every member of both parties voted to seat the republican candidates from these two counties, eight of them in all, giving a republican majority in each branch, and upon a fair contest the third senator was seated from the Conecuh district.

Mr. BAYARD. Allow me to ask the honorable Senator whether his present proposition is not to go back into that condition of doubt and uncertainty, or, as he called it, of cabal and intrigue, in order to find out what was then done, and allow that to become the basis of seating a man in the Senate, or whether he does not now recognize that there is something in the shape of a respectable legislature in the State of Alabama, whose action should alone be considered by the Senate of the United States, in the selection of a member to this body.

Mr. MORTON. I wish to say a single word on that point, as I do not want to detain the Senate, and I had no wish to say another word in this debate. When the capitol legislature first convened, while Governor Lindsay, the democratic governor, was still in office, before the inauguration of Governor Lewis, the republican members, finding that they were to be overslaughed by the means I have referred to, refused to go into that legislature, and they organized what was called the court-house legislature, and they received into that legislature, as members of it, the republican candidates from the counties of Marengo, and Barbour, and from the district of Conecuh, men who were afterward confessed and shown to have been elected. Receiving into that legislature the members from those three counties, they had a quorum in the senate and a quorum in the house. In other words, the members who were in the senate and in the house of the court-house legislature, and who took part in the election at which Mr. Spencer was chosen, every one of them voting, now constitute the actual quorum in the legislature as at present organized. The Senator understands that proposition, that the men who voted for Spencer in the court-house legislature, both senate and house, now constitute a lawful quorum in the senate and the house after the members of the capitol legislature have gone into the legal body.

Mr. BAYARD. But at the time of their action they had not certificates.

Mr. MORTON. I confess that. I am stating the whole truth about it. At the time of their action the members from Barbour and from Marengo Counties had not certificates. They were held by the spurious members in the other legislature.

Mr. BAYARD. Do I understand the Senator to say that there were no others, except members from these counties, who were there without certificates?

Mr. MORTON. Not that I know of.

Mr. BAYARD. The Senator has large information, apparently, on this subject; and as he is speaking with so much confidence, as he generally does, I think he should know it.

Mr. MORTON. There is no dispute about any other counties but these two and the Conecuh district. The very agreement the Senator has read shows that the dispute arose in regard to those counties or those senatorial and representative districts.

Mr. BAYARD. The fact is an awkward one, and therefore the Senator passes it over.

Mr. MORTON. I have no objection to the Senator from Delaware giving any facts. I am sure he cannot give any that will controvert the statement I have made. When the capitol legislature first met, Governor Lindsay, the old governor, recognized it as being the lawful legislature, and it is true that the lieutenant-governor, the outgoing lieutenant-governor, on the proper day, did count the votes for Governor Lewis and for Lieutenant-Governor McKinstry, and declared them to be elected in the presence of what were called the senate and the house of the capitol legislature. But it is equally true that immediately afterward Governor Lewis recognized the court-house legislature as being the lawful one, as having a quorum of men who were actually and truly elected, as it turns out upon the final showing, and the courts have recognized that legislature. For example, Mr. Spencer was elected on the 4th of December; on the 10th of December that legislature proceeded to the election of a State printer, in accordance with law; the capitol legislature had done the same thing; they had elected such an officer, and the contest came up between these two State printers as to which was the rightful officer. That contest, after litigation, found its way into the supreme court of the State, and they, within a few days, have decided the question, deciding that the State printer elected by what was called the court-house legislature was the lawful officer; that he was elected by the legislature of Alabama; and, mark you, they held that that was the legislature of Alabama before this fusion took place. That took place several weeks afterward, and yet the supreme court of the State held that the State printer elected by the court-house legislature on the 10th of December was the lawful officer, elected by the proper body. If the decision of the supreme court is entitled to any consideration; if the fact that the governor of the State recognized that body; the fact that it has gone on making laws, which have been accepted as valid all the time, and are in operation to-day in the State of Alabama, and the fact that the capitol legislature afterward voluntarily gave up its existence and merged itself into the court-house legislature—if these considerations are entitled to any weight, it seems to me that my friend has a very slim foundation now to stand upon.

Mr. BAYARD. I wish to ask the Senator one question. When he speaks of the governor recognizing the legislature, may I ask which one he recognized? It seems he approved bills passed by the capitol legislature as well as bills passed by the faction in the court-house.

Mr. MORTON. Certainly; the identity of the court-house legislature was preserved. It has never been changed; it has the same officers to-day it had before Mr. Spencer was elected. There was no change in its identity. This so-called capitol legislature simply gave up the ghost; the members marched into the other, and certain mem-

bers of them were allowed to take seats there, and the legislature has gone on pretty much as it had done before, and the governor has approved laws passed since, just as he approved laws passed before, and I suppose that it is really as valid a legislature as it was before. I am not arguing that it has been made illegal by the admission of those members from the capitol legislature.

Mr. BUCKINGHAM. Mr. President, I am under the impression that it has been the practice of this body to admit members who have brought testimonials which, upon their face, gave evidence that they were elected to seats here. I know of only one instance in which an exception has been made to that rule; and it seems to me it would be very difficult for us to organize and continue this body unless we adopt that rule and are governed by that principle. For instance, every second year twenty-four members of this body are re-elected or twenty-four go out and their places are filled by other men. Now if any man is to be permitted to come and present a petition for the places of these twenty-four men, and if we are, in consequence of that petition, to delay action until we can settle all questions which are connected with them, we may be a long time organized with a body of only two-thirds of the members which the law allows us to have.

The Senator from Delaware, if I remember aright, came here with a certificate from the governor of that State which stated, in substance, that he was elected by the legislature of that State in accordance with law, and there was nothing which interfered with that statement. It was *prima-facie* evidence of his election, and upon that certificate he was admitted in the same manner and upon the same evidence that I was admitted. Mr. Spencer comes here with a certificate from the governor of Alabama, and that certificate states that the legislature of that State was in session, a majority being present in convention of both houses, and there they gave a ballot in accordance with the laws of the United States and the State of Alabama, and Mr. Spencer was elected. Up to this point the certificate of the Senator from Delaware and the certificate of the Senator from Alabama are precisely alike.

Now the question comes up, why should not Mr. Spencer be admitted to a seat as well as the Senator from Delaware? The reason is that another gentleman presents a petition, and in that petition sets forth a declaration that he was elected by the legislature of the State, and that is fortified by a certificate signed by the presiding officers and the clerks of the two houses. I submit that the certificates of those men are of no more importance to this case than the certificate of a sheriff of a county of Alabama, or than the certificate of a judge of any of the courts of Alabama. They are not recognized in law as proper officers to furnish a certificate for men who are elected to this body. And so with all the declarations which are made in connection with that petition of Mr. Sykes. But Mr. Sykes goes on at the close of his memorial to say that if Mr. Spencer shall be admitted to a seat, he asks the privilege of being heard and contesting it. That is undoubtedly the right ground. It appears to me that we can yield only to that suggestion, and that we have no right to-day to bring in any evidence to prevent us from admitting Mr. Spencer to the seat to which he is entitled upon *prima-facie* evidence, and the best thing we can do and the only thing is to receive Mr. Spencer with his testimonials, and then take up the question proposed by Mr. Sykes and see whether he is not entitled to it instead of Mr. Spencer.

Mr. THURMAN. I rise only to say that what I have learned since the Senator from Indiana addressed the Senate increases, in my mind, a conviction of the propriety, in fact the necessity, of referring these credentials to a committee and not seating Mr. Spencer at this time. The Senator from Indiana asserted that the senators who now constitute the quorum of the legislature since the fusion has taken place are the same senators who constituted the quorum in what is called the court-house legislature, and, if I understand him correctly, that a majority of the senators and members in the fusion legislature actually voted for Mr. Spencer for Senator at the United States court-house.

Now, sir, I am told that that is an error on the part of the Senator, and that if the journal of that court-house legislature, which I understand has gone or is to go to the printing-office to be printed, it being one of the matters laid before us by Mr. Sykes, were it before the Senate, it would show that the Senator was entirely mistaken in making that statement.

But there was another thing upon which the Senator dwelt, and that was that, by the votes of both democrats and republicans, the republican members of the house from Marengo and Barbour Counties were seated, and he says that was a confession that those men, and not the democrats, were entitled to the seats. I do not think it is to be regarded in the light of a confession at all. I do not think it is any confession whatever that they had not a right, because, upon another canvass of the votes than that which had been officially made, the second board of canvassers provided for in this compromise, and, by the way, this extra-constitutional compromise suggested by the Attorney-General of the United States, found that the republicans were elected. But I wish to speak more particularly of the case of the senator from Conecuh, upon which the Senator remarked. In that case Mr. Miller, the republican senator, was seated, ousting Mr. Martin, the democratic senator, and the Senator from Indiana takes that as another proof of fraudulent preteuse on the part of Mr. Martin by which he had a seat in that assembly.

Now, sir, what were the facts? I will state them as they were told to me, and as I am assured that the journal will show when it is printed and before us. According to the suggestion of the Attorney-General, when those two bodies fused together they appointed a committee on elections, (whether by that name or not I do not know, but a committee composed of two republicans and two democrats,) to canvass the votes. One of the members of that committee (a republican) died. That left the committee consisting of two democrats and one republican. They made two reports. The republican reported that Miller, the republican candidate, was entitled to the seat, and the two democrats reported that Martin, the sitting member, was entitled to the seat. The majority having reported a resolution that Martin, the sitting member, was entitled to a seat, a motion was made that the report of the minority be substituted for that of the majority. That was to strike out all of the majority resolution and insert that of the minority. Two members of the senate paired with each other, a democrat and a republican, upon that vote. If they had both been there, the majority would have been democratic, and the motion to substitute the minority report would have failed. It would have been precisely the same thing if the pair was kept, but the fact was that while the democrat went home on the faith of that pair, the republican broke his pair and voted on that question, and by his vote substituted the report of the minority in place of that of the majority. That having been done, what next was necessary? Next, it was necessary to put the question, shall the resolution as amended pass? But the lieutenant-governor, the presiding officer of the senate, absolutely decided that merely substituting the resolution of the minority for that of the majority, although no action followed that and no other vote was taken, had the effect to oust the sitting member, and to seat the contestant, Mr. Miller. It is by such means as those, which the journal will show when you get to look at it, that a majority was obtained by the republicans in that senate.

Now, sir, in view of these things, it will not do to talk as the Senator from Indiana has done about there being a majority of republicans in that body since the fusion of the two rival bodies claiming to be the legislature. Everything that we hear about this case shows the necessity of referring it.

As to the *prima-facie* case made by the credentials of Mr. Spencer, enough has been said. Again and again has this body refused to seat a Senator although his credentials were perfectly regular. They did it in Mr. GOLDTHWAITE'S case; they did it in Mr. RANSOM'S case; and I affirm that where the case is one of two legislatures, and where we must decide which is the true legislature, and where we are not bound by any decision or any State court upon that subject, in such a case as that we are bound to send the case to a committee for investigation. If there were but one legislature the case would be wholly different. Then, sir, we ought to admit (unless there were the strongest possible reason against it) on the certificate of the governor; but where there are two legislatures, or two bodies, each of which claims to be the legislature, then in the nature of things we cannot be bound even *prima facie* by that certificate.

Mr. BOREMAN. Mr. President, as this matter now stands, it seems to me that it is not well to go into the facts. They are not before us in a form sufficiently authentic to enable us to make up a judgment upon the history of this transaction; and mere conjecture will not answer.

What is the case as it is presented to us? A gentleman presents his credentials in the usual form, certified by the governor, and countersigned by the secretary of state, setting forth that he was duly elected a member of this body. Objection is made, not by any gentleman who it is pretended now, as I understand, was elected and claims the seat to which the gentleman who has presented himself is aspiring, but simply a protest against his election. We have not the facts before us so as to go into the history of the case and ascertain the details; but we have the documents which are usual in such cases, and which are authorized by law.

Now what is our duty in the premises? If the person presenting himself makes a *prima-facie* case, it seems to me that our duty is clear. It is said that the practice of swearing in a member on a *prima-facie* case has been departed from heretofore in some instances. That may be so; but in looking into them it will be found that they are not in accord with this case. The case of Senator RANSOM, to which reference has been made, we all know is not analogous to this case. In that case there had been a preceding election; the facts were before the body and under investigation. Another gentleman had received, as we knew, a majority of the votes of the legislature, but was ineligible. He had given up his claim. Then a man who was voted for at the same time, and who had received a minority of the votes, claimed, because of the ineligibility of the majority man, that he himself was legally chosen Senator, and that the legislature which elected Mr. RANSOM had no right to proceed to an election at all.

But here we have only the ordinary certificate under the seal of the State in the form prescribed by law. Now, what is our duty, as I asked before? It seems to me that it is so plain that there ought to be no difficulty about it. A mere protest that the gentleman who presents himself is not elected is not to inhibit us from the discharge of our duty. The Constitution confides to the State legislatures, in the absence of any action of Congress, the power to provide the time, place, and manner of the election of Senators to this body. The provision is:

> The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law make or alter such regulations, except as to the place of choosing Senators.

In 1866 the Congress undertook to and did pass a law in pursuance of the authority given in that clause, and prescribed the time and manner in which members of this body should be elected. In the act of July 25, 1866, section 3, we find:

That it shall be the duty of the governor of the State from which any Senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the secretary of state of the State.

Has Mr. Spencer produced here a document such as is contemplated by this act of Congress? It is admitted that he has, and that no other person has. The gentleman who enters this protest has presented no credentials from the proper authority. Then, *prima facie*, Mr. Spencer is elected. The usual evidence of an election is here, and we are not permitted, at this stage, to go into the facts of the case.

Shall we then refer it to a committee to ascertain the facts before we swear him in? That is the point here, I understand. I think not. The practice of this body, and, if I may refer to it, I believe the practice in the other end of the Capitol, has been that when a gentleman presents himself with credentials in the usual form, with the proper certificate, with everything that goes to show that he is properly elected, he shall be sworn in; and then, if others want to contest his election, they present their papers and the case is then referred to a committee for investigation. But in this instance Mr. Spencer comes here with the proper document, properly authenticated, showing that he is properly elected, and it is our business to qualify him, and then he is a member of this body until he is ousted by the report of a committee, and the judgment of the Senate upon the report of that committee.

Why, sir, on the face of the petition which Mr. Sykes has presented here he gives what he says is the law, not only of this country, but of England, and upon the law, as he gives it to us in the argument of another proposition, we are bound to admit Mr. Spencer to take the oath. He lays down certain propositions. He says:

The principles of parliamentary law, of universal usage in this country and England, and in force in Alabama, as to the rights of persons holding certificates of election to legislative assemblies, are as follows.

Now he goes on to lay down the principle:

1. That every person duly returned is a member, weether legally elected or not, until his election is set aside.

This is the law brought here by Mr. Sykes—"that every person duly returned is a member, whether legally elected or not, until his election is set aside."

It seems to me if that is good law—and the friends of Mr. Sykes cannot gainsay it; I apprehend it is parliamentary law—our duty is to swear in Mr. Spencer first, and then if any gentleman sees fit to contest his seat, let him present his papers as has been done in this case; let them be referred to a committee; let the proper examination be made, and the facts reported to this body, and then let this body take the proper action upon it. This, it seems to me, is the course that we should pursue. I do not intend now to commit myself as to what should be the ultimate action of this body on the case. I am not aware of what the facts are. We have them stated on one side in one way; we have them on the other side stated in another way. It seems, however, from the admissions on both sides, that the body which elected Mr. Spencer is now acknowledged to have been a quorum of the legislature properly elected. If that be so, it is very singular that gentlemen are here protesting against the admission of Mr. Spencer at this time, when they know, after thorough investigation, that their pretensions are groundless, and that he must ultimately be qualified as a member of this body. We have been annoyed very much for years past by these contests; but I may say, so far as my experience goes, that in none of them was the precise case presented which we have here. The facts were different; other questions arose as to the reconstruction of States, whether States were in the Union, or other matters which are of a different character from those that are developed in this case; but here we have not the facts before us authentically; we have not the facts before us on which to make up a proper judgment; we have here, however, papers which show, *prima facie*, that Mr. Spencer is elected to this body, and it seems to me we can do nothing less than to qualify him, and let any contest that may be made come up afterward.

The VICE-PRESIDENT. The question is on the motion to refer to a special committee of five.

Mr. ALCORN. I desire to say one single word for myself before the vote is taken, not in the way of argument or debate, but as a statement.

I wish it understood for myself that in this vote which I give today to seat Mr. Spencer I do not express any opinion with regard to the merits of the controversy between him and Mr. Sykes. He has the credentials required by the act of Congress; he comes with a certificate authenticated by the great seal of the State of Alabama as having been elected, and I, therefore, have discarded all these hearsay statements that do not rise even to the dignity of evidence in the case, let alone proof. I discard the whole of them. I have no opinion. I purposely refrain from any opinion as to the ultimate merits, but admit Mr. Spencer by my vote upon the certificate which he holds in his hand, which certificate is in due form of law.

The VICE-PRESIDENT. The question is on the motion to refer the subject to a special committee of five Senators.

Mr. COOPER. I call for the yeas and nays.

The yeas and nays were ordered; and being taken, resulted—yeas 20, nays 38; as follows:

YEAS—Messrs. Bayard, Bogy, Casserly, Cooper, Davis, Dennis, Fenton, Goldthwaite, Hamilton of Maryland, Hamilton of Texas, Kelly, McCreery, Merrimon, Norwood, Ransom, Saulsbury, Stevenson, Stockton, Thurman, and Tipton—20.

NAYS—Messrs. Alcorn, Allison, Ames, Boreman, Brownlow, Buckingham, Caldwell, Cameron, Chandler, Clayton, Conkling, Conover, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Flanagan, Gilbert, Hamlin, Hitchcock, Howe, Ingalls, Jones, Lewis, Logan, Mitchell, Morrill of Vermont, Morton, Oglesby, Patterson, Pratt, Ramsey, Sargent, Stewart, Wadleigh, West, Windom, and Wright—38.

ABSENT—Messrs. Anthony, Carpenter, Edmunds, Frelinghuysen, Johnston, Morrill of Maine, Robertson, Schurz, Scott, Sherman, Sprague, and Sumner—12.

So the motion to refer was not agreed to.

The VICE-PRESIDENT. The question now is on administering the oath to the Senator-elect from Alabama.

Mr. THURMAN. The question now is, shall Mr. Spencer be sworn? ("Yes.") Well, sir, I move to lay that question on the table until the regular committees are appointed, so that then there may be a motion made to refer these credentials to the proper committee, the Committee on Privileges and Elections. I move that the question of Mr. Spencer's right to be sworn in be laid on the table.

The VICE-PRESIDENT. The question is on the motion of the Senator from Ohio.

The motion was not agreed to; there being, on a division—ayes 20, noes 34.

The VICE-PRESIDENT. The question recurs on administering the oath to Mr. Spencer.

Mr. GOLDTHWAITE. I want to place myself on the record in regard to this question, which I understand to be whether Mr. Spencer has shown a case which entitles him, under the existing laws, to a seat upon this floor until the contest is decided. In determining this question, Mr. President, we have first to look at the act of 1866 in relation to the requisitions which are demanded by law to entitle a Senator here to his seat in the first instance. What are those requisites? They are prescribed by that act, and it requires simply the certificate of the governor certifying to his election to enable him to take his seat upon the floor.

On the 4th of March two years ago I presented my credentials, to which there was taken no exception. From that time until some day in the January following, upon pretexts, pretenses, and memorials, Alabama was kept out of her constitutional right to representation on this floor. In that case, as I have said, there was not the slightest objection taken to the credentials. The question arose simply upon a memorial stating facts which were not attempted to be proved, and stating facts of which the Senate could not take cognizance without proof. I have smarted from that day to this, not for myself, but for the wrong that was done to the State of Alabama in refusing her, upon pretexts of the character I have adverted to, her constitutional rights on this floor.

I concede to the fullest extent all the force that is claimed for the certificate of the governor. I concede, so far as that certificate is concerned, that it is in due form of law, and I am willing to give it, as I think should be given to it, full *prima-facie* effect.

But, Mr. President, what is the meaning of a *prima-facie* case? It is simply that it presents a case which is good at the first view, but whenever the presumption arising from the certificate is overbalanced by other testimony of a higher character, of a superior order, then it is held in every legal and legislative tribunal that the effect arising from the certificate itself is dissipated by higher and better testimony. I should have greatly preferred that the case should have gone to a committee, in order that all the testimony which has been introduced in the memorial of Mr. Sykes should be before the Senate; but in consequence of the Public Printer not being able to lay it before them, I shall feel at liberty to assume every fact which is stated, and which would be supported by that testimony if it were before the Senate, as true. I assume that it is, constructively at least, before the Senate, and that upon examining it as I have done, the sole question will be for the Senate to determine as to its sufficient weight to counteract the *prima-facie* presumption arising from the certificate which is now before the Senate. That testimony consists, in the first place, of the certificates of the presiding officers of each house and the journals of each house, showing the organization of the house and the senate of the legislature of Alabama according to the laws of Alabama.

The laws of Alabama demand, in the first place, that the legislature shall be holden at a certain place. The Constitution of the United States requires that the legislatures of the States shall elect Senators to this body at a place to be fixed by law. The general assembly that elected Mr. Sykes was held at the place which was fixed by the law of Alabama. Of that legislature, in the house, consisting in number of 100, there was, if I recollect aright, a quorum of 54; in the senate, which consists of 33 members, there was also a quorum present. There was, then, not only a quorum of each house, as the law demands, but it was at the place at which the law demanded it should be held. Under the constitution of Alabama the law requires that each house shall be organized by a particular officer; the president of the senate, who holds over for that purpose, organizes the senate, and the speaker of the preceding house organizes the house.

Now, Mr. President, you will see that that requisition of the constitution and laws of Alabama was complied with; that each house was not only organized at the place which was fixed by law, but it was organized by the officers prescribed by law; that a full quorum was present, and every one of the persons constituting that quorum

in each house had the certificate of election which the law demands. I ask any Senator on this floor to inform me, if every requisite of the law and constitution of Alabama has been complied with in so far as the organization of that body was concerned, what exception can be taken to the legality of its action? Was any requisite demanded by law not complied with? Not one, sir. If you will read the evidence which will be before you in the journals of the two houses, you will find that they met at the time, and that they were organized on the day and by the officers and at the place prescribed by law, and by a full quorum; all of which requisites were demanded, and which were complied with, and which were the only requisites that the law then demanded.

I apprehend that it will not be questioned that if the legislature was organized in pursuance of the laws and constitution which I have referred to, every act done by that duly-organized legislature which was in consonance with the Constitution of the United States, and in accordance with the constitution of Alabama, was entirely valid. On the day appointed by law, that legislature, every member of which was certificated according to the laws of Alabama, met and proceeded to the election of a Senator of the United States. The election was conducted in strict conformity to the act of Congress of 1866 upon that subject, regulating that election; and the memorialist who comes before you with his petition received a majority of the votes thus cast.

Now, I would ask Senators who differ with me how it can be possible, if that was a legally-organized legislature, that there could be any other legislature in existence but the general assembly *de jure*? Here is a contest with a rival house—a contest with a legislature that was assembled, not at the place required by law; which was organized, not by the officers demanded by the constitution, but an assembly which met in secrecy, in a place different from that appointed by the law, and which was not organized by the officer appointed by law; and it was by that body that the election of Senator Spencer was made.

I take it that it is a perfectly clear proposition that, if there be a body *de jure*, acting of right, it is actually an impossibility in a legitimate sense that there can be at the same time a legislature *de facto* whose acts are valid. Why, sir, you might as well say that two quarts of water could be poured into a one-quart basin without spilling a drop. It is absolutely impossible for the two bodies to exist in the exercise of their separate functions together. There may be a legislature *de facto* in the absence of a legislature *de jure;* but it is impossible that there should be a legislature *de facto* when there is actually a legislature *de jure* in existence and acting. It could be accomplished only by revolution, only by excluding the legitimate bodies by force, which amounts to revolution.

Two years ago, as I have said, I presented my credentials before this honorable body. No objection was taken to their form. I was denied my seat by members of the opposite side of the House upon a mere memorial, stating facts which I think the most ordinary justice of the peace would have held insufficient upon demurrer. They were simply that I was elected by a bare majority, and that one, or perhaps two, of the members of the legislature, who were acting in my election and who sustained me by their votes, did not have the certificate which the law required. Has there ever been a case in which this House has assumed jurisdiction in a matter of that kind, to look into the merits of an election the choice in which is confined by the Constitution solely to the legislature? Under pretexts like that, Alabama was denied her right to one of her representatives upon this floor for nearly twelve months. Smarting under the sense of injustice which had been done to Alabama, not to myself, I took the position that in every case I should sustain the certificate of the governor with its *prima-facie* effect; and it is only within the last few days, upon a more thorough examination, that I have become entirely satisfied, so far as my own mind is concerned, (and I speak for myself alone,) that whenever there was testimony before me as a member of this House, which was stronger than the testimony resulting from the *prima-facie* presumption, it was my duty, acting here as a Senator, to give that weight to the evidence rebutting the *prima-facie* case which on fair legal principles attached to it. I consider that here, by the evidence which I deem constructively before you, which will be before you properly in a few hours, conclusive proof is afforded by which it will be demonstrated that the facts upon which Mr. Spencer bases his right do not exist, and by which it will be shown that Mr. Sykes was elected by a legislature *de jure*, having full authority under the law and under the constitution; and if so, that is a settlement of the question so far as he is concerned. The records of the two houses of the legislature will be before this body, and the records of those houses will show the fact that I have adverted to.

I do not know, sir, after the investigation which has been had, that it is necessary for me to go into the respective merits of the two bodies claiming to be the legislature of Alabama. I stand precisely at the point where I have left the case, and content myself with satisfying my own mind from the evidence, which is historic, which is sustained by the journals of the houses themselves, under the certificate of the proper officers. There is no doubt that the body which elected Mr. Sykes was recognized by the governor himself, who has since recognized the other body. The legislature which elected Mr. Sykes ushered Governor Lewis into existence, for by the laws and constitution of Alabama it is made the duty of the president of the senate and speaker of the house, in the presence of both houses, to count and determine the votes for governor, and to announce the result. That was done. Governor Lewis, who has since dethroned them, recognized them when he held that they were the legislature required by law, and capable of pronouncing upon his election. But while he recognized them as a legislature sufficient for the purpose of installing him into his seat, he recognized them no further. I do not suppose in legal effect that one legislative act, one act required to be done by a legislature, is of higher dignity than any other act; that the passage of a law is an act of higher dignity than the election of a Senator; and whenever it is shown that a general assembly has the power to pass laws, that the legislature has exercised that power, which laws were approved by the governor and are still in force, the same power which exists so far as laws are concerned exists, unless it is restrained by either the law or the constitution, in relation to every other power which they are to exercise.

I believe, sir, I have stated all that it is necessary for me to state upon this question. Believing that the Senate, when the papers are before them, will see, even adopting the *prima-facie* inference arising from the certificate, that the other evidence to which I have referred will more than balance that testimony, they will decide accordingly. They did so in my case on much lighter evidence.

The VICE-PRESIDENT. The question is, shall the oath be now administered to Mr. Spencer?

The question being put, it was decided in the affirmative.

Mr. SPENCER thereupon advanced to the chair, and the oaths prescribed by law having been administered to him, he took his seat in the Senate.

ELECTION OF CHAPLAIN.

Mr. CAMERON. This morning a resolution was offered to continue in office the Chaplain of the Senate. I desire to enter a motion to reconsider that vote.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The Senator from Pennsylvania enters a motion to reconsider the vote on the resolution indicated by him. The motion will be entered.

SENATOR FROM LOUISIANA.

Mr. WEST. I desire to present the credentials of Hon. William L. McMillen, of Louisiana, for the senatorial term commencing March 4, 1873.

The chief clerk read the credentials.

Mr. WEST. I move that the credentials lie on the table.

The motion was agreed to.

Mr. THURMAN. The credentials will, of course, be printed. Is it so understood?

Mr. WEST. I will add that they be printed.

Mr. THURMAN. If that is not included in the Senator's motion, it ought to be.

Mr. WEST. I move that the credentials of Mr. McMillen be printed.

The motion was agreed to.

ADJOURNMENT TO MONDAY.

On motion of Mr. CAMERON, it was

Ordered, That when the Senate adjourns to-day, it be to meet on Monday next.

EXECUTIVE SESSION.

Several executive messages were received from the President of the United States, by Mr. O. E. BABCOCK, his secretary.

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

Mr. MORTON. I ask the Senator to withdraw that motion for a moment.

Mr. CONKLING. With what view?

Mr. MORTON. I gave notice yesterday that I should ask the Senate to-day to proceed to the consideration of the CALDWELL case, and I desire to call that up.

Mr. CONKLING. I do not yield for that motion. I think we ought to go into executive session.

The VICE-PRESIDENT. The Senator from New York does not yield. The question is on the motion of the Senator from New York.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After one hour and twenty minutes spent in executive session, the doors were re-opened; and the Senate (at four o'clock and forty minutes p. m.) adjourned.

IN THE SENATE.

MONDAY, *March* 10, 1873.

Prayer by Rev. J. G. BUTLER, D. D.

The journal of the proceedings of Friday last was read and approved.

PETITIONS AND MEMORIALS.

Mr. CHANDLER. I present the petitions of J. M. Swanger, postmaster, and sixty-three others, of Morley, Mecosta County, Michigan; of George P. Smith and twenty-nine others, of Baldwin, Iosco County, Michigan; of William P. Hazen and one hundred and one others, of Jonesville, Hillsdale County, Michigan; of Deroy Simpson and thirty-six others, of Flushing and vicinity, Genesee County, Michigan, pray-

ing Congress to prohibit the traffic in intoxicating liquors, to be used as a beverage, to the extent of its constitutional powers. I move that these petitions lie on the table until the committees are appointed, when I shall desire to have them referred to the Committee on the Judiciary.

The VICE-PRESIDENT. The petitions will lie on the table for the present.

Mr. FENTON. I present the petition of S. J. Warren and others, praying for the passage of an act for the relief of William Rood, late private Thirty-sixth Regiment, Wisconsin Volunteers; and also the petition of James W. Ogle and others, praying for the passage of an act for the relief of Charles W. Berry, late a private of the Thirty-sixth Regiment, Wisconsin Volunteers. I ask that these petitions lie on the table for the present, to be referred to the Committee on Military Affairs, when appointed.

I desire also to present the petition of Antoine Sontag——

Mr. HAMLIN. I object to the presentation of any petitions of a legislative character at this session. We have no legislative functions whatever. That matter has been discussed and deliberately determined by the Senate, and we may just as well begin precisely as we ought to go on. I object to any legislative business, and this is legislation.

The VICE-PRESIDENT. The Senator from Maine objects to the reception of any petitions asking for legislation.

Mr. FENTON. I withdraw the petitions.

The VICE-PRESIDENT. They will be withdrawn, and those presented by the Senator from Michigan will also be regarded as withdrawn, the point having been raised.

PAPERS WITHDRAWN.

Mr. EDMUNDS. I ask leave to have the papers withdrawn of Benjamin H. Campbell, marshal of the United States for the district of Illinois, which relate to certain losses of his by the fire in Chicago. There was a favorable report on the case and a bill passed, and the papers are to be withdrawn to go to the Department.

The VICE-PRESIDENT. Leave will be granted to withdraw the papers, if there be no objection.

On motion of Mr. WEST, it was

Ordered, That Clarissa Bishop, of Louisiana, have leave to withdraw her memorial and papers from the files of the Senate, copies of the same being left with the Secretary of the Senate.

PRESIDENTIAL ELECTIONS.

Mr. MORTON. I offer the following resolution, and ask for its present consideration:

Resolved, That the Committee on Privileges and Elections be instructed to examine and report, at the next session of Congress, upon the best and most practicable mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions connected therewith, with leave to sit during vacation.

The resolution was considered by unanimous consent and agreed to.

PAY OF WITNESSES.

Mr. MORRILL, of Maine. I offer a resolution which is in effect an order, and ask that it may be read.

The chief clerk read as follows:

Resolved, That witnesses summoned to appear before the Senate or any of its committees shall be paid as follows, viz: for each day a witness shall attend, the sum of four dollars; for each mile he shall travel in coming to or going from the place of examination, the sum of five cents; but nothing shall be paid for traveling when the witness has been summoned at the place of trial.

Mr. MORRILL, of Maine. I find that the practice between the two Houses is not uniform on this subject. On the House side, for example, they pay what is specified in this resolution; on the Senate side we pay twice that sum for travel. It is with the view of arranging the matter between the two branches that I offer this resolution. Under it the Senate will pay precisely what has been paid for some time by the other House. I do not ask immediate action now. Let it lie on the table for the present.

The VICE-PRESIDENT. The resolution will lie on the table.

EXECUTIVE SESSION.

Mr. SHERMAN. 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 twenty-five minutes spent in executive session, the doors were re-opened, at twelve o'clock and thirty-five minutes p. m.

ELECTION OF SENATOR CALDWELL.

Mr. MORTON. I move that the Senate proceed to the consideration of the resolution in regard to the case of Mr. CALDWELL.

The motion was agreed to; and the Senate proceeded to consider the following resolution:

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. MORTON. Mr. President, I will first ask the Secretary to read the report of the committee in this case.

The chief clerk read the following report, submitted on the 17th of February last, by Mr. MORTON, from the Committee on Privileges and Elections:

On the 11th day of May, 1872, the Senate adopted the following resolution:

"*Resolved*, That the Committee on Privileges and Elections be authorized to investigate the election of Senator S. C. POMEROY, by the legislature of Kansas, in 1867, and the election of Senator ALEXANDER CALDWELL in 1871; that the committee have power to send for persons and papers; that the chairman, or acting chairman, of said committee, or any sub-committee thereof, have power to administer oaths; and that the committee be authorized to sit in Washington, or elsewhere, during the session of Congress and in vacation."

In obedience to this resolution the Committee on Privileges and Elections have had under consideration the election of ALEXANDER CALDWELL to the Senate of the United States, in January, 1871, have taken testimony, and beg leave to submit the following report:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. CALDWELL, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. CALDWELL, Mr. CALDWELL should pay him the sum of $15,000, for which amount notes were given, and afterward paid, at the same time taking from Mr. Carney a written instrument, in which he pledged himself, in the most solemn manner, not to be a candidate for the office of Senator in the approaching election.

This instrument is in the words following:

"I hereby agree that I will not, under any condition of circumstances, be a candidate for the United States Senate in the year 1871, without the written consent of A. CALDWELL, and in case I do, to forfeit my word of honor hereby pledged. I further agree and bind myself to forfeit the sum of $15,000, and authorize the publication of this agreement.

"THOS. CARNEY.

"TOPEKA, *January* 13, 1871."

Mr. Smith's testimony is fully corroborated by that of Mr. Carney, who admits the execution of the paper, the making of the arrangement, the taking of the notes, and the subsequent receipt of the money. The notes for the money were signed by Mr. Smith, but paid by Mr. CALDWELL; and one of them, for $5,000, was made contingent upon Mr. CALDWELL's election. The substance of the whole agreement, only a part of which was expressed in the writing, was that Mr. Carney should not be a candidate for the Senate against Mr. CALDWELL, that he should use his influence for Mr. CALDWELL, go to Topeka, meet the legislature, and do all he could to secure his election.

The first question to be considered is, was this arrangement corrupt; was it the use of corrupt means, on the part of Mr. CALDWELL, to procure his election? The committee are of opinion that it was corrupt; was against public policy; was demoralizing in its character; directly contributed to destroy the purity and freedom of election, and not to be tolerated by the Senate of the United States as a means of procuring a seat in that body.

To understand the full nature of the transaction, we must consider the character and position of Mr. Carney. He had been a governor of Kansas; he had once been elected a Senator of the United States by the legislature of that State, but the election was premature, being at the wrong session; he had been a candidate for the Senate at another time, and had come within ten votes of being elected. He was well known throughout the State, had a large body of active friends, many of whom were warmly devoted to his political fortunes. His being a candidate would greatly endanger the success of Mr. CALDWELL, if not certain to result in his defeat. He was from the same city with Mr. CALDWELL, and his candidacy would be the more dangerous on that account. When Mr. CALDWELL agreed to give him $15,000 under this arrangement, it was an attempt to purchase the votes of the friends of Mr. Carney. He doubtless expected that Mr. Carney, through his influence over his friends, could bring them over to his support. They would naturally become friends to the man with whom Mr. Carney was friendly. It was, at least, a tacit part of this arrangement that Mr. Carney should conceal the the mercenary part of the transaction, and place his withdrawal from the canvass and his support of Mr. CALDWELL upon personal and political considerations that were honorable to himself, and would be attractive to his friends; and this he did. Mr. Carney went to Topeka before the senatorial election and remained there until it was over, working industriously for Mr. CALDWELL, and exerting all his personal and political influence to secure his election. Looking at the transaction in its real character, it was a sale, upon the part of Mr. Carney, of the votes of his personal and political friends in the legislature, to be delivered by him to Mr. CALDWELL, as far as possible. If it were legitimate for Mr. CALDWELL to buy off Mr. Carney as a candidate, it was equally legitimate to buy off all the other candidates, and have the field to himself, by which he would exert a *quasi* coercion upon the members of the legislature to vote for him, having no other candidate to vote for. It was an attempt to buy the votes of members of the legislature, not by bribing them directly, but through the manipulations of another. The purchase-money was not to go to them, but to Mr. Carney, who was to sell and deliver them without their knowledge. That Mr. CALDWELL did procure the votes of members of the legislature, friends of Mr. Carney, ignorant of the fact that Mr. Carney was making merchandise of his political character and influence, and of their friendship for him, for which he was to receive a large sum of money, the evidence leaves no reasonable doubt.

Buying off opposing candidates, and in that way securing the votes of all or the most of their friends, is in effect buying the office. It recognizes candidacy for office as a merchantable commodity, a thing having a money value, and is as destructive to the purity and freedom of elections as the direct bribery of members of the legislature.

A candidate for the Senate, without strength or merit, may, by purchasing the influence and support of all or a part of his competitors, and withdrawing them from the canvass, succeed in an election, thus not only committing a fraud upon the friends of the candidates who were purchased off, but a greater fraud upon the people of the State who may be thus saddled with a representative in the Senate of the United States about whom they know little, for whom they care nothing, and who possesses little ability to represent their interests.

Mr. Smith, the friend of Mr. CALDWELL, testifies that he paid Mr. Carney the further sum of $7,000 while at Topeka, and just before the senatorial election, to meet Mr. Carney's alleged expenses while there, and through fear that Mr. Carney would, after all, withdraw from the arrangement and become a candidate.

Upon the check for this sum the money was drawn from the bank at Topeka in the evening by one T. J. Anderson, who testified that he gave it to Mr. Carney, and that he was ignorant of the consideration for which it was paid. Other testimony impeaches that of Mr. Anderson, and raises a strong presumption that he was engaged in the purchase of votes for Mr. CALDWELL, and for which this $7,000 was used, and that for his services he afterward received the sum of $5,000 from Mr. CALDWELL. Mr. Carney swears positively that he did not receive this $7,000, or any part of it, but he indorsed the check, at the request of Mr. Smith, to enable him to procure the money from the bank; that the money was to be used in procuring votes for Mr. CALDWELL, and that a package containing this money, as he believes, was placed by Mr. Anderson on a table in Mr. Carney's room, where it could be and was conveniently carried off by the parties for whom it was intended.

Taking all the testimony together, the probability is that Mr. Carney did not get the $7,000, as no good reason was presented by Mr. Smith why, when Mr. CALDWELL was holding Governor Carney's written promise not to be a candidate, and Mr. Carney holding notes to be paid by Mr. CALDWELL for $15,000, a new arrangement should be made by which Mr. Smith should pay Mr. Carney $7,000 more, making $22,000 in all.

We now come to the consideration of the transaction with Mr. Sidney Clarke. He had been a member of Congress, had been a candidate for the United States

Senate during the preceding canvass before the people, and many members of the legislature were elected upon personal pledges to vote for him for Senator. When the first vote was taken in the separate houses, Mr. Clarke received twenty-seven votes, the largest number given for any candidate but one; but the votes satisfied him and his friends that he could not be elected. An arrangement was concluded between Mr. CALDWELL and a Mr. Stevens, a friend of Mr. Clarke, at a late hour in the night before the joint convention of the two houses, by which Mr. CALDWELL was to pay Mr. Clarke's expenses in the canvass, estimated at from twelve to fifteen thousand dollars, and Mr. Clarke was to withdraw in favor of Mr. CALDWELL. At a caucus of the friends of Mr. Clarke, held at nine o'clock on the morning of the joint convention when Mr. CALDWELL was elected, Mr. Clarke made a speech and urged them to vote for Mr. CALDWELL; and in joint convention his name was withdrawn, and all his friends but one voted for Mr. CALDWELL. Subsequently in this city Mr. Clarke had several conferences with Mr. CALDWELL, in which the latter promised to comply with his engagement with Mr. Stevens and pay Mr. Clarke's expenses, estimated at from twelve to fifteen thousand dollars, but never did. Mr. Clarke was unwilling to admit that he had made an agreement to transfer his friends to Mr. CALDWELL in consideration of the latter's promise to pay this money; but taking all the testimony together, the committee have no doubt that the transaction between him and Mr. Clarke was as has been stated. Mr. CALDWELL'S subsequent refusal to pay the money to Mr. Clarke does not relieve the character of the transaction, and very probably resulted in the exposure of Mr. CALDWELL and the institution of this examination.

There was nothing in the evidence to show that Mr. Clarke's expenses in the senatorial canvass, or in the preceding canvass before the people, amounted to half the sum which Mr. CALDWELL was to pay him.

Mr. Carney and Mr. Clarke both testify that Mr. CALDWELL told them, after the election, that his election had cost him $60,000. Mr. Anthony, the mayor of the city of Leavenworth, testified that Mr. CALDWELL admitted to him that the election had cost him over $60,000. Mr. Burke, editor of the Leavenworth Herald, and a supporter of Mr. CALDWELL in his canvass, testifies that after the election Mr. CALDWELL told him that the money he had paid Mr. Carney was not more than ten per cent. of the whole amount which the election had cost him; and on another occasion that the election had cost him more than twice his entire salary.

The committee have had much difficulty in tracing the money transactions; but the evidence shows that various sums, amounting to over $50,000, were drawn under circumstances that make it probable they were used to procure Mr. CALDWELL'S election. The sum of $15,000 paid to Mr. Carney has already been stated. The second sum of $7,000, which Mr. Len. T. Smith swears was paid to Mr. Carney, and which Mr. Carney denies receiving, and testifies to circumstances showing it was used for the bribery of members of the legislature, has also been referred to. It is further shown that three or four days before the election took place Mr. CALDWELL'S agent went into the banking-house of Scott & Co., at Leavenworth, and drew the sum of $10,000 upon Mr. CALDWELL'S check, for the avowed purpose of taking the money to Topeka by the train that morning, which was given as the reason for presenting the check before bank-hours. Mr. Jacob Smith, banker at Topeka, testified that at nine o'clock in the evening before the election took place, Dr. Morris, of Leavenworth, a very active friend of Mr. CALDWELL, drew $5,000 from his bank, and that Judge Crozier, of Leavenworth, an influential supporter of Mr. CALDWELL, and then at Topeka, laboring for his election, drew $1,200 from the bank after banking-hours, at the request of Mr. Smith, which was handed over to Mr. Smith. The testimony left no doubt upon the minds of the committee that the bankers, who honored these different checks at Topeka after banking-hours, understood that the money was to be used for political purposes. The evidence further shows that Mr. T. J. Anderson subsequently received from Mr. CALDWELL the sum of $5,000 for his services in the election. A draft for $10,000, drawn by the solicitor of the Kansas Pacific Railroad Company upon the treasurer of that company, was presented at the Kansas Valley Bank, of Topeka, by Mr. T. J. Anderson, on the 23d of January, the day before the election, and the money drawn upon it, under circumstances which, taken in connection with other testimony, make it probable that the money was used for Mr. CALDWELL'S election. The committee have no reason to believe that they have traced all the money that was used, and in the foregoing statement have taken no account of several small sums shown to have been paid by Mr. CALDWELL for the expenses of his friends while at Topeka.

Mr. William Spriggs, a former treasurer of Kansas, testified in regard to a self-constituted committee of six of Mr. CALDWELL'S leading friends who met from time to time at Topeka, during the day and evening, for five or six days before the election, to confer and report progress in electioneering for Mr. CALDWELL; that during the meetings of this committee it was reported by Mr. Smith what members of the legislature had been secured to vote for Mr. CALDWELL; how much was offered to others, and how much was asked by others. We quote from his testimony:

"We usually met at ten o'clock in the morning. We had a roll of the senate and of the house, and kept them, and we would compare notes, and then such a member of the committee would be sent that day or at such a time to see such members of the house, and such another one to see somebody else, whoever we thought would be the best man for that particular place, and then we would meet again at such another hour, and report what we had done and what success we had had, and in some quite a number of times, I do not know how many. In making the report and comparing notes there was one member of the committee would report; in calling over the names he would come to such and such a man and he would say, 'We had better not count that man yet; that is under negotiation, and he is a little too high; I think I can bring him down some.'"

This witness testified to several interviews with Mr. CALDWELL, and we quote from his testimony:

"I will just tell you what Mr. CALDWELL said to me about it. He asked me if I knew any members of the legislature that could be influenced by the use of money for their votes, and I told him that I knew two members, I believed, that had the reputation of having been influenced in their votes on former occasions."

And further on:

"He said if I found any members that wanted a little money for votes, to send them to him and to Len. Smith.

"Mr. CALDWELL said there was another class of high-toned gentlemen there in the legislature that would not sell their votes, but they put it in this way: that they had been to a pretty heavy expense in carrying their election, and they would want their expenses paid, and if I met with any of that class, to send them to him or to Len."

The testimony of Mr. Spriggs is very full, and shows that the canvass of Mr. CALDWELL was thoroughly corrupt, and that money was the chief argument relied upon. Among many other things, he stated that T. J. Anderson told him that he had paid Mr. Crocker, a member of the house, $1,000 for his vote; that Mr. Crocker afterward backed out, and handed the money over to a Mr. Carson to be returned to Mr. Anderson; that Carson got on the cars, went home, and kept the money. Carson was afterward called by the committee, and corroborated the statement, admitting that he had received the $1,000 back from Mr. Crocker to be returned to Mr. Anderson, but that he had kept the money himself for his services to Mr. CALDWELL. Mr. Carney testifies that, in an interview with Mr. CALDWELL after the election, in which he was urging him to procure an appointment for one of Mr. Carney's friends who had voted for him, Mr. CALDWELL took from his pocket a memorandum-book, and appeared to run over a list of names, and, coming to the man referred to, said, "That man has been paid;" and Mr. Carney understood from his manner that he had in this memorandum-book a list of members with the sums paid to each; that Mr. CALDWELL told him upon another occasion that he had paid Mr. Bayers the sum of $2,500 for his vote, and Mr. James F. Legate the sum of $1,000 for his vote. Mr. Anthony also swears that in a conversation with Mr. CALDWELL, that gentleman admitted to him that he had paid $2,500 for the vote of Mr. Bayers. There is much testimony showing that Len. T. Smith, Frank Drenning, James L. McDowell, George A. Smith, and T. J. Anderson, among the most active friends of Mr. CALDWELL during the canvass, admitted at different times that they had offered money to members of the legislature to vote for Mr. CALDWELL, in some cases specifying the members to whom it was offered and paid, and in other cases that offers had been made that had not been accepted, and that negotiations were on hand with others which had not been completed. These men have denied before the committee all conversations and admissions of this character, and all payment of money to members, or offers to pay them, and several members of the legislature who were implicated have expressly denied that they received the money or that offers were made them.

Mr. CALDWELL offered testimony showing that Mr. Carney had made threats to have him ousted from the Senate; that Mr. Anthony was hostile to him; that Mr. Burke had a lawsuit with him, growing out of money furnished to Mr. Burke about the time of the election; and to contradict several statements of Mr. Clarke. The most important contradictions of the testimony produced against Mr. CALDWELL are made by members of the legislature, who were themselves implicated, or by the agents of Mr. CALDWELL, who were directly charged with taking a part in these corrupt practices; and there are some contradictions made by witnesses against whom there is no cause of suspicion. But taking the testimony altogether, the committee cannot doubt that money was paid to some members of the legislature for their votes, and money promised to others which was not paid, and offered to others who did not accept it.

By the Constitution, each House of Congress is made the judge of the elections, returns, and qualifications of its members.

If a person elected to the Senate has not the constitutional qualifications, or if the election is invalid, by reason of fraud or corruption, the jurisdiction to examine and determine is expressly vested in the Senate.

Another clause of the Constitution authorizes the Senate to expel a member by a two-thirds vote. The causes for which a Senator may be expelled are not limited or defined, but rest in the sound discretion of the Senate.

It has been a subject of discussion in the committee whether the offenses of which they believe Mr. CALDWELL to have been guilty should be punished by expulsion or go to the validity of his election, and a majority are of the opinion that they go to the validity of his election and had the effect to make it void. Wherefore the committee recommend to the Senate the adoption of the following resolution:

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.

In conclusion the committee remark that, while Mr. CALDWELL did things to procure his election which cannot be tolerated by the Senate, they believe he was as much sinned against as sinning. He was a novice in politics, and evidently in the hands of men who encouraged him in the belief that senatorial elections in Kansas were carried by the use of money.

Mr. MORTON. Mr. President, this investigation originated in the legislature of Kansas. A committee was appointed there to examine into the circumstances of Mr. CALDWELL'S election. The volume containing the testimony was transmitted to the Senate of the United States by virtue of a joint resolution of the legislature of Kansas, which I will now ask the Secretary to read.

The chief clerk read as follows:

Resolved by the house of representatives, (the senate concurring,) That a printed certified copy of the report and evidence of the investigating committee appointed to investigate charges of bribery in the senatorial elections of 1867 and 1871 be sent to each of our Senators in Congress, and that a copy of said report and evidence be placed in the hands of the governor of this State, with the request that he forward the same to the Vice-President of the United States, asking him to lay the same before the Senate of the United States for their information.

Mr. CAMERON. Will the Senator from Indiana tell me the date of that document from the legislature of Kansas?

Mr. MORTON. That resolution, I think, was passed April 4, 1872. I now read an extract from the Globe of April 8, 1872, when this resolution was referred to the Committee on Privileges and Elections of the Senate. The Senator from Kansas [Mr. CALDWELL] said:

I desire to state that I also have received the report of the investigation referred to. I had been expecting that report for some time. I believe it was made up in February, and I have repeatedly inquired of the Chair whether he had received it or not. I am glad to know that it is here, and I desire that it be referred as my colleague has suggested, so that we may have speedy action on it.

I read that simply for the purpose of showing that Mr. CALDWELL submitted himself in this matter to the jurisdiction of the Senate.

Mr. CALDWELL submitted a printed argument to the committee, which is published with the evidence and the report, in which he made a general denial of the existence of any satisfactory evidence that he, or his friends with his knowledge, had bribed any members of the legislature of Kansas to vote for him for Senator, but entered into no discussion of the testimony. In the argument of the law he placed his defense upon the following grounds:

First, that his admitted transaction with Mr. Carney was a private affair between citizens, and was not denounced as illegal by any statute, State or Federal, and about which the Senate has no legal right to inquire.

Secondly, that bribery of members of the legislature to vote for a candidate is not made a criminal offense by any statute of the United States, and that a member of the Senate cannot be unseated for bribery, because he cannot be indicted and punished for it in a court.

Thirdly, that the question of bribery in the election of a Senator can, under no circumstances, be inquired into by the Senate of the United States, but that the right to make investigations belongs only to the State, and that the Senate is concluded by his commission from the State from all inquiries, except as to whether he possesses the qualifications required by the Constitution of the United States.

Fourthly, that the Senate has no power to expel a member for any cause arising before he became a member of the body.

A summary of the evidence and of the conclusions to be drawn from it is made in the report, and an examination of the whole volume of the testimony, which is upon your tables, will show that the statements and conclusions in the report are not only fully sustained, but are in a moderate form, and might have been made much stronger in many respects. No impartial man can read that evidence through without coming to the conclusion beyond a reasonable doubt that the

transactions with Clarke and Carney are of the precise character stated in the report, and that the charges of direct bribery of members of the legislature, and that Mr. CALDWELL's election was secured by money, are completely sustained.

On the first point in the legal defense of Mr. CALDWELL, I quote the following extract from his argument:

I am charged with having procured an election to the Senate by the use of money to induce opposing candidates to retire, and by the use of money and other improper means to induce members of the legislature to vote for me. The first of these charges, so far as it relates to the retirement of Thomas Carney, stands admitted upon the record; but I insist that that was a private transaction between citizens, neither of whom occupied any official position, and was not denounced as an illegal act by any statute, State or Federal, and was one concerning which the Senate has no legal right or power to inquire, as I shall subsequently endeavor to show.

If the Senate cannot inquire into the circumstances attending the election of its members, whether such election was procured by bribery, corruption, or other matter impairing the freedom of elections, such inquiry cannot be made anywhere. It is true the State may investigate these charges, as was done in this very case, but such investigation amounts to nothing unless it may be for the information of the Senate of the United States.

The Constitution provides that "each House shall be the judge of the elections, returns, and qualifications of its own members."

The Senate is authorized to judge of three things in regard to its members, their qualifications, returns, and elections.

First. It may inquire in regard to his qualifications, whether the member was thirty years old, had been nine years a citizen of the United States, and was an inhabitant of the State.

Secondly. Whether the returns of the election are in due form, and show an election by the lawful legislature of the State, certified as required by law.

Thirdly. Whether the election was conducted according to law, and was free, or attended by circumstances that would make it invalid, such as bribery, fraud, or intimidation.

The Senate has no power to inquire whether individual members of the legislature have been lawfully elected, because each house of the legislature is invested with like power to judge of the election and qualifications of its own members. It is contrary to the policy of the law to permit a court to inquire whether a statute properly certified was enacted through bribery, but such an inquiry bears no analogy to the question whether the Senate may inquire as to the election of its members, for which purpose it is vested with express power.

The power of the State legislature is exhausted when it has elected a Senator, and it has no right at the same or at a subsequent session to annul its action from any cause and hold a new election. If the State legislature could afterward annul an election of Senator and hold a new one, membership in the Senate would not be under the control of the Senate, but of the several States, and the Senate would not be the judge of the election of its own members. And if there be no power either in the Senate or in the State legislature to inquire whether an election has been procured by bribery or fraud, then the evil would be irremediable, however gross and wicked the instance; and if such be the position of the Senate, it is perhaps the only legislative body in the civilized world in such a helpless condition.

In the case of Asher Robbins, from Rhode Island, referred to by Mr. CALDWELL, the only question was whether he had been elected by the lawful legislature, and there was no question of bribery or misconduct in the case, and the reference to bribery in the report of the committee was only by way of argument.

To show in this connection the real character of the transaction with Mr. Carney, which Mr. CALDWELL says is "admitted upon the record," I quote the following extract from the report of the committee:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. CALDWELL, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. CALDWELL, Mr. CALDWELL should pay him the sum of $15,000, for which amount notes were given, and afterward paid, at the same time taking from Mr. Carney a written instrument, in which he pledged himself, in the most solemn manner, not to be a candidate for the office of Senator in the approaching election.

This instrument is in the words following:

"I hereby agree that I will not under any condition of circumstances be a candidate for the United States Senate in the year 1871, without the written consent of A. CALDWELL, and in case I do, to forfeit my word of honor hereby pledged. I further agree and bind myself to forfeit the sum of $15,000, and authorize the publication of this agreement.

"THOS. CARNEY.

"TOPEKA, *January* 13, 1871."

Mr. Smith's testimony is fully corroborated by that of Mr. Carney, who admits the execution of the paper, the making of the arrangement, the taking of the notes, and the subsequent receipt of the money. The notes for the money were signed by Mr. Smith, but paid by Mr. CALDWELL; and one of them, for $5,000, was made contingent upon Mr. CALDWELL's election. The substance of the whole agreement, only a part of which was expressed in the writing, was that Mr. Carney should not be a candidate for the Senate against Mr. CALDWELL, that he should use his influence for Mr. CALDWELL, go to Topeka, meet the legislature, and do all he could to secure his election.

The committee have recommended to the Senate the adoption of the following resolution:

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.

The ground upon which bribery and intimidation invalidate an election is that they impair "the freedom of elections." Rogers, in his Treatise on the Law and Practice of Elections, speaking of the action of the House of Commons, says:

Bribery, essentially affecting the freedom of elections, they took cognizance of, and punished both the electors and the elected offending.

Again:

But numerous instances have not been wanting in more modern times, in which the court of king's bench have, by the rigor of their punishments, vindicated the freedom of elections. Informations and indictments at the common law, as well as indictments on the statute of 2d George II, chapter 24, have there been prosecuted, not only by private individuals, but by the attorney-general, by order of the House of Commons. To bribe a voter is not only an infringement of parliamentary privilege, it is more, a high misdemeanor, and breach of the common law.

The opinions of the wisest and most honest statesmen embodied in the resolutions and standing orders of the house had been set at defiance, and the first and best principle of the constitution, the freedom of election, was daily and unblushingly violated.

Cushing, in his work on the Law of Legislative Assemblies, says:

The great principle which lies at the foundation of all elective governments, and is essential indeed to the very idea of election, is, that the electors shall be free in the giving of their suffrages. This principle was declared by the English Parliament in regard to elections in general, in a statute of Edward I, and with regard to elections of members of Parliament in the Declaration of Rights. The same principle is asserted or implied in the constitutions of all the States of the Union.

Freedom of elections is violated by external violence, by which the electors are constrained, or by bribery, by which their will is corrupted; and in all cases where the electors are prevented in either of these ways from the free exercise of their right, the election will be void, without reference to the number of votes thereby affected.

Again:

The freedom of election may also be violated by corrupting the will of the electors by means of bribery, as well as by intimidating or preventing them by external violence from exercising the right of suffrage.

Again, speaking of bribery, he said:

It is an offense of so heinous a character, and so utterly subversive of the freedom of election, that when proved to have been practiced, though in one instance only, and though a majority of unbribed voters remain, the election will be absolutely void.

Whatever impairs the freedom of elections is illegal and against public policy, and makes the election void. Intimidation and bribery are not the only practices that impair the freedom of elections. They are only instances, perhaps the most common heretofore, but may not be hereafter. There is no difference in principle between buying votes and buying influence. To employ persuasion and argument to secure votes is legitimate; but buying off opposing candidates goes much further. That is not only the purchase of influence, but of that power which a man has over his particular friends, springing from political and social relations. We know from observation what power a political leader has over his friends and followers who have been for years devoted to his political fortunes—how they enter into his resentments and attachments, and when he is forced off the stage, how bitterly they feel toward those who have forced him off, and how naturally they go with him to the support of another who is represented as his friend.

It is a matter of frequent occurrence that the result of senatorial and other elections is determined by the withdrawal of a candidate and casting his influence in favor of another, thus transferring a body of friends sufficient to secure his election. This is of more frequent occurrence than bribery, and generally far more effective. It is also far less troublesome and dangerous than the bribery of individual voters. The purchasing party has but one man to deal with instead of many, and that man, to have friends who are worth buying, must be a man of some character, and equally interested in keeping the secret. While such an operation is more effective and dangerous than the bribery of individual voters, it also involves more turpitude. The vendor of his friends and influence is betraying and making merchandise of those sentiments of attachment and devotion to him which are honorable to human nature, and serve to elevate and relieve political contests from sordid selfishness and ambition, and the purchaser knows he has obtained votes under false pretenses, and that he has bought them just as effectually as though he had paid the bribe to them, although the purchase-money has been paid to another. Such a transaction is within the very definition of bribery as given by Sheperd in his Treatise on Elections, page 94:

Bribery at an election is the creation or the attempt to create an undue influence over the disposition of suffrages by a lucrative consideration, or a voluntary subjection to such influence.

It is an "undue influence" over suffrages obtained for a lucrative consideration paid to another. As stated in the report:

If it were legitimate for Mr. CALDWELL to buy off Mr. Carney as a candidate, it was equally legitimate to buy off all the other candidates, and have the field to himself, by which he would exert a *quasi* coercion upon the members of the legislature to vote for him, having no other candidate to vote for.

It is in the broadest sense "undue influence" over suffrages, exerted for a "lucrative consideration," and none the less so because the persons upon whom exerted were ignorant of the character of the transaction. It is bribery in the wholesale, rather than retail, for the bribe is paid to a man who, from his peculiar relations to a number of voters, can in all probability control their action.

This sort of "undue influence" was recognized in England as being more extensive and more dangerous to the freedom of elections than the purchase of individual votes. I quote again from Sheperd, on page 97:

Besides the practice of purchasing individual votes, there sprung up a system of corruption far more extensive, in which the commanding influence in a borough

was transferred, either for a sum of money paid down at once, or, with a more accurate calculation of traffic, for an annual payment during the continuance of Parliament; the sitting member thus purchasing the return of him who had previously purchased the power of returning. To repress this practice the 49 George III, chapter 118, was passed, by which it is made highly penal to enter into any pecuniary engagement for procuring the return of a member of Parliament.

This is but another definition of a practice which impairs the freedom of elections, and invalidates an election upon the same principle as bribery of the individual voters.

The principles of the common law are applicable in all civil matters touching the validity of elections or the tenure of office, and it is a well-established principle of the common law that whatever impairs "the freedom of elections" is illegal, against public policy, and will make the election void. Particular forms in which this is done, such as bribery and intimidation, are punishable by statutes in England and nearly all the States; and in England the further form of purchasing the influence of persons who are not candidates themselves, for the return of members of Parliament. But the absence of a statute punishing these several practices impairing the freedom of elections in no wise affects the operation of the general principle touching the validity of elections.

Sheperd, in his treatise, says:

The bribery act makes no mention of any parliamentary disqualification affecting a member's seat; the effect, therefore, of an act of bribery not within the words of the treating act of 7 William III, chapter 4, is in that respect determined by the law of Parliament as follows: "Bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in his favor, will avoid the particular election."

Mr. CARPENTER. If it will not annoy my friend, I should like to ask him at that point, whether he has any common-law authorities laying down that doctrine which do not refer to and rest upon the statutes of England.

Mr. MORTON. I hope my friend will allow me to get through with this portion of my speech without interruption.

Mr. CARPENTER. I beg pardon. The Senator asserted that that was the common-law doctrine, and I simply wished to know whether he had found any cases.

Mr. MORTON. I have quoted several very high common-law English authorities on the subject. It has never been held in England or this country that the effect of bribery, in making an election void, depended upon the existence of a statute punishing it as an offense. On the contrary, as stated by Sheperd, it invalidates an election by operation of the ancient law of Parliament.

But if the transaction I am considering was not technically bribery, yet that is immaterial, for it is "undue influence," even more dangerous to the freedom of elections than the purchase of individual votes, and partakes of the same general nature, for it is begotten by a corrupt money consideration. In England bribery was held to invalidate the election of a member of Parliament long before there was any statute punishing bribery, upon the general principle that it impaired the freedom of elections, showing that its effect, in invalidating an election, does not depend upon the fact that it has been made punishable by statute as a penal offense; and so a corrupt contract with an opposing candidate for the Senate, by which he is to withdraw from the canvass and cast his influence for another, must be held to have the same effect in invalidating the election as though the transaction was made punishable as a criminal offense.

Bribery may be said to bear the same relation to an election that fraud does to a contract, but if there be a difference it is that it is more fatal, and that a smaller ingredient will have the effect to destroy the life of the election, because the purity and freedom of elections are vital to the existence of every elective form of government.

Said the court of king's bench, in Rex *vs.* Pitt, (Burrows, 1338:)

Bribery at elections of members of Parliament must always have been a crime at common law and punishable by indictment or information.

There are, however, no traces of any prosecution for bribery at elections till after the legislature inflicted particular penalties upon it.

Rogers, in the treatise referred to, says:

Bribery, as we have seen, had always been a misdemeanor at common law, and a violation of the privilege of Parliament; but the above statute [the bribery act] armed courts of law with new and extraordinary powers to attack the growing evil by attaching a penalty of £500 on every conviction of an offense against its provisions, and by disqualifying the offender from ever again voting in any election for members of Parliament.

Sheperd, in his Treatise on Elections, says, speaking of bribery:

Though it was always an offense at common law, it is thought that no prosecution for this species of bribery took place until the bribery act, for which the jealousy of the Commons in regard to their privileges sufficiently accounts. As soon, however, as the Commons began to rise in importance, and a seat was considered of sufficient political value to be purchased, they were not slow to discover and attempt themselves to repress the pernicious consequences of such corruption.

The general policy and provisions of the laws of England in regard to corruption in elections are embodied in the constitution and laws of all the States, and bribery made to invalidate every election into which it enters. The doctrine that the bribery of a single voter will vitiate an election, although the candidate may have a majority of unbribed votes, is a necessary consequence of the principles I have considered, and indispensable to the protection of the freedom of elections. If the candidate who has been fraudulently elected is entitled to maintain his seat, unless it can be shown that his whole majority was corruptly procured, the operation of the principles I have considered will in most cases be defeated, for although he be shown to be guilty of corruption and unworthy of a seat in any legislative body, yet he has the chances largely in his favor that it cannot be shown to have extended to his whole majority. Corruption in an election may be compared to a drop of fatal poison injected into the human system, which circulates into every part and destroys every function. The man who has purchased one vote has shown himself willing to purchase all, and that his corrupting influence has been limited only by his means or his necessities.

The Constitution declares that "each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." The causes for which a Senator may be expelled are not limited or defined, but rest in the sound discretion of the Senate. The position taken by Mr. CALDWELL, that a Senator can be expelled only for causes arising subsequent to his admission, is not sustained by the reading of the Constitution, by any rule of construction, or by authority.

In this case, the Senate would have the right to proceed either way, if it finds Mr. CALDWELL guilty of the charges preferred against him, or any of them: first, by declaring his election invalid, which would require only a majority vote, or by a resolution of expulsion, which would require a two-thirds vote.

The power of expulsion is absolute. It has the definition of an absolute power, for it is not limited in the clause creating it, and there is no tribunal by which its exercise can be reviewed or reversed. It should be exercised with sound discretion, and the security against its abuse consists in the fact that it requires a two-thirds vote. It should undoubtedly be exercised within certain limits and under certain moral restraints; but each case, perhaps, would depend upon its own peculiar character.

As it is a power to be exercised within the sound discretion of the Senate, that exercise may be for causes arising before the election, as well as after, and for any cause which in the sound discretion of the Senate would make it improper for a man to continue to be a member of the body.

It is admitted that the Senate may expel a member for a crime committed during his membership, although it has no connection with his official duties or his position of Senator, upon the ground that his presence in the Senate degrades the body, and that he has shown himself unworthy of public trust and unfit to be associated with honorable men. But do not all these reasons exist with equal force for expulsion where the crime was committed before admission to the Senate, but was not discovered until afterward?

It has been argued that if the legislature of a State elect a known criminal to the Senate of the United States, it is their business, and the State has a right to be represented by a criminal if she desires to be, and the Senate must receive whomever the State sends as Senator. I dissent from this doctrine. The Senate has a right to protect itself against the admission of a criminal, although the legislature electing him was indifferent upon the subject or chose him for that very reason. The propriety of exercising the power might be more doubtful if the criminality of the member were known at the time of his election, for it might be argued that the members of the legislature did not believe the charge to be true, or that the offense was mitigated or had since been condoned.

The power to expel a member is incident to every legislative body, because it is necessary to its protection and character, and this power exists, although the constitution or law creating the body does not confer it in terms. The former constitution of Massachusetts contained no clause authorizing either house of the legislature to expel a member for any cause. But it was held by the supreme court of that State, Chief Justice Shaw, one of the ablest jurists who ever sat upon the bench in this country, delivering the opinion, that the power of each house to expel a member existed as a necessary and incidental power, and that each house must be the sole judge of the exigency which may justify and require its exercise. I quote from the decision, which will be found on page 473, in the third volume of Gray's Massachusetts Reports:

The power of expulsion is a necessary and incidental power to enable the house to perform its high functions, and is necessary to the safety of the state. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language.

If the power exists, the house must necessarily be the sole judge of the exigency which may justify and require its exercise.

As to the law and custom of Parliament, the authorities cited clearly show that the jurisdiction to commit, and also to expel, has long been recognized, not only in Parliament, but in the courts of law, for the purpose of protection and punishment. I here confine myself strictly to the law of personal privilege from arrest. There has been much debate upon abuse of power and excess of claim of privilege, but the power to commit or expel has been uniformly admitted.

But the reasoning as to the propriety of expulsion for an offense committed before admission to the Senate, and wholly disconnected with the election, falls to the ground when you come to consider a case where the offense has been committed in connection with admission to the Senate; where it is the very means by which admission is obtained; where the offense is the stepping-stone to the Senate.

The distinction is radical between such a case and that of an independent crime committed long before the election and having no connection with it whatever. In the latter case the offense goes only to the man's character and his fitness to be a member of the Senate; but in the former it goes not only to his character and fitness, but to his title to the office; and the power of the Senate to examine the matter and adopt the proper remedy is expressly given by that clause of the Constitution which authorizes the Senate to judge "of the elec-

tion of its members." If this clause does not confer this power, then it is nugatory, for all the other powers are given in the preceding clauses, which authorize the Senate to judge of the qualifications and returns of its members. The Constitution authorizes the Senate to judge of three things concerning its members: their qualifications, returns, and elections; but the doctrine contended for by Mr. CALDWELL in effect strikes out the last, and limits the Senate to the exercise of powers which come under the head of qualifications and returns.

To say that the Senate cannot expel a member for a cause arising before his election, when that cause was the very means of the election and brought it about, seems to be very unreasonable, and is to say in effect that, if the crime has a favorable result, and the perpetrator of it enters upon the enjoyment of its fruits, he is by that very fact exonerated from any inquiry into its character and protected in his guilty possession.

For example, suppose a man secretly procure the opposing candidate to be poisoned, and thus secure his election, and afterward the crime become known; or suppose he secretly procure his opponent to be kidnaped, and the sudden disappearance being unaccounted for, he thus obtain the election; or suppose he procure his opponent to be arrested upon false charges of crime, and thus for the time being disgrace him and break him down, and thus obtain his election; or suppose he procure his election by the most monstrous frauds, by intimidation, by gross bribery, by buying off the opposing candidates, or by other dishonorable and illegal means, and slip into the Senate before his offenses are discovered—shall it be said that the success of his crimes and their successful concealment for the time shall become their constitutional protection, and that he may hold on to the seat which he has thus illegally and fraudulently obtained?

Mr. President, bribery is from its very nature hard to prove. Bribery in matters of election by members of a legislature, who are to be presumed to be men of some character and standing, who have at least some ambition to preserve a good name—bribery upon their part you must suppose will be concealed by every means in their power; and we need not be surprised if men who receive bribes deny it under oath.

The evidence in this case, taken altogether—for it is a large volume—in my opinion, establishes this as the most flagrant case of bribery in the history of English or American politics.

Mr. CALDWELL had no political status in Kansas whatever. He was unknown as a politician. A man of large wealth, engaged in business, having been a freighter across the plains, and afterward engaged in the construction of one or more railroads, he was yet unknown entirely in the politics of the State. He had been concerned, perhaps, in some local controversies in the city of Leavenworth, touching certain railroad questions in that city; but aside from that he had no political status, and was wholly unknown to the people of Kansas, except so far as his business may have brought him into contact with them. The very fact that a man under such circumstances can step into the political arena, and distance all competitors who have been before the people for years, implies that there is some other influence at work than that of a political character.

Mr. CALDWELL made a statement before the committee which is published with the evidence, but to which I have not referred. The statement was not made under oath. It was put in upon his honor as a Senator. He was notified by the committee that he had a right to make his statement under oath, but that in that case he would be subjected to a cross-examination. He preferred to submit his statement not under oath.

Mr. CALDWELL lives in the city of Leavenworth, on the Missouri River. The city of Topeka, I believe, is eighty or ninety miles distant in the interior of the State, the capital of the State. The active friends of Mr. CALDWELL in this senatorial contest were Messrs. Len. T. Smith, T. J. Anderson, of Topeka, Dr. Morris, of Leavenworth, Mr. McDowell, of Leavenworth, Mr. George H. Smith, of Leavenworth, and two or three others of almost equal prominence; but among them all Mr. Len. T. Smith was the chief adviser and operator. Mr. Smith, it will be remembered, made the negotiation between Mr. CALDWELL and Mr. Carney, by which Mr. Carney, in consideration of $15,000, signed a paper agreeing to withdraw from the contest. The evidence of Mr. Smith and of Mr. Carney shows that there was the further understanding between them that he should go to Topeka and work for Mr. CALDWELL'S election, and use all his influence with his friends to get them to vote for Mr. CALDWELL, and as a security for his industry and zeal, one note for $5,000 was made contingent upon Mr. CALDWELL'S election.

Mr. Smith was recognized at Topeka throughout the contest as being the principal friend, and the responsible friend, of Mr. CALDWELL. He was regarded as the money-man in the concern, and the treasurer; and the evidence shows that on one or two occasions, perhaps three, Mr. Smith said he had exhausted all the currency there was in the banks at Topeka, and had to send elsewhere to get more.

It seems, Mr. President, that from some cause there was an understanding in Kansas that senatorial elections had been carried by money, and that there was such a demoralization, not only of the legislature, but of the people assembled at the capital, that this thing of corruption was not regarded as a very heinous thing. It was talked about almost as freely as the weather, almost as familiarly as the markets, and members of the legislature, as is shown by this evidence, spoke to their friends of how much they had been offered, what they had been promised, and several of them what they had received; others, how much they had asked, and that the negotiation was not concluded; and this talk of corruption was so common and so free, it was so well understood by everybody, and was in all the public papers in the State, and it became so strong, so overwhelming just before the election took place, that a transaction occurred which was rather extraordinary in its character, to which I call the attention of the Senate very briefly.

Mr. Fenlon, a representative from the city of Leavenworth, a democrat, but a friend of Mr. CALDWELL, and who appeared here upon the examination as one of his counsel, on the day when the first vote was taken in the two houses—Mr. Fenlon being, as he said, oppressed by this general conviction that that senatorial election was being carried by money, offered the following resolution:

Whereas it is reported in the press of the State, and currently spoken of in the streets of the capital, and other principal cities of the State, that money is being used to buy the votes of members of this house in the senatorial election now pending; and

Whereas it is due to the character of the members of this house, and due to the gallant and confiding people who have intrusted us with sacred powers, to be exercised only in their interests and for their benefit, that such rumors should be promptly and effectually silenced: Be it therefore

Resolved, That immediately before the roll is called for the vote on the senatorial candidates the speaker of this house administer to the members of this house the following oath:

You, and each of you, do solemnly swear before Almighty God, the Searcher of all hearts, that you have not now received, and will not receive, any money or other valuable thing to influence or control your vote on the senatorial question.

Strange to say, that resolution was tolerated; it was adopted; and when the time came for the vote the speaker called upon the members of the house to stand up and receive the oath. I believe a little more than half of them stood up and took the oath, and the remainder refused. The mere fact that such a resolution was offered, that the house would tolerate it, so insulting and dishonoring, showed a consciousness of guilt and demoralization that would hardly be believed if it were not well attested by history.

Mr. President, I do not intend to go through this testimony to-day. It has been upon your tables for some weeks, and I suppose the members of this body have generally read it. I will simply refer to an outline of the principal proof that has been made.

Len. T. Smith, the particular friend and agent of Mr. CALDWELL, has long been his partner in business; I believe they have made large fortunes together; I believe he and Mr. CALDWELL are regarded as the two wealthiest men in Kansas. Mr. Smith was put upon the stand and examined as to his knowledge of this election. He denied all knowledge of any money, consideration, or corruption except the sum of $7,000, which he said he had drawn from the bank and paid to Thomas Carney, in the city of Topeka, some three or four days before the election. He said he paid that money to Mr. Carney to pay his expenses; that Mr. Carney asked it, and that Mr. Carney, in consideration of it, was not to be a candidate, but was to give his influence and his labor to secure Mr. CALDWELL'S election, and was to procure his friends, so far as he could, to vote for Mr. CALDWELL. He denied all knowledge of any other transaction; and we had examined him for more than two hours, and he was about going off the stand when he made an inadvertent remark that he could not take back, and, upon being pressed in regard to it, he then admitted the $15,000 transaction, accompanied with the remark that he had not intended to tell that part of it if he could help it. He then went on to detail the negotiation with Mr. Carney by which he was to receive $15,000 for not being a candidate and to aid in the election of Mr. CALDWELL, and that transaction, it is shown by the date, had been made some week or more before he said he paid to Mr. Carney this other $7,000. According to the testimony of Mr. Smith, Mr. Carney received $22,000; but according to Mr. Carney's testimony, and I believe that he told the truth on this point, he received but the $15,000, and the $7,000 went elsewhere. The testimony of Mr. Smith himself was that the $7,000 was drawn from the bank of Topeka in the nighttime. There was no reason given for drawing it after bank-hours except the desire to avoid publicity. The check was drawn by Mr. Smith upon the bank, made payable to Mr. Carney, by him indorsed, and delivered to a man by the name of T. J. Anderson, who, next to Mr. Smith, was Mr. CALDWELL'S chief agent and operator there in the work of corruption. Mr. Anderson went down to the bank and got the money. Anderson testifies he paid the money to Carney. Smith testifies that Carney got the money; but when Mr. Smith came afterward most reluctantly to admit the $15,000 transaction, he then revealed a state of facts which in itself contradicted the statement that Mr. Carney had got the $7,000, showing a total want of consideration, and of reason for paying to Mr. Carney the additional sum of $10,000, because Mr. CALDWELL at that time had Mr. Carney's obligation in his pocket, and Mr. Carney had Mr. CALDWELL'S or Mr. Smith's obligation for $15,000, which Mr. CALDWELL afterward paid.

Mr. CALDWELL. May I interrupt the Senator for one moment? The Senator says that I had Mr. Carney's obligation in my pocket. I think he is mistaken there. I suppose he does not intend to do me any injustice; but there was no evidence of that kind. He probably referred to Mr. Smith.

Mr. MORTON. Perhaps I am mistaken in saying that the Senator had it in his pocket at that time, for I presume he had not, but it was in his possession. It had been taken before that, with his knowledge and consent. A copy of it was produced upon the examination before the committee, and the obligation was never surrendered, and Mr. CALDWELL paid the notes given by Mr. Smith, in consideration of

the signing of this paper. The mere fact that Mr. CALDWELL did not have the paper in his pocket at that time makes no difference. It was either in his possession or in that of his agent, Mr. Smith.

Now, Mr. Carney comes upon the stand, and he gives a different version of the $7,000. The seven thousand dollar check from the bank is produced, drawn by Mr. Smith to Mr. Carney, and indorsed by Mr. Carney, subsequently indorsed by this man Anderson, who got the money out of the bank at night. Mr. Carney tells a story which is borne out by all the transaction as established by other witnesses. He says that about nine o'clock in the evening, on the night, I think, of the 21st, (the election was held on the 24th,) Mr. Smith drew a check upon the bank in Topeka for $7,000, and gave it to Anderson to go and get the money. Mr. Anderson went around and found the cashier of the bank somewhere, not in the bank, but the cashier refused to let him have the money, stating that these were political times. Mr. Anderson brought the check back to Mr. Smith. Mr. Smith tore it up with indignation, and, as they wanted the money, he then drew another check, made it payable to Mr. Carney, and Mr. Carney indorsed it and gave it to Anderson, and Anderson was gone about half an hour and came back, appearing to be in an excellent humor. He had a package wrapped up in a newspaper, apparently a large package of money, as it would come from a bank, and he showed this to Mr. Carney and Mr. Smith in Mr. Smith's room. Then by invitation, I believe, of Mr. Anderson, Carney got up and went to his room just across the hall with Mr. Anderson. There was a door opening back from Mr. Carney's room, it having two doors in it, which led to a hall that went down to the floor below. The back door was left open. There was a table standing in the middle of the room, and Mr. Anderson took this package of money, as it was supposed to be, from his coat-pocket and put it upon this table, and then he and Carney went back. In a few minutes Mr. Anderson came in smiling and said to Smith and to Carney, "I believe somebody has stolen that package;" and Smith made the remark, "I guess we had better not make any fuss about it; I guess we had better wait until after the election before we make any fuss about it;" the whole transaction, taken in connection, showing that the money was placed upon the table for certain parties to get it, and, taken in connection with other testimony, that it was to go for the votes of the Doniphan delegation, they being seven in number, and the amount of money placed on the table was $7,000.

Mr. CONKLING. Is there any other evidence that they got it?

Mr. MORTON. No. I just give the transaction as it appears. There is other evidence, however, showing at what time the Doniphan delegation changed their support to Mr. CALDWELL.

So much for the $7,000. It would take me a long time to read all the evidence in connection with the $7,000, which goes to show that Mr. Carney's statement of the disposition of it is the true one; that Carney did not get the money, but that it was gotten by Smith, and the package placed by Mr. Anderson upon this table where it could be carried off.

The whole amount of money which we have traced as being drawn about that time, and as being used, is about $77,000. A part of this money is not connected with this election in any way except by the time at which it seems to have been drawn from the bank by Mr. CALDWELL. For example, his account in Scott & Co.'s shows that between January 9, (and, by the by, that is about the time the canvass commenced,) and January 28, he drew from that bank $2[illegible],967, and from the First National Bank $1,043; that Len. T. Smith drew from Scott & Co., from January 23 to February 11, $11,114; that Dr. Morris, to whose transaction I shall refer directly, drew from Jacob Smith, at Topeka, $5,000; Robert Crozier, $1,200; the Kansas Pacific Railroad Company, through Anderson, $10,000. Carney received, as admitted, $15,000, and Anderson himself, subsequently, $5,000, making over $77,000. Some of these items we trace to this election, so that there can be little doubt as to what use was made of the money.

First, we have the item of $15,000 paid to Carney after the election. Then we have the item of $7,000 which Smith drew, and for which the check was produced, which Smith swears that Carney got, and Carney swears Smith got, and was disposed of in the manner I have described. Then we have another item of $5,000 drawn by Dr. Morris, a leading and active friend of Mr. CALDWELL, living in Leavenworth, who was up there for the purpose of promoting Mr. CALDWELL'S election. On the night before the first vote was taken, at about nine o'clock at night, he drew from the bank $5,000 upon his check. The evidence shows that the banker, Jacob Smith, understood that this money was used for political purposes, and all the circumstances surrounding it show that the money was drawn for the purpose of that canvass, and can leave no doubt that it was used in that election; and upon this point there is no contradiction. It was in the power of Mr. CALDWELL to have shown by Dr. Morris what other disposition, if any, was made of this $5,000; but Mr. CALDWELL did not attempt to explain the use of this $5,000.

Judge Crozier, who was also there as the acknowledged friend of Mr. CALDWELL, and working for him, drew $1,200 on the night before the election, after banking-hours, from the bank, and passed it over to Len. T. Smith. Mr. Smith wanted the money; Mr. Smith was a man of large fortune at Leavenworth, whose check was good perhaps for $100,000; but Mr. Smith did not want to draw the money himself, and he got Judge Crozier to draw it. So, Crozier got the money after the bank had been closed, and handed it over to Mr. Len. T. Smith.

Then there is the testimony in regard to $10,000 sent to Mr. CALDWELL from Leavenworth on the 22d. The testimony of Mr. Comstock is that on the morning of the 22d, Mr. Martin, the known agent of Mr. CALDWELL, came into Scott & Co.'s bank at Leavenworth and presented a check from Mr. CALDWELL for $10,000, giving as his reason why he wanted to draw the money before banking-hours, that it was to be taken to Topeka that morning by the first train, which was to go out shortly after the bank would open. I cannot detail all the circumstances surrounding that transaction, but everything goes to show that the money was to be taken that morning to Mr. CALDWELL at Topeka, and the money was taken.

Then there is the further transaction of $10,000, paid by the Kansas Pacific Railroad Company. Mr. T. J. Anderson was the agent of that company, resident at Topeka. The road runs through that city. On the 22d of January, two days before the election took place, the assistant solicitor of that company drew a check for $10,000, which Mr. Anderson took to the bank in Topeka and got the money upon, but Mr. Anderson failed to state what he did with the money. He was asked what use the money was to be put to. He said he thought for the payment of taxes in the county due from the railroad, but upon further examination he took that back, and said he did not know what became of it; but the circumstances under which it was drawn showed that it was for the canvass, and the testimony afterward offered showed that Mr. Len. T. Smith admitted that he had got that money, $10,000, from the Kansas Pacific Railroad Company. He expressly told Governor Carney that.

There are other circumstances going to show what use was made of that money. Mr. CALDWELL told Governor Carney after the election was over that the Kansas Pacific Railroad Company had agreed to bear half the expenses of that senatorial election, but that they had not complied with their contract, and that he did not intend that they should have any legislation here until they did comply with the contract. Mr. CALDWELL told Mr. Clarke in this city, giving it as a reason why he had not complied with his contract to pay Mr. Clarke's expenses, estimated at from twelve to fifteen thousand dollars, that the Kansas Pacific Railroad Company had not complied with their contract; that they had not paid what they promised to pay; and in the evidence taken before the legislature at Topeka, Mr. John P. Usher, formerly Secretary of the Interior here under Mr. Lincoln, and now the solicitor of the Kansas Pacific Railroad Company, testified that in a conversation with Mr. John D. Perry, the president of the Kansas Pacific road, in regard to business, Mr. Perry informed him that Mr. CALDWELL had demanded from the company the sum of $30,000 as their part of the expenses of his election. Mr. CALDWELL himself told Mr. Carney that that company was to pay a part of the expenses, and made the same statement to Mr. Clarke, giving it as a reason why he had not paid to Mr. Clarke or to his friends $12,000. Ten thousand dollars were drawn by that company, which they failed to account for, just two days before the election, and Mr. Smith told Mr. Carney on the evening before the election, "I was out of money; I had drawn all the currency in these banks here; but I got $10,000 from the Kansas Pacific Railroad Company to-day; I am now in funds again."

There are other matters in regard to the amount of money that I will pass over, smaller sums, as I do not intend to go into a general discussion of the evidence. Mr. CALDWELL, in his conversation with Mr. Carney, who was up there working for him upon the terms already described, told Mr. Carney, after the election was over, that the election had cost him over $60,000 in cash; and made the statement to Mr. Clarke in this city two or three times, in explaining why he had not complied with his promise to Clarke to pay $12,000 for his expenses, that the election had cost him from $60,000 to $70,000, and that he was then very poor in ready money. He made the statement to Mr. Anthony, the mayor of the city of Leavenworth, Mr. Anthony being in negotiation with him to purchase a newspaper in which Mr. CALDWELL had an interest, that that election had cost him over $60,000. He made a statement to Mr. Burke, who was his debtor, he holding Mr. Burke's notes to the amount of $6,000, that had been advanced to enable Mr. Burke to carry on a newspaper in Leavenworth to support Mr. CALDWELL'S election, that the election had cost him more than twice the whole amount of his salary, which would be $60,000, if he got the salary for the term, and that the amount he had paid to Mr. Carney was not more than ten per cent. of the actual amount of his expenses. He told Mr. Anthony upon another occasion, in conversation, that he had paid to Mr. Bayers, a member of the legislature, I believe, $2,500 for his vote. He made the same statement to Mr. Carney.

It is not necessary to go into a detail of all the circumstances, or to allude to all these conversations; I simply give the substance. He also told Mr. Carney that he had not only paid Mr. Bayers $2,500 for his vote, but that he paid James F. Legate $1,000 for his vote.

I should remark that, in the previous negotiation between Mr. Carney and Mr. CALDWELL, in addition to paying this money to Mr. Carney, Mr. CALDWELL was to take care of Mr. Carney's friends, if they voted for him; he was to provide for them as fully as he could. Mr. Carney afterward wrote to him several letters to get appointments for his friends in that legislature who had voted for Mr. CALDWELL. Upon one occasion he came to Mr. CALDWELL with a letter from one of these men asking for an appointment. Mr. CALDWELL took out from his pocket a memorandum-book, and seemed to look down one page as if he was looking over a list, and then he turned the leaf over and looked down another page part of the way, until he

came to this man's name, and said he, "That man has been paid; I paid him." And he said that Mr. CALDWELL's manner, that of a good business man, was that he had a list of all the members of that legislature, and that he looked over the list to see if that man had been paid, and he found he had been, and made that statement to him.

Many admissions of Mr. CALDWELL I have not time now to refer to. I will, however, in the conclusion of this argument, refer to the evidence more in detail, if it becomes necessary; but to any Senator who has read this volume it will not be necessary that I should say anything more about it.

The evidence shows that Mr. Clarke was an opposing candidate for the Senate. He had been a member of the House of Representatives from Kansas for four years, I believe, and in making his speeches in the canvass the summer before, it was announced that he was a candidate for the Senate. A number of members of the legislature were elected upon the promise that they would vote for Mr. Clarke, but there was some opposition to him, and other members were elected simply as anti-Clarke men. When the vote first took place Mr. Clarke had twenty-seven votes, the highest vote of any man but one. But he was satisfied that he could not be elected. That evening while he was at supper he received a note from Mr. CALDWELL asking him to come to his room. He went to his room, and Mr. CALDWELL began to negotiate with him for his votes. He said to Mr. CALDWELL, "Personally I feel more kindly to you than I do to some of these other men who have been making war upon me; but, Mr. CALDWELL, everybody knows that your strength in this legislature depends entirely upon money; that you are buying your way through; and if my friends went for you I should be compromised and they would be compromised." Mr. CALDWELL did not deny it; for it seems the demoralization was such there at that time that there was scarce any concealment about these operations; and Mr. CALDWELL said to him, "Success will take away the stigma; if I am successful, that will make it all right." Mr. CALDWELL then suggested to him that he would pay his expenses. Mr. Clarke said that his expenses and those of his friends had been twelve or fifteen thousand dollars. The evidence shows that Mr. Clarke did not at that time agree to this, and Mr. Clarke showed a tenderness at all times in admitting that he had withdrawn and transferred his friends to CALDWELL upon the consideration of the payment of this $12,000; and yet all the evidence, even Clarke's testimony alone, omitting everything else, leaves no room to doubt that in point of fact that was the distinct contract, that Clarke was to withdraw, was to cast his influence for CALDWELL, and that CALDWELL was to pay to a Mr. Stevens a sum of not less than $12,000, and perhaps $15,000. The evidence shows that this contract with Stevens was concluded about two o'clock in the morning. The parties were up all night engaged in this negotiation. About two o'clock in the morning Mr. CALDWELL went to Mr. Stevens's room, and the arrangement was there finally made that Mr. CALDWELL should pay the expenses of Mr. Clarke and his friends, estimated at not less than twelve nor more than fifteen thousand dollars. The evidence does not show that their actual expenses were half the amount; but that, perhaps, is wholly immaterial.

In accordance with that arrangement there was a caucus held on the next morning at nine o'clock of Mr. Clarke's friends. They were all present. Mr. Clarke went into that caucus, and there said he was no longer a candidate, and urged his friends to vote for Mr. CALDWELL; and when the election came off at twelve o'clock in joint convention, Mr. Clarke's name was withdrawn, and all Mr. Clarke's friends but one voted for Mr. CALDWELL.

Subsequently Mr. Clarke called upon Mr. CALDWELL in this city, after the election was over, and after he had taken his seat, as Mr. Clarke says, to procure the appointment of a postmaster in the town where he lived, but in which conversation the question of paying this money to Stevens came up. Mr. CALDWELL said every time—and the last conversation took place out here in the lobby—"I intend to pay Stevens." Mr. Clarke says that he said to Mr. CALDWELL, "Whatever you have agreed to pay to Stevens you ought to pay to him." The money was not paid; and how this controversy began is not very clearly shown; but it may have originated, and I think probably did, from the very fact that the contract to pay this money to Clarke's friends was not complied with.

There is another feature of this case, Mr. President. I have already spoken of the fact that the testimony shows that several members of this legislature admitted at the time that they had been bribed, that they had negotiations on hand, that they had been promised this, that, and the other. Two said that they had asked so much, and had only been offered so much. There are repeated declarations proved that Mr. Len. T. Smith, Mr. CALDWELL'S principal agent, said that he could get a man for less than what had been offered or asked; and once, when a man was presented to him to be sold, "Why," said he, "I have already bought that man, and I only gave $500 for him."

The evidence is direct and positive that this man Anderson paid to Mr. Crocker, a member of the house, the sum of $1,000 for his vote; and Crocker afterward backed out, and did not vote for CALDWELL, and he handed the money back to a Mr. Carson, to be delivered by him to Anderson, but Carson kept the money. He knew that Anderson could not very well sue him for it, and so he held on to it. We had Mr. Carson before us. He admitted that he had received the money and had kept it, giving as a reason that he had been working for Mr. CALDWELL there, and he thought he had a right to hold on to the money for his services.

Then there is the testimony of Mr. William Spriggs, formerly treasurer of Kansas; I believe a man of as good character as was before the committee, and I think no member of the committee doubted a single word that Mr. Spriggs said. He was there as one of Mr. CALDWELL's friends, and he said there was a self-constituted committee of some six persons, composed of Mr. Len. T. Smith, T. J. Anderson, Frank Drenning, McDowell, and perhaps another one; that they met in the morning and in the evening for the purpose of canvassing Mr. CALDWELL's prospects. They had a list of the members. They would run over the list, and, as they would do so, remarks would be made by the different members of the committee. Len. T. Smith would say, "Now that man is a little too high; I shall not close with him yet; I think I shall get him lower." In regard to another he would say, "That is already fixed; I have closed with that man."

Mr. CARPENTER. Will the Senator allow me to interrupt him a moment?

Mr. MORTON. Yes, sir.

Mr. CARPENTER. Will the Senator add in that connection that every one of those six men, said to have been a committee, denied it on oath before our committee?

Mr. MORTON. I cannot state that, because it is not correct; but I will state how far it is correct. I said that Mr. Len. T. Smith had denied all knowledge of it.

Mr. CARPENTER. And all the rest of them that I heard testify.

Mr. MORTON. Mr. McDowell denied it, he being one of the principal operators, and I do not think there was a man on the committee that believed Mr. McDowell.

Mr. CARPENTER. Did not Drenning deny it?

Mr. MORTON. Yes, Drenning did deny it, but made admissions which impaired the force of his testimony; and I do not believe my friend believed one word that McDowell said or that Anderson said. Anderson was on that committee, and I think we all agreed that he perjured himself from the very beginning to the end of his testimony. His statements conflict with each other, and they conflict with the whole body of the testimony. He denied what was proven by a number of men there, and his admissions as to his own receipt of $5,000. There was conflicting testimony, but there was not any more than would be likely to happen in any lawsuit where there is a millionaire on one side, and where there are reputation and position at stake, aided by good counsel and large influence.

Mr. CARPENTER. I wish simply to call my friend's attention on that particular point. What he is stating as the undoubted fact of the case, he is stating on the testimony of one man, who is contradicted directly by three or four others.

Mr. MORTON. Three others; and other evidence shows that those three men, every one of them, were engaged there in the purchase of votes; they were the corrupt manipulators of this transaction. If my friend wishes it, I will give him the testimony. I will refer him to a scrap or two of testimony on this point. I will read from the testimony of Mr. Spriggs. I think every member of the committee believed Mr. Spriggs, and I think we all, when he went off the stand, felt that he had told the truth.

Mr. LOGAN. Will the Senator allow me a word in reference to these statements about all of us believing so and so? He will find in Mr. Spriggs's testimony that he testifies that he had a conversation with Mr. CALDWELL on the Tuesday before the election, in Mr. CALDWELL'S room, at Topeka. Mr. CALDWELL'S physician swore that he attended him in Leavenworth on that very same day, and gave him medicine.

Mr. MORTON. There was just that contradiction. This man was mistaken in regard to the date.

Mr. CARPENTER. He fixed the day most particularly with reference to the election. They all agreed about when the election was, and then he fixed the day positively; and now it turns out from the testimony of the physician that CALDWELL was in Leavenworth, sick abed on that day.

Mr. MORTON. There was a mistake of one day in the date, a most trivial mistake; and my friend now cannot, for his life, I venture to say, tell the day when this investigation began and when it ended; because we cannot, any of us, remember such things.

Mr. LOGAN. That is not necessary; and that is no legitimate argument in the case. I merely called attention to the fact, as the Senator was speaking of Mr. Spriggs's testimony being so reliable, that it was of a character that was totally contradicted by every witness on the stand. Mr. CALDWELL was sick for several days, at Leavenworth, and Mr. Spriggs said he talked with him on the Tuesday before the election, in his own room, at Topeka. Mr. CALDWELL'S doctor and minister both testified that he was sick at home, at Leavenworth, at the very time this man said he had the conversation with him at Topeka.

Mr. MORTON. They did, by the physician, prove that on that particular day he was at Leavenworth; but he took the cars there at night, or the next day.

Mr. LOGAN. That was the evening of the election?

Mr. MORTON. O, no.

Mr. LOGAN. Well, it is immaterial.

Mr. MORTON. He went to Topeka the next day after the physician said he was sick in bed. The physician undertook to verify the date by reference to the charge he made against Mr. CALDWELL; but I am not mistaken, I think, in the fact that my distinguished friend from Illinois did at the time indorse Mr. Spriggs's testimony. He did

state, on this floor, (and if I do him injustice he will correct me,) that he indorsed the statements in the report, all except the resolution as to what should be done. I think every member of the committee agreed in regard to the facts, unless it was my friend from Wisconsin.

Mr. CARPENTER. The Senator should state, in that connection, that I not only did not agree, but expressly disagreed and dissented, in the committee, to the findings of fact.

Mr. MORTON. My friend did disagree all the way through, I think.

Mr. LOGAN. I do not think that has anything to do with the case, and the Senator ought not to use that kind of argument. I stated in the Senate that I dissented from that report; it is entirely immaterial on what ground I dissented from the report—whether as to the conclusion or the statements of fact, makes no difference. I have a right to put my dissent on such theory as I see proper.

Mr. MORTON. I do not want to be placed in a false position. I understood my friend to agree to the whole report, except as to the resolution, and I think his remarks, as recorded in the Globe at the time the report was submitted, will show that he dissented from the conclusion; and I think the Senator from Rhode Island [Mr. ANTHONY] made the same dissent. He dissented from the conclusion.

Mr. LOGAN. You may put it on that ground; but we dissented from the report; and I most emphatically do dissent from it now. I do not care what ground you put it on. I am not compelled to agree that everything stated in the report as to the testimony is the fact. I do not say that the report falsifies the testimony; but I have a right to say whether a man is contradictory or not, and form my own conclusions as to testimony, and that is what I am doing.

Mr. MORTON. Mr. President, I read an extract from the testimony of Mr. Spriggs:

We had a roll of the senate and of the house and kept them, and we would compare notes, and then such a member of the committee would be sent that day or at such a time to see such members of the house, and such another one to see somebody else, whoever we thought would be the best man for that particular place, and then we would meet again at such another hour, and report what we had done and what success we had had, and in some quite a number of times, I do not know how many. In making the report and comparing notes there was one member of the committee would report; in calling over the names he would come to such and such a man and he would say, "We had better not count that man yet; that is under negotiation, and he is a little too high; I think I can bring him down some."

Question. By "negotiation;" was that a bargain for a price?

Answer. Yes; that was a bargain for a price.

Question. How many occurrences of that kind were there?

Answer. There was but one man that made that kind of reports.

Question. Who was he?

Answer. That was Len. T. Smith; but still I am totally unprepared to say the number of times.

Question. Did any other member of the committee report negotiations of that sort?

Answer. No, sir.

Question. Of members being approached in that way?

Answer. No, sir; I have no recollection of any other member of the committee doing it.

Question. Was there any understanding in the committee that Mr. Smith was the member of the committee who was to conduct negotiations of that kind?

Answer. Well, whether there was anything said or not I do not know, but there was a general kind of consent that he was to do that business.

Question. How many members did he report being in negotiation?

Answer. That is what I say I could not tell; quite a number; I can give one or two instances that occur to my mind.

Question. Can you remember their names?

Answer. I can remember one name very distinctly.

Question. Whose name?

Answer. It was Mr. T. C. Sears. He happened to be the senator from my own district.

Question. Can you recollect any other names?

Answer. It does seem to me, since I have heard Snead's name called here to-day, that that was one, but it had passed out of my mind. Since I heard it called here to-day, I thought that that was another member mentioned there.

Question. Were there other members mentioned there?

Answer. Yes; quite a number.

Question. Did he report to this committee that he had agreed with any of the members upon a price?

Answer. Yes, sir, several; and Mr. Sears, I asked him the question. I think that is about the only question I asked him touching that subject. I asked him what Mr. Sears asked. He said $5,000. He said he had offered him $2,500, and he could not give the five thousand unless he could not secure enough without it.

And there is much more of the same character that I have not time to read.

Mr. CARPENTER. That is all hearsay.

Mr. MORTON. My friend can make his speech when his time comes, I have no doubt.

Mr. Spriggs further testifies as to conversations with Mr. CALDWELL:

I will say this much in the beginning: about the time that this committee was arranged, I had a little conversation with Mr. CALDWELL.

Question. What was that?

Answer. I told Mr. CALDWELL the condition upon which I would support him, and after we agreed upon those terms, he made some suggestions to me as to what he wanted me to do.

Question. What were those conditions upon which you were to support him?

Answer. The conditions were, that two years from that time he would just as earnestly work for the election of T. Carney, Governor Carney, as Mr. Carney and Mr. Carney's immediate friends, including myself, would work for him then.

Question. Was that all the condition?

Answer. Yes, sir; that was all the condition that was made between us. I believe I said to Mr. CALDWELL that in this committee we were arranging I did not want this man Legate; I did not want Legate to be allowed to come about the caucus. On them conditions I would go to work.

Further on:

Question. Was anything said in that conversation about the use of money or necessity of paying money for votes?

Answer. I will just tell you what Mr. CALDWELL said to me about it. He asked me if I knew any members of the legislature that could be influenced by the use of money for their votes, and I told him that I knew two members, I believed, that had the reputation of having been influenced in their votes on former occasions.

Question. Did you mention their names?

Answer. Yes, sir.

Question. Who were they?

Answer. Mr. Luce was one.

Question. Mr. Luce who sits there?

Answer. Yes, sir; and the other man—I cannot call his name.

Question. Where was he from?

Answer. I cannot recollect; but I recollect telling him there were two who had the reputation of having been influenced on former occasions or a former occasion.

Question. What did Mr. CALDWELL say in reply to that?

Answer. He said if I found any members that wanted a little money for votes, to send them to him and to Len. Smith.

Question. Was that all that was said upon the subject?

Answer. Mr. CALDWELL said there was another class of high-toned gentlemen there in the legislature that would not sell their votes, but they put it in this way: that they had been to a pretty heavy expense in carrying their election, and they would want their expenses paid, and, if I met with any of that class, to send them to him or to Len.

I simply read these as illustrations. I will now read a passage from the testimony of Mr. Carney. Mr. Carney gives the details of an interview between Mr. Smith, Mr. CALDWELL, and himself. He went to see Mr. CALDWELL at the request of Len. T. Smith:

He asked me then to go and see Mr. CALDWELL. Mr. Smith and myself went to Mr. CALDWELL'S room. Mr. Smith said to Mr. CALDWELL that he had involved him to the amount of about $40,000.

Question. Mr. Smith stated to Mr. CALDWELL that he had involved himself?

Answer. He said, I think, "I have already involved you to the amount of about $40,000."

By Mr. HILL:

Question. Involved Mr. CALDWELL?

Answer. Yes, sir, involved Mr. CALDWELL; and, says he, "Now you must not be alarmed; you must expect to expend money in the beginning of this contest; that is to get a status before the legislature. You have got to lead the other candidates in the preliminary vote, and if you have not nerve and courage enough to do that you had better withdraw from the canvass. That had to be done." Mr. CALDWELL wanted to know how much it would take, how much he thought it would take to do it, and Mr. Smith said he did not know. I do not remember that he stated it. He asked me. Well, I said to him I thought he might do that for the sum he expected to expend, or had proposed, or may be for a little less than that sum, which was a quarter of a million of dollars.

It turns out that before the arrangement was made between CALDWELL and Carney for the $15,000, Mr. CALDWELL and Mr. Smith said to Mr. Carney, "We intend to carry this matter if it costs us $250,000," and this was the remark referred to by Mr. Carney in this conversation. Mr. Smith made the same statement: "We intend to elect CALDWELL if it costs us $250,000."

That seemed to startle him, and he said he was not prepared to do anything of that sort. Mr. Smith replied that was all nonsense; that it would take but a small sum more; and if he did not make it succeed, he said, "If you will let me go on and have my own way, and I do not make it succeed for you, I will pay half the expenses myself." Mr. CALDWELL said, "Len., that is fair," and slapped him on the knee; "go ahead, and I will stand by you." I think that on another occasion Mr. Smith asked me to go with him again, and I went the second time, and what occurred was similar.

It seems from the testimony that Mr. CALDWELL became despondent several times, and thought the thing was costing him too much, and Mr. Smith had to strengthen him and stiffen him up.

I will read an extract from the testimony of Mr. Anthony, mayor of Leavenworth. He says:

Question. Did you ever have any conversation with Mr. CALDWELL in regard to what that election had cost him, or anything on that subject?

Answer. He remarked to me, incidentally, I think last summer, in regard to the cost of the election.

Question. What did he say about it?

Answer. He said to me that it had cost him about $60,000.

Question. Where was that statement made to you?

Answer. That statement was made to me when he was conversing with me about my purchasing the *Bulletin* office, in Leavenworth.

He testifies in regard to a conversation he had with him as to what Bayers's vote had cost him; that it had cost him $3,000.

Mr. Carney testifies:

Question. How much have you heard him say, if anything, that it cost him?

Answer. I have heard him say it cost him over $60,000.

Question. When did he tell you that?

Answer. After the election.

Question. Over $60,000?

Answer. I have heard him state that.

And Mr. Carney testifies that in several conversations with Mr. CALDWELL, he (CALDWELL) told him that. It seems that these notes given for the $15,000 were not paid at the time they were to be. Mr. CALDWELL excused himself to Mr. Carney, first, because the Kansas Pacific Railroad Company had not complied with their contract, and because he had run short of ready money, and frequently told him that the election had cost him over $60,000, and this although Mr. CALDWELL had repudiated his contract with Mr. Clarke for the $12,000. Mr. Burke, who was the editor of the Leavenworth Times, and supported Mr. CALDWELL during the canvass, and to whom Mr. CALDWELL had loaned $6,000 with the understanding that a part of it was not to be paid back, and suit for it was afterward brought and only part of it recovered, says in his testimony:

I had two or three conversations with him at different times, but that was about the gist of it all. He remarked, I believe, something about paying Mr. Carney's election expenses, and I suggested that that was perhaps a pretty large item. He said it was, but not more than ten per cent. of the whole amount.

He had confessed to the $15,000 to Carney, and he said that that was not ten per cent. of what had been the cost of the election.

The Senator from Mississippi [Mr. ALCORN] calls my attention to the testimony of Mr. Thomas, a man who I think impressed the com-

mittee very favorably; and everybody who heard it, I think, believes he told the truth. He went, at the instance of a man by the name of Steele, a member of the house, to see Len. Smith. Steele intimated that he would vote for CALDWELL for $800. He said that everybody was being paid, and he might as well be paid. He got Mr. Thomas to go and see Mr. Smith. Mr. Thomas called upon Mr. Smith, and then Mr. Smith told him, or gave him to understand in the conversation—I think McDowell was present—that he had already bargained for that man's vote for $500, and had paid him the money, and Mr. Thomas went right back to Steele, and told him about it, and Steele did not deny it, but had evidently been trying to get a larger sum.

I have not time to go further into this testimony to-day, but I will say this in regard to it: while there have been contradictions in regard to a number of points, yet, taking the whole body of this testimony together, it stands impregnable; it dovetails together; and the conclusion is irresistible that Mr. CALDWELL's election was procured by money—a portion of it is admitted, undenied—and that it was paid to members of the legislature and paid to other persons for their services, was paid to one opposing candidate, was promised to another opposing candidate.

Mr. President, in presenting the law in this case, as I have tried to do, and in referring to this testimony, I am simply endeavoring to discharge my duty. It has been an unpleasant one; one which I would have gladly avoided, but the Senate devolved it upon the committee, and the committee have devolved it upon me. If the Senate shall come to the conclusion, in the face of all this evidence, that Mr. CALDWELL is not guilty, that these charges are false, I shall be as well satisfied as any member of the body. But the Senate has a duty to perform to itself, a duty to perform to the country. It is a case in which mere sympathy should not be allowed to operate beyond a given point. We cannot afford to have it understood that membership in this body is a thing to be purchased; that men can go into a legislature, wholly unknown or almost so, without any political standing, can put everybody aside, and buy their way into the Senate of the United States. When that shall come to be the understanding in this country, the honor and glory of this body are gone, its power is gone, and its influence in the country from that time is gone.

Mr. ANTHONY. I move that the Senate do now adjourn.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The Senator from Kansas [Mr. CALDWELL] has risen for some purpose.

Mr. ANTHONY. Certainly, I will give way to the Senator from Kansas.

Mr. CALDWELL. I simply desire to say that I have prepared a statement to make to the Senate on this question, but my voice is so much affected by a severe cold that I know it will be impossible for me to read it. I should like to send it to the Secretary's desk and have it read now, to follow the speech of the Senator from Indiana.

Mr. CARPENTER. I hope my friend will give way to a motion to adjourn.

Mr. EDMUNDS. O, no; the Senator from Kansas ought to be allowed to make his statement in answer to the Senator from Indiana. That is only fair to him.

Mr. CALDWELL. I desire to say, further, that there are many things that the Senator from Indiana has said in his argument that I can reply to and refute. I refrain from doing so now, but I shall do so before this subject is disposed of.

The PRESIDING OFFICER. The Senator from Kansas sends to the desk a statement to be read.

Mr. STEWART. I think the Senator had better have it read in the morning.

Mr. CALDWELL. I should like it to go out to the country with the argument of the Senator from Indiana. I think it will be a pretty good antidote to his speech.

Several executive messages were received from the President of the United States, by Mr. BABCOCK, his secretary.

Mr. CAMERON. It seems to me that this reply of the Senator from Kansas can hardly be listened to with attention now when the Senate is fatigued; and as the day is pretty well spent, I would move that the matter be postponed until to-morrow for the purpose of having an executive session.

The VICE-PRESIDENT. The Senator from Pennsylvania moves that the further consideration of the subject be postponed until to-morrow.

The motion was agreed to.

EXECUTIVE SESSION.

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

The motion was agreed to.

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

IN THE SENATE.

TUESDAY, *March* 11, 1873.

Prayer by Rev. J. G. BUTLER, D. D.

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

WITHDRAWAL OF PAPERS.

Mr. WRIGHT. I ask leave to withdraw the papers in the case of Berry, McFall & Judd. There was a favorable report in the case, and a bill, I believe, passed both Houses, but failed for want of the signature of the President. There has been no adverse report.

The VICE-PRESIDENT. Leave will be granted if there be no objection.

On motion of Mr. LOGAN, it was

Ordered, That Dr. M. E. Walker have leave to withdraw her petition and papers from the files of the Senate.

On motion of Mr. BUCKINGHAM, it was

Ordered, That E. W. Whitaker have leave to withdraw his petition and papers from the files of the Senate on filing copies of the same with the Secretary of the Senate.

CHARGES AGAINST SENATOR CLAYTON.

Mr. CLAYTON. I ask consent of the Senate to make a few remarks on a question of privilege.

The VICE-PRESIDENT. Leave will be granted if there be no objection.

Mr. CLAYTON. It will be remembered that some thirteen or fourteen months ago a special committee of this body was raised, charged with the investigation of certain allegations against myself, set forth in the testimony of two witnesses, Wheeler and Whipple, given before the Committee on Southern Outrages. It will also be remembered that at the expiration of the session preceding the last a partial report of that committee was made, but the testimony was not submitted with the report. A short time before the close of the last session a full report was submitted, with the testimony, which is now upon our tables. I did not deem it advisable at that time, so near the close of the session, and to the prejudice of public business, to ask the Senate to take up that report. I desire now to ask that the Senate, after the case of Mr. CALDWELL, which is now before the Senate, is disposed of, will take up, consider, and pass judgment upon the testimony and reports submitted by the committee in my case.

The VICE-PRESIDENT. Does the Senator make any motion?

Mr. CLAYTON. No, sir.

Mr. WRIGHT. I ask leave to offer the following resolution:

Resolved, That the charges made and referred to the select committee for investigation, affecting the official character and conduct of Hon. POWELL CLAYTON, are not sustained, and that the committee be discharged from their further consideration.

I shall not ask the consideration of this resolution now, but I give notice that I shall call it up immediately after the resolution now before the Senate is disposed of.

Mr. NORWOOD. Mr. President, as the charges against Senator CLAYTON have been referred to, I wish to call the attention of the Senate to one fact. The evidence as printed contains the report of the majority, and the views of myself as the minority. Probably Senators might not understand the arrangement unless their attention was called to it. I rise, therefore, for that purpose. The views of the minority have been placed at the back of the volume, commencing at page 378. There are what purport to be views of the minority in the beginning of the volume. That is an arrangement by the printer which I do not understand. I suppose it was a mistake of his without any direction from any one; but the views of the minority are in the back of the volume.

SENATOR FROM GEORGIA.

Mr. MORTON. Is there a motion pending?

The VICE-PRESIDENT. There is not.

Mr. NORWOOD. Will the Senator from Indiana give way to me for a moment?

Mr. MORTON. Yes, sir.

Mr. NORWOOD. Mr. President, Mr. John B. Gordon, Senator-elect from Georgia, whose certificate has been on our table for some days, is now present, and I ask that he be sworn in.

The VICE-PRESIDENT. The Senator-elect will present himself for the purpose of being qualified.

Mr. GORDON thereupon advanced to the Vice-President's desk, and the oaths prescribed by law having been administered to him, he took his seat in the Senate.

ISLAND OF MACKINAC.

Mr. FERRY, of Michigan. I submit a Senate resolution, which I ask to have read and considered at this time.

The resolution was read, as follows:

Resolved by the Senate, That the Secretary of War be directed to consider the expediency of dedicating to the public use so much of the island of Mackinac, lying in the Straits of Mackinac, within the county of Mackinac, in the State of Michigan, as is now held by the United States under military reservation or otherwise, (excepting the Fort Mackinac and so much of the present reservation thereof as bounds it to the south of the village of Mackinac, and to the west, north, and east, respectively, by lines drawn north and south, east and west, at a distance from the present fort flag-staff of four hundred yards,) to be reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a national public park, or grounds, for health, comfort, and pleasure, for the benefit and enjoyment of the people; that all persons who shall locate or settle upon or occupy the same or any part thereof, except as herein provided, shall be considered trespassers and removed therefrom; that said public park shall be under the exclusive control of the Secretary of War, whose duty it shall be to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases, for building purposes, of small parcels of ground, at such places in said park as shall require the erection of buildings for the accommodation of visitors, for terms not exceeding ten years; all of the proceeds of said leases, and all other revenues derived from any source connected

with said park, to be expended, under his direction, in the management of the same and in the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of game or fish found within said park, and against their capture or destruction for any purposes of use or profit. He also shall cause all persons trespassing upon the same, when by law thus set apart, to be removed therefrom, and generally shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes expressed; and that the Secretary be required to report to the Senate, at the opening of the next session of Congress, whether or not such dedication would be incompatible with the public service.

Mr. FERRY, of Michigan. Mr. President, I ask the indulgence of the Senate to occupy a few moments in stating why I desire this resolution to pass, and to very briefly call attention to some of the considerations which have moved me to take steps toward the attainment of a measure wholly in the interest of the public good.

My purpose was to invite action upon this project, by the passage of a bill, of like features, at the late session of Congress. The extraordinary pressure of graver matters precluded the possibility of consideration. Notwithstanding the approval of both Military Committees of that Congress, following the concurrence of the Secretary of War, the rules of the Senate, rigorously enforced, barred what I had good reason to believe the ready passage of the bill. Since it could not be reached, and fell with other measures by the termination of Congress, I desire now to so far recur to it as to call public attention to the subject, that during the months of recess before us popular judgment and comment may find way to the next Congress, in approval or disapproval of what I am persuaded will verily subserve the general welfare.

As the bill expresses, its object is to set apart as a national park, and dedicate to the public use, all of the public grounds, except the necessary surroundings of the fort, now held by the Government within the island of Mackinac, as a military reservation or otherwise. If in past years this island was considered as a point of such strategic importance as to warrant its withdrawal from public sale, it certainly cannot longer be regarded as so essential to the national safety as to be continued in the sense of an indispensable military reservation. Whatever of importance may have attached to salient points along our northern border, as coming within the scope of national guardianship and retention against the possible event of rupture with the British government, these fears may henceforth be regarded as groundless. War with England would be American occupation of her Canadian possessions. For military purposes, therefore, we no longer need to hold the island of Mackinac. This fact is practically recognized by the dilapidated condition of the fort, now left to crumble into decay by the indifference shown by the Government to any expenditure looking to the preservation of the military works at that post. Were it otherwise, and the point deemed of any importance in respect to future military necessities, this design does in nowise conflict with any such use of the island which the military exigencies of the country might demand. It seeks not to divert from, but to keep it, as now, under the continued control of the War Department of the Government. In the possibilities of the future, the use to which it is proposed to dedicate the island will not prejudice or defeat the utilization of the spot as a base for military operations. Then, as now, the Government will have the same access to and occupation of its area for all purposes of public emergency. There can be, therefore, no military objection to the purpose sought. To place this beyond doubt, during the late session I formally invited the attention of the Secretary of War to the provisions of the measure, and asked his consideration and approval of the same, if deemed compatible with the public use and safety. The General of the Army was also conferred with upon the subject. The officer having military charge of the lakes was called upon to express any objections which might occur to him against the adoption of such a measure. Besides, as stated, the Military Committee of the last Senate fully considered the proposition, and now all these may be said to have given their unqualified approval of the measure.

I have said this much upon the military aspect of the case, more because of the fact of the reservation being a military one, and held as such, and possibly considered by the public as of some strategic importance. When in the early years of our lake navigation the commerce of the lakes passed through the north channel, between Mackinac and Round Islands, the fort on Mackinac Island commanded this commerce. Of later years it has been found that the better one is what is now known as the south channel, through which the great part of the growing commerce of these lakes passes, and really Mackinac is too distant from the course taken to be of any practical use in a military espionage of this branch of national pursuits.

It is a significant historial commentary of this, that Old Mackinac, on the main-land of the lower peninsula of Michigan, was where the English first erected their fort, following in the wake of the Indian choice of the like spot as the commanding one of the straits. The island of Mackinac was not till 1780 selected as a locality of any importance, and then by the English as a place of security, by its isolation, from the surprises and incursions of warlike savages. The massacre of the English garrison at Old Mackinac by hostile Indians, in 1763, led to the selection of Mackinac Island as the more secluded and consequently safer, rather than the most commanding location for the military defense of the straits. The island falling into our hands by the definitive treaty of peace of 1783, retaken by the British in 1812, and restored by the treaty of Ghent in 1814, has, by these successive transitions, historically grown into military fame. The observant and instinctive Indian chose better when he established his *point d'appui* at Old Mackinac, where the straits are but four miles wide, and the narrowest point, rather than, as the white man since has done, on an island seven miles distant from the course of commerce.

It will hence be noticed that whatever may be the reasons for retaining possession of the island for Government uses, it cannot chiefly be considered as of much military significance to the nation. Of traditional and historical value it possesses much to endear it to the people, and as one of the earlier landmarks of national boundary and history, it will not easily pass out of annals or recollections.

In the estimation of the natives, who made it a point of interest bordering upon veneration, the island was not only of singular beauty, but made sacred to them by legends and traditions from immemorial tribes and races.

Its antiquity is worthy of note. As early as the Puritan landing it was trodden by whites, for the French occupied and roamed about it in 1620. At Old Mackinac, Père Marquette established his mission in 1671, and following his death this mission of peace was transformed into the seat of war. Thousands of Indian warriors held their councils and dances, and planned their murderous forays at these notable chief quarters. The confederate tribes gathered here to devise ways and means to capture and destroy tribal foes. It was the grand place of meeting and point of departure for trade and war. Here the scalps were brought and counted, the wampum distributed, and the warrior decorated.

So near this scene of warlike sway, where whoop and song made nightly orgies more terribly hideous, it was not strange that the superstitious Indian, beholding in the distance an island of much natural beauty and grotesque crest, three hundred feet above the watery surface, naturally clothed its striking features with the supernatural, naming it "the island of giant fairies."

To this day the Indian looks upon and treads the almost unbroken surface of Mackinac with much of the veneration which inspired his early fathers when they first saw and consecrated to the Great Spirit the favored island.

It is, Mr. President, to hold intact, as far as practicable, this island, fast becoming the favorite of the white man as well as Indian, that I seek by the measure proposed to guard against its natural curiosities and beauty being lessened or destroyed by the hands of wanton despoilers. We cannot too early or too surely arrest and preserve from decay relics of national history or fame. We owe it to ourselves and to the future to grasp and fix in some form to hand down to posterity, all points or incidents of historic value which serve to illustrate the march of the nation. I would add this example in perpetuity of that worthy record, that this, with other national memorials, may not perish, but brighten with the lapse of time. In what better or surer way can this be done, in this instance, than by devoting the reservation to the free use and pleasure of the public, and by this very dedication to that object lead each and every visitor and constituent of the nation to take a personal interest and make it an individual matter to protest against any form of vandalism calculated to lessen its value and favor?

By the act setting apart for the public the distant, wilder, and grander areas of the Yosemite and Yellowstone, the desire of the people is disclosed to do something looking to the protection and perpetuation of places of natural curiosities as national possessions for general enjoyment. With all of their plodding traits, the American people are developing in many ways the love for the beautiful. The practical is sharing somewhat with the æsthetical.

Vastness and grandeur will be sought in the parks of the Yosemite and Yellowstone, at the cost of distance and inconvenience. Mackinac lies in the path of the lakes, with proximity and ease to invite to its charms. Nine miles in circumference, with an area of six thousand acres, about two thousand of which the Government owns; its altitude greater than other islands of the straits; its famed successive strifes for national possession in the memorials of the "British landing" and "Fort Holmes," whose imperishable moat records the fall of an American hero; its natural curiosities of "arch-rock," "sugar-loaf," and rocks and caves of legendary incident, these interspersed with profusion of variegated perennial growth, contrasting with the hue of transparent waters embracing it; and to this unique scenery add the surrounding spectacle of waters dotted with islands and flecked with sail and steam, the horizon frequently decked with mirage—breath of antagonizing vapors—and we find the source of attraction which is fast making this island the most noteworthy of the group which adorns the uniting waters of Lakes Superior, Michigan, and Huron. Already hundreds flock there during the heated season for escape from warmer latitudes. Plunged in cool waters, the island is fanned by a temperature whose invigorating effect is the avowed experience of all sojourners. Famous for the product of its waters, it is also celebrated for the salubrity of its climate.

Situate about three hundred and fifty miles from Chicago, and say three hundred from Detroit, it has heretofore been reached only by lake navigation. Steamers daily touch there from either way.

Many have no objections to traversing the water, others dislike to venture upon its restless surface, and this unavoidable means of approach has, to a great extent, dissuaded large numbers from seeking its pleasures and benefits. Two lines of railroad will soon be completed, terminating at Old Mackinac. A company has organized to construct a road connecting with the Northern Pacific, and, meeting opposite this terminus, to form a transcontinental route to the Pacific,

broken only by the four miles passage of the straits. Within sight of the moving masses upon this future national thoroughfare, and in full view of the commerce of the chain of lakes, it needs no prophetic eye to forecast the prominence in store for such an easily reached and charmingly situated summer retreat.

The legislature of Michigan, the State I have the honor in part to represent, within the jurisdictional limits of which the island lies, alive to the value of this place of resort to the people of the nation, has recently passed a concurrent resolution, already presented to and ordered printed by the Senate, which earnestly commends the project. The public press, reflecting various sections, join in its commendation. Congress already has passed two acts—one of donation, the other of sale—conveying title to a portion of the reservation. Others are applying for like acts for purchase. Gradually, in this manner, the tract will be dissipated and the nation thus dispossessed of the whole reservation unless, by some general measure like the proposed one, it is finally and effectually vested in the public. I may add that the plan makes provision for the fullest freedom, right, and enjoyment to all, of this romantic island. Reserved by the executive order in 1827 for public use, let it, by the legislative branch, in 1873, be perpetuated to a broader and more useful national service, that the people may for this new boon find fresh cause for pride in and devotion to a Government that blesses while it protects and provides.

Mr. President, I have deemed it in place to say at least this much in behalf of Michigan, whose citizens, speaking for themselves and for the people of the whole land, thus invoke Federal aid to make free and sacred to the nation an historic spot for the public good. I hope, therefore, there will be no objection to the adoption of this preliminary resolution.

Mr. SAULSBURY. Mr. President, it seems to me that this is a very inauspicious time for us to enter upon such a project as this. It ought to be considered at greater length, and requires more time than we shall be able to devote to the consideration of the subject now. It involves the principle whether we shall now dedicate throughout the States of this Union certain portions of the public land for public parks and thus become involved in the expenditure of money hereafter. I prefer that this matter should go over.

Mr. FERRY, of Michigan. I was unable to hear all that the Senator said, but supposing that he intended to make an objection to this resolution, I will state to him that this resolution merely directs the Secretary of War to report to the next session of Congress whether in his judgment it is compatible with the public service to make such a dedication of this island.

Mr. SAULSBURY. I understand that the resolution is nominally a resolution of inquiry, but it is a movement looking to legislation for the dedication of public parks throughout the different States of this Union. Therefore, at this early stage of the movement, I give notice that, for one, I am opposed to all these projects, and oppose this one now in its inception even as a matter of inquiry. I do not think we ought to enter upon such a measure at this time.

Mr. FERRY, of Michigan. I should not have offered the resolution at this session had not the Senate already set the precedent by the adoption of similar resolutions of inquiry, one on Thursday last, and another yesterday, submitted by the Senator from Indiana, [Mr. MORTON,] and I have taken care to keep within the rule fixed by past usage. The resolution which I have offered is, I think, in order, as other resolutions of like import have been so ruled by the Vice-President. The Chair, therefore, having ruled it in order, I have supposed that I was but doing my duty, and exercising my right, in expressing my views on the subject.

While I am on the floor I desire to say that I have seen but one adverse comment upon this project; and as there was an insinuation in that criticism from a paper in this city, I deemed it my pleasure to recur to the subject in the Senate and invite public scrutiny and comment upon the project during the months of recess before us, so that when we assemble here again at the next session we may be fully advised of any popular objection that may arise throughout the land to the proposed dedication of this island; and if there shall then appear any valid objection I shall be one of the first to oppose the proposition. My judgment now is that there cannot be any possible objection to it, since it is to serve the uses of the public. All will be left free to go to it. I am opposed to its passing into private hands, so that by fees the public will be mulct while enjoying places of public interest. It is for that reason—to invite public attention and judgment upon the subject—that I have sought the floor this morning to present, in this brief manner, my views, and to show something of the value to the people which such a place may become by the public dedication I have suggested. I hope the resolution will pass.

Mr. CASSERLY. I should like to hear the resolution read.

The CHIEF CLERK. The resolution is——

Mr. CASSERLY. I understand it is very long; and if the Senator from Michigan will state the substance of it, that will answer my purpose.

Mr. FERRY, of Michigan. The reservation is now under the control of the Secretary of War. There is a very small portion of the island, a few acres, under the General Land-Office. I have asked that the whole of it be placed, as the most of it now is, under the control of the Secretary of War. The resolution proposes to leave it to his discretion and control, as it is now. The object of the resolution, or the bill that it presupposes, is to impose on the Secretary of War the duty of looking after and seeing that the places of interest, and the shrubbery that adds to the beauty of the island, shall not be destroyed by wanton rovers upon it. This is the sum and substance of the whole measure. It does not divert it from any branch of the Government, but leaves it where it now is, and simply directs the Secretary of War to give additional attention to it.

I will state that we already have a post there; we have a garrison, and keep a company of soldiers, and the Government has thus oversight of the island now. This resolution, as I said before, only directs the Secretary of War to pay a little special attention to it, and prevent it from mutilation. In my opinion, any Senator or any one who will visit that island, and see its locality and enjoy its beauty, will be one of the foremost to join me in the object I have in view.

Mr. CASSERLY. Mr. President, I should not have said a word but for the intimation of my good friend, the Senator from Delaware, of his opposition to this and similar resolutions. I desire to say that in the case where military reservations of the United States adjoin cities and towns, my opinion is that the best use to which they can be put is to apply them to public uses as parks or public grounds, under, of course, reasonable restrictions as to the amount, tenure, and the use to be made of them and the improvements to be put upon them. From what the Senator from Michigan has stated of his resolution, it seems to me entirely unobjectionable.

Mr. HAMILTON, of Texas. This is a most extraordinary proposition, it seems to me. Does the Senator from Michigan mean that a resolution passed by the Senate of the United States shall take from the control of the Government any of its public domain and put it under the care of the Secretary of War?

Mr. FERRY, of Michigan. Will the Senator allow me to answer him just there?

Mr. HAMILTON, of Texas. Yes, sir.

Mr. FERRY, of Michigan. The resolution does not propose anything conclusively. It simply invites the attention of the Secretary of War to the compatibility with the public interest of the project, and asks him to report to us at the next session of Congress. I will state to the Senator that it embodies substantially a bill which I introduced to the Senate and had referred to the Committee on Military Affairs at the last session. The chairman of that committee is now present, and if there be any objection from that committee to the project, I should like the Senator from Illinois [Mr. LOGAN] to state it. The measure was reported back approved from that committee. If I were at liberty to speak of the action of the House of Representatives I might say that the Military Committee of that House has approved the measure, but I am foreclosed by the rules of the Senate from stating that as a fact, but I will draw it as a direct inference, and I think I am justified in making the inference.

Mr. HAMILTON, of Texas. I think the matter had better go over, at any rate until the resolution is printed and we can see what it is. Clearly, if I understood it as it was read at the desk, it means that no person shall be permitted to trespass upon this property, to cut timber, or to settle upon it, or do anything of the sort until the War Department determine what to do with it. It is legislation to all intents and purposes; and if the Senator proposes it for adoption this morning he must expect to have it discussed. Nobody, I suppose, is prepared properly to discuss it now. It is a very strange proposition anyhow, that where there is a world of vacant territory, and we are moving heaven and earth to get emigrants from Europe to fill it up, we should be asked to set apart national parks every day of the week. It does not seem to me that the proposition has any foundation in taste or necessity.

Mr. FERRY, of Michigan. If I supposed there was anything in it detrimental to the public interest, I would yield at once; but I will state to the Senator that there is no timber upon that island that is worth anything as timber. There is a small growth of evergreens that I am, by this proposition, (which I am inviting the Secretary of War to approve or disapprove,) endeavoring to protect as objects of beauty connected with the natural features of the island. There is no timber of any value upon it. The Government has held it as a military reservation for years; as I stated, it was reserved in 1827 by an executive order. It now lies in the control of the military branch of the Government, and can be utilized for war purposes if necessary. This does not divert it from that. Nobody wants to go on there to take timber for its use; but men going there, ax in hand, without any particular interest, will slash and destroy its beauty. On account of that, and having observed it by a visit there the past season, I was determined in some manner to arrest it. This movement is for the interest of the Senator's constituents as well as my own. It does seem to me that there can be no public objection to the dedication of this island to national purposes.

Mr. HAMILTON, of Texas. I ask that the resolution go over for the present.

The VICE-PRESIDENT. The Senator from Texas asks that the further consideration of the resolution be postponed until to-morrow, and that it be printed.

Mr. HAMILTON, of Texas. Does not an objection carry it over one day?

The VICE-PRESIDENT. The resolution was received without objection. The Senator from Michigan asked to have it considered, and it was considered. It is fairly before the Senate.

Mr. FERRY, of Michigan. If the Chair will allow me, I will state

to the Senator that this is only a resolution of inquiry. It concludes no legislative action. It is merely asking the opinion of the Secretary of War to be submitted next winter, when the Senate shall meet. Certainly the Senator will have an opportunity then to be heard; and I say to him now in advance that I will not press the subject in advance of his being present, or at any time except when he is in his seat. This being a mere matter of inquiry, certainly it would seem that the objection should not be persevered in.

Mr. HAMILTON, of Texas. What is the objection? There are thousands of historic spots just as sacred as the island of Mackinac which the people of the respective localities would like to have improved at the national expense, so as to enhance the value of surrounding property. I can pick out swamps in Louisiana that are memorable in the history of that country, and it would not cost more than six or seven million dollars to fill them up and make magnificent parks of them. [Laughter.] The island of Blennerhassett, and various other objects of interest to the people of the United States, might be indicated. The Senator from Michigan has made a pathetic appeal for the island of Mackinac; but if it carries conviction to the mind of any one for any purpose in the world, it should be to restore it back to the natives of the country, for they seem to deplore the fact that they have been robbed of that spot. I do not know anything about its surface, but possibly it would make a good reservation for Indians. If so, it had better be devoted to that purpose, or any other purpose than a national park, which would be but a sink-hole to waste money in.

Mr. FERRY, of Michigan. This being a resolution of inquiry simply, I ask for a vote on the resolution.

Mr. HAMILTON, of Texas. I ask for the yeas and nays on it.

Mr. CHANDLER. I wish to state that this island is simply a watering-place. It is an old French trading-post, and an old Indian post. It is a rock out in the lake a few miles, with, as my colleague says, very little vegetation, but it is a romantic spot, visited by people from all parts of the United States. This is simply to reserve it.

Mr. LOGAN. I did not hear the resolution read, and the first impression was different from what it is. A bill for the purpose of the resolution, asking that this island be set apart for a park, was referred to the Military Committee at the last session. My recollection is that it was reported back to the Senate favorably, but not acted on by the Senate.

Mr. FERRY, of Michigan. It could not be reached.

Mr. LOGAN. I believe that was the reason; it could not be reached. This is a mere resolution of inquiry, calling for a report from the Secretary of War. I did not understand the resolution as first read, but I understand now that that is it; and I see no objection to that.

The VICE-PRESIDENT. The question is on the adoption of the resolution.

The question being taken by yeas and nays, resulted—yeas 37, nays 13; as follows:

YEAS—Messrs. Allison, Ames, Anthony, Bogy, Boreman, Buckingham, Caldwell, Carpenter, Casserly, Chandler, Clayton, Conkling, Conover, Cragin, Dorsey, Ferry of Michigan, Flanagan, Hitchcock, Ingalls, Jones, Logan, Merrimon, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Norwood, Oglesby, Pratt, Ramsey, Ransom, Sherman, Sprague, Stewart, Tipton, Wadleigh, and Wright—37.

NAYS—Messrs. Alcorn, Cameron, Fenton, Ferry of Connecticut, Gilbert, Hamilton of Maryland, Hamilton of Texas, Kelly, McCreery, Sargent, Saulsbury, Schurz, and Stevenson—13.

ABSENT—Messrs. Bayard, Brownlow, Cooper, Davis, Dennis, Edmunds, Frelinghuysen, Goldthwaite, Gordon, Hamlin, Howe, Johnston, Lewis, Patterson, Robertson, Scott, Spencer, Stockton, Sumner, Thurman, West, and Windom—22.

So the resolution was agreed to.

STEERAGE IMMIGRANT PASSENGERS.

Mr. CHANDLER. I offer a resolution of inquiry, and ask for its present consideration:

Resolved, That the Secretary of the Treasury is hereby directed to inform the Senate, at its next session, how many superficial feet of clear space are allotted to each steerage immigrant on board ship, according to the official reports of the collectors of customs; also to cause the atmosphere of some of the steerage compartments to be chemically analyzed by a competent expert, with a view of ascertaining its healthfulness; and also to have an examination made of the general treatment of immigrants on board ship, and to suggest such alterations in existing laws as may be necessary to secure effectual protection to steerage immigrants.

The resolution was considered by unanimous consent and agreed to.

ELECTION OF SENATOR CALDWELL.

Mr. MORTON. The Senate yesterday, on motion of the Senator from Pennsylvania, [Mr. CAMERON,] postponed the consideration of the resolution in regard to Mr. CALDWELL until to-day. That will make it necessary that it be taken up by motion. I therefore move that the Senate do now proceed to the consideration of that resolution.

The motion was agreed to; and the Senate proceeded to the consideration of the resolution submitted by Mr. MORTON on the 6th instant.

Mr. CALDWELL. A majority of the Committee on Privileges and Elections, in a report made to the Senate on the 17th of February, 1873, recommended the adoption of the following resolution:

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.

The recommendation seems to be based upon a summing up of the facts in the following words:

But taking the testimony altogether, the committee cannot doubt that money was paid to some members of the legislature for their votes, and money promised to others, which was not paid, and offered to others who did not accept it.

As this proceeding is essentially a judicial one, it cannot be considered a serious misapplication of terms to say that here is a verdict of conviction against me, and an application to the Senate for a judgment thereon.

Waiving for the present all question of the propriety of the verdict with reference to the testimony, the inquiry is naturally suggested, will the finding warrant such judgment? That it will not I shall endeavor to maintain upon principle and authority; and in pursuance of such purpose I beg to call the attention of the Senate to the following clause of the Constitution:

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

This clause has been several times adjudicated upon by the Senate, and the settled doctrine now is that the Senators represent the State, the organized community, the body-politic, and not the individual citizens, as do the members of the House of Representatives. The latter are designated by the citizens acting in their individual capacities; the former are chosen by the State as a political sovereignty, acting through the designated instrumentality, generally the legislature, but sometimes the executive. In either case it is the State, the body-politic, that chooses the Senators. It is not profitable to inquire why the legislature, or, in certain contingencies, the executive, was designated as the instrumentality through which the will of the body-politic should be expressed; the theory is that it is the act of the State. The decree or judgment of a court is not in legal contemplation the individual action of the judges who may happen to be upon the bench, but the act of the court of which they are judges.

In considering the election of a Senator it is competent to inquire, what is the legislature? And the inquiry is satisfied when it is ascertained what constitutes the law-making power in the State. Or, if the inquiry arose upon an appointment to fill a vacancy, the question would be, if the credentials were regular upon their face, whether the person who made the appointment was the individual exercising executive functions in the State. These inquiries being determined in the affirmative, they become, and are to be taken and held to be, the acts of the State. It is the State that appoints the Senator, acting through the instrumentality designated by the Constitution.

I do not understand that this position is controverted by the committee, but I judge from the report and the recommendation that the right to go behind my commission is claimed. And for what purpose? To determine whether the body that chose me was the legislature, within the meaning of the Constitution? No; that is not denied. To ascertain whether the choice was made at the right time and place, and in the prescribed manner? No; all this is admitted. To find whether a sufficient number voted for me? No; there is no controversy that I received twenty-five votes more than were necessary to a choice. What, then, is the claim? Why, nothing less than that the motive of each of the eighty-seven members who voted for me may be inquired into. There is no pretense that my credentials do not speak the truth, as evidenced by the journals of the legislature, or that the record was tampered with. It is an absolute fact that a large majority of the legislature did vote for me, and there is no evidence anywhere that any member voted under any kind of restraint; but because a majority of the committee say they have no doubt money was paid to some one of the eighty-seven, without in any way indicating the particular one, the Senate is asked to say that the certificate of the governor is false; the record of the proceeding in the legislature does not speak the truth, and, instead of eighty-seven members voting for me, that no one of them did so.

If the election of Senators by the legislature is the act of the State, wherein does it differ in legal intendment from the legislative acts of the same body? They are the acts of the State, the body-politic, performed by the instrument designated by the fundamental law of the State for that purpose. The State constitution creates the instrumentality through which the laws are made by the State, and the Constitution of the United States adopts the same instrument for the choice of Senators by the State. It will be admitted on all hands that the act of the legislature in either case is the act of the State. The law has been long well settled and has become the doctrine of the elementary books, that in determining the validity of a legislative act of the State, the motives of the members of the legislature cannot be inquired into. Upon what principle is it, then, that an act of the State of a different character, accomplished through the same agency, can be questioned on that ground? In a controversy before one of the judicial tribunals of the country, if it should be sought to enforce a right created by the statute of a State and depending upon such statute, and a question should be made as to the validity of the statute upon the alleged ground that a portion of the legislature which enacted it, including the person seeking to enenforce its provisions, had been induced to vote for it by bribery; is there any court in the country, enlightened or otherwise, that would entertain such inquiry? Would it not be said, and properly, too, that when what purported to be an act of the legislature, duly authenticated as prescribed by law, should be presented, the court must take it as the law? If, however, the authentication should be attacked, the court might properly refer to the journals of the legislative bodies for the purpose of ascertaining whether the act had been passed in the forms of the constitution; and, if found to have been so passed, would declare it to be the law and govern itself thereby accordingly. It would not be contended by any person that the court

could go further back; that it could inquire into the reasons, motives, or inducements operating upon the minds of the members when these votes were cast. Public convenience, public policy, required the rule long since established, and observed without variance down to this day, that the judicial tribunals of the country ought not to go further, and the history of jurisprudence shows that they have not done so. The reason of this rule is so obvious as to commend the rule itself to the approval of all, and need not here be discussed. Nor can anybody, lawyer or no lawyer, distinguish between this case and the choice of a Senator, if each is, as everybody admits, the act of the State in its sovereign capacity. I am well aware that the Senate of the United States, in adjudicating upon the election of a Senator, is not bound by the constitutional interpretations of the judicial tribunals, but has the right to determine for itself what the law is; but where a good reason is given by the judicial tribunal for the rule it shall adopt in determining what is an act of the State and how far its authenticity or genuineness may be inquired into, it would be proper for the Senate to adopt and enforce the same rule.

The soundness of the rule I have been considering does not rest upon reason alone, but upon adjudications of the highest tribunals to which such questions can be submitted.

In the well-known case of Fletcher *vs.* Peck, (6 Cranch, 87,) the Supreme Court of the United States denies the power of judicial tribunals to inquire into the motives of members of the legislature, even upon a suggestion of bribery.

In the case of Virginia *vs.* West Virginia, a very earnest effort was made by the State of Virginia to induce the courts to go behind the acts of the State of Virginia and of the United States, and to inquire into the validity or invalidity of the vote of certain counties, in consequence of which they were to be deemed to be annexed to the State of West Virginia. But the Supreme Court held that the act of the governor, representing the State of Virginia, was *prima facie* valid and not impeachable for fraud, especially in the absence of specific allegations and proofs to show the want of a major vote for the transfer of the counties in question from Virginia to West Virginia. (Wallace's Reports, vol. xi, p. 39.)

This decision illustrates the objection which exists to going behind the fact of admitted majority of vote of the legislature of Kansas.

The case of Elisha R. Potter against Asher Robbins was considered and decided in the Senate of the United States at a time when there were giants in the land, and the report of the committee was supported by the concurrence of such men as Calhoun, Clay, Clayton, Ewing, Frelinghuysen, Leigh, Mangum, Poindexter, Preston, Southard, Sprague, and Webster.

The case was this: On the 19th of January, 1833, Mr. Robbins was elected a Senator for the State of Rhode Island for the term of six years, in due form, by the general assembly of the State. In October, 1833, the general assembly undertook to declare the election of Mr. Robbins void, and elected in his place Mr. Potter.

The debates and documents in the case occupy more than a hundred pages of Clark's Contested-Election Cases, (pages 877–1009,) from which it will suffice to cite pertinent passages covering the precise question before the Senate.

The majority of the committee in that case (Messrs. Poindexter, Frelinghuysen, and Sprague,) say:

> They (the Senators) are chosen by the States as political sovereignties. * * * In the performance of this duty the State acts in its highest sovereign capacity, and the causes which would render the election of a Senator void must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election voidable, and these are enumerated in the Constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their legislatures by the Constitution of the United States. We might inquire, was the person thirty years of age at the time of election? Had he been nine years a citizen of the United States? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs, and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the legislature, or into the peculiar organization of the body, for reasons to justify the Senate in declaring its acts void. Such a power would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature whose elections were contested might be set aside. It would also lead into the investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters your committee think properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void who possessed the requisite qualifications and was chosen according to the forms of law and the Constitution.

The committee further says:

> It is admitted that the sitting member, Asher Robbins, possesses all the qualifications required by the Constitution of the United States to be a Senator in Congress, and that his commission as such is in due form according to the laws and usages of Rhode Island. These points being conceded, the remaining and the only question to be decided is, was the body by which he was chosen a Senator the legislature of Rhode Island?

The minority of that committee, Messrs. W. C. Rives and Silas Wright, agreed with the majority upon this point, and Mr. Wright states the proposition as follows:

> The undersigned has always supposed that a member of a legislative body who should accept a bribe was punishable for the crime; but he has never understood, nor does he now understand, that the vote of the member given under the corrupt influence vitiated the proceeding voted upon, or rendered either void or voidable, by legal adjudication such proceeding. The member bribed is still constitutionally and legally a member of the body, notwithstanding his corruptions, and retains all his rights and all his powers as a member until conviction for the crime ousts him from his seat.

These authorities, it seems to me, ought to be considered as conclusive against the action recommended by the committee; but if they shall not be so considered, and the Senate undertakes to go back of the certificate of the executive and the journals of the legislature for grounds upon which to sustain the recommendation of the committee, questions quite as serious will arise.

The Constitution provides that the Senate shall be the sole judge of the elections, returns, and qualifications of its own members. It will be admitted that in judging of the "returns and qualifications" of the members, the body must be governed by the written law upon those subjects. But it may be claimed, perhaps, that in judging of "their elections" the Senate is not bound by any written law; that it may make the law *ex post facto* and proceed to enforce it, and this for the purpose of protecting itself against unworthy members. Such a claim cannot be admitted.

What was the object of the clause of the Constitution in question? No branch of the Government, nor any department or subdivision thereof, can lawfully exercise other than delegated powers. The judicial power is vested in the courts created and provided for by the Constitution. Judging of elections generally—or of their equivalents, appointments—is an exercise of judicial powers, and included in the grant. The elections of members of the English Parliament are now subject to investigation by the courts. The framers of our Constitution thought best to confer the power to judge of the elections of its own members on each House, and adopted the clause in question to take the subject out of the general grant to the judiciary; in other words, to specifically delegate to the Senate and House of Representatives so much of the judicial power of the nation as is necessary to enable each House to judge of the elections of its own members. No one will contend that if this power had been left to the judicial tribunals of the country (and it would have been but for this clause) they could rightfully have judged of these elections, except according to the known law. How, then, can it be said that a mere change of tribunal changed the law to be administered?

If this be the correct view of the subject the question will arise, what is the law in the premises? The committee in effect say it is the will of the majority, no matter how capriciously exerted. And indeed, under existing circumstances, this is the only tenable position that can be assumed; for it is not pretended that there is any written law upon the subject. This is not a question of privilege resting in the sound discretion of the Senate, nor is it claimed to be by the committee. It is not whether I shall be punished for "disorderly behavior," either before or after my election; but whether there was any election at all. Proceeding under the clause of the Constitution that authorizes the expulsion of a member, I am ready to admit that the Senate would be allowed a very wide discretion in determining what should be adjudged "disorderly behavior," inasmuch as it would be impracticable to catalogue all the possible derelictions that would come within the meaning of the terms used. This, however, is not a proceeding under that clause, but under an entirely different one.

In deciding upon the proposition embodied in the recommendation of the committee, I insist that the Senate must be governed by the law as it stood at the time of the election; and the only question is, what was the law? If the matter were pending before a judicial tribunal upon the finding of the committee, considered as the verdict of a jury or a report of a referee, what should be the judgment?

The only applicable statute is the act of Congress fixing the time and prescribing the manner of the election of Senators. The place is designated alone by the fact that the legislature shall meet and hold its sessions at the capital of the State. Neither the act of Congress nor any law of Kansas provides that a vote induced by bribery shall be treated as void, nor is it a principle of the common law that it shall be so considered. Upon what assumption, then, can such a claim be founded? It must be remembered the question is not what constitutes bribery, but what is the effect of it? It may be claimed that the law of the English House of Commons is the law of the Senate. This I deny emphatically. But if so, how did it become such? It is not made so by the Constitution or any act of Congress, or any other authority that I am aware of. The Parliament is said to be omnipotent, as is also the House of Commons in its sphere. The Senate can lawfully exercise delegated powers alone. It may judge of the elections of its members, determine the rules of its proceedings, and punish for disorderly behavior, but it may not lawfully import and then enforce British law.

Where, then, does it get this power to declare the consequence of bribery in the elections of its members? It may punish a member for bribery during his membership by expulsion, because of constitutional authority, but there is no authorization for declaring the vote of a member of a State legislature void. Is it because it is a legislative body that it is to be considered endowed with all the powers of the House of Commons in regard to its members? If so, where the need of express provisions to enable it to judge of elections and inflict punishments? These are undoubted powers of the House of Commons.

English statute law provides that "bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in

his favor, will avoid the particular election and disqualify him for being re-elected to fill such vacancy." (Sheperd's Law of Elections, page 102.) But no case can be found in any of the books where an election was declared void on the ground of bribery, where there was no statute authorizing such action. That power was not claimed by the House of Commons. The books make indistinct allusion to two cases, those of Longe and Halle, where members were expelled for that reason; but the cases are not well authenticated; and if they were they would not be in point, because that would have been done as punishment and not as affecting the election.

There is, then, no source for the power claimed by the committee unless it be derived from the British statute. Such claim certainly cannot be admitted. Conceding to the Senate, in this behalf, all the inherent powers claimed by the House of Commons, and still it would not have the power. It must be conferred by express law, and there is no pretense that it has been done here. I cannot think the Senate is prepared to say a foreign statute is the law of the United States. But it may be asked, is not the Senate authorized to protect itself against the presence of unworthy persons? I answer, no, if they have the constitutional qualifications and are elected in the forms prescribed by law, unless by law authorized so to do. It may be inquired how that can be done. Why, if at all, by the enactment of a law by Congress which shall declare the effect of bribed votes upon the particular election, as has been done by the British Parliament.

Should these objections to the adoption of the resolution offered by the committee be considered insufficient by the Senate, then I object to the finding as being unsupported by the testimony.

That those Senators who may not have heard the testimony may have a proper appreciation of the situation, I beg to call their attention to some considerations arising out of the whole case, and suggested by the testimony, that the committee seem to have overlooked or to have considered unworthy of notice.

Before the investigation commenced I had been advised, authentically, as I supposed, that whatever testimony should be offered against me must be adduced subject to the known legal rules of evidence in judicial examinations; that hearsay would not be admitted; that the charges exhibited against me being, under the laws of the State where the derelictions are charged to have occurred, criminal offenses, the proceeding must be considered and treated as a *quasi* criminal investigation, and, in justice and right, conducted according to the known and long-established rules governing such examinations. I had a right to suppose that nothing would be admitted as evidence without being subjected to the tests applied in the cases supposed. How grievously I have been disappointed in this behalf, will appear hereafter.

Soon after the investigation was commenced, discovering that the rule I had been led to believe had been adopted was disregarded, I sought to have it enforced; but, relying upon assurances of some members of the committee, that hearsay statements would not be regarded as proofs in making up a report, I forbore making objections as occasion arose, supposing I was not to be prejudiced thereby. I regret to say that my just expectations in this behalf have not been realized, some of the most serious charges in the report being founded upon such statements alone. I hope the Senate will be more just, and adopt a different course.

I had been led to believe that the investigation to which I have been subjected was in the nature of a judicial proceeding, and that it was the duty of the committee to fairly consider all the testimony, giving that in my favor all the weight to which it was entitled, and not undue weight to that against me; but I am constrained to say that a comparison of the report with the testimony must convince any fair-minded man that such was not the course pursued by the majority of the committee. Most of the charges against me are founded upon the testimony of Thomas Carney, Sidney Clarke, William Spriggs, and D. R. Anthony, and every circumstance disclosed by the record tending to strengthen it is mentioned in the report, and every circumstance having an opposite tendency is suppressed. That this is not an unwarranted accusation will be abundantly manifest by even a hasty examination.

It is said that Mr. Carney had been a governor of Kansas. That is admitted. It is also said that he had been once elected a Senator of the United States by the legislature of that State; but I deny that he ever was, in any proper sense, so elected. The public history of the country, of which the committee had a right to take notice, shows that, while the late General Lane was a member of this body, and Mr. Carney governor of Kansas, the latter induced a majority of the legislature, some time after it convened, to believe they had a right, one year prior to the proper time, to elect a Senator to succeed General Lane, and they did attempt to do so. There was no other candidate before the legislature, and the votes cast were all for Mr. Carney; but such an outcry was made by the people of the State that he never attempted to take a seat in the Senate. It was considered a fraud by the people, and a trick upon General Lane, and was execrated and denounced accordingly, and yet there is no reference to these facts in the report.

It is further said that, at another time, he was a candidate for the Senate, and came within ten votes of being elected. Senators must not consider that I am trying their credulity when I say that all there is in the record in any degree sustaining the statement, may be found in the testimony of Jeremiah Clark, the postmaster at Leavenworth, (page 356 of the record,) where, in detailing a conversation with Mr. Carney, he says:

By the CHAIRMAN:

Question. You spoke of Governor Carney saying he would unseat Mr. CALDWELL?

Answer. Yes, sir.

Question. Did he tell you why he would do it?

Answer. It was in relation to a grievance, as I said before, which occurred about six years ago, when he was a candidate for the United States Senate, and when Mr. POMEROY and Mr. Ross were elected.

Question. What was that grievance?

Answer. The grievance, as he told it, was that, being a candidate for the United States Senate, a prominent candidate, he had enough votes to elect him, lacking ten, and he said those ten votes had to be obtained, hit or miss; they must come; and he said he had placed twenty-five thousand dollars in the hands of Len. T. Smith to procure him those votes; he said Len. Smith sold him out and kept his money.

On the second succeeding page, Mr. Carney denies that he said so to Mr. Clark. Such is the testimony upon which it is found that Mr. Carney came within ten votes of a seat in this body.

He admitted that he tried to bribe a member to vote for me; and he was the only witness who did so admit, alleging authority from me. He acknowledged he had written a falsehood to Mr. Clarke, in order to bring about an investigation of my election, and that one of the objects in writing the false letter was to be avenged upon me. None of these disparaging circumstances, except the last one, is even hinted at in the report.

To give force to Mr. Clarke's testimony, the report says he had been a member of Congress; that "when the first vote was taken in the separate houses, he received twenty-seven votes—the largest vote given for any candidate but one;" but the report omits to state that I was that "one;" that I got thirty-eight votes; that on the following day I was elected by twenty-five votes more than were necessary to a choice. Nothing whatever is said of Mr. Clarke's attempt to buy the votes of J. M. Luce, Ira C. Busick, J. M. Steele, George W. Wood, and Sol. Miller, or of his own very flat contradiction of himself.

To give weight to the statements of D. R. Anthony, the report is careful to say that he is the mayor of the city of Leavenworth, but omits to mention that he had been pursuing me for years, had endeavored to contract with me to aid in my election for $5,000, and many other disparaging things disclosed by the testimony. And, in the same connection, W. H. Burke, Mr. Anthony's editor, is referred to; but there is no mention of the fact that I had loaned him money for business purposes prior to my candidacy, and when he attempted to deprive me of my security, I had instituted suit against him.

Such are the men, together with William Spriggs, who will be hereafter referred to, on whose testimony the Senate is asked to declare my election illegal.

I proceed now to call attention to the specific charges in the report, and to show from the testimony which of them are sustained, and which disproved. Probably the most important one is the first one, viz, the transaction with Mr. Carney.

Mr. L. T. Smith, of Leavenworth, agreed with Mr. Carney that I should pay him $15,000 if he would retire from the canvass, and not be a candidate in 1871, which agreement I subsequently carried out by paying the money. This agreement was evidenced by a writing as follows:

I hereby agree that I will not, under any condition of circumstances, be a candidate for the United States Senate in the year 1871 without the written consent of A. CALDWELL, and in case I do, to forfeit my word of honor hereby pledged. I further agree and bind myself to forfeit the sum of $15,000, and authorize the publication of this agreement.

THOS. CARNEY.

TOPEKA, *January* 13, 1871.

But it is objected that the whole agreement is not contained in the writing; that Mr. Carney was not only to retire, but was to do all he could to secure my election.

To sustain this view of the matter the committee refer to the testimony of Mr. Smith, and in stating it say Mr. Smith testified that it was a part of the agreement that Mr. Carney "should give his influence and support for Mr. CALDWELL."

I think the testimony of Mr. Smith will be searched in vain for such a statement. Mr. Carney said such was the agreement. Mr. Smith said such was not the agreement. The paper is silent, and no reason given by Mr. Carney for the omission. Should not the paper, then, have been taken as the evidence of the agreement, rather than resolve the difficulty by rejecting it entirely?

The committee say that the agreement to pay Mr. Carney, in re-imbursement of his political expenses in former campaigns, the sum of $15,000, was in effect a purchase of whoever of his friends in the legislature might vote for me. I had thought, in order to constitute bribery, it was necessary there should be a corrupt giver and a corrupt taker of the consideration for the act to be done. But in this case we are told that although the voter may be entirely ignorant of all improper appliances to secure his vote, yet if one of his friends, outside of the legislature, should agree for a consideration to procure his vote for a particular person, that would be bribery of a voter. Although nothing whatever should be said to him on the subject except what was perfectly proper and legitimate, yet, because it should be said by a person who had been a candidate and was induced for a consideration, either pecuniary or by the promise or bestowal of official position, to retire, the voter, who is entirely ignorant of the bargain, must be considered corrupted. It is suggested that one might induce all other candidates to retire and leave the field to himself, and thus coerce the members to vote for him for want of another candidate for whom he could vote. It ought to be a sufficient answer to this to say, that there are at least ten thousand persons in my State who would gladly accept a seat in this body; so that the contingency supposed by the

committee is not likely to arise there. I suppose that another than the prominent candidates might legally be voted for.

With reference to the $7,000 mentioned on the third page of the report, Mr. Smith testified he gave Mr. Carney his check for that amount to re-imburse him for his expenses while at Topeka. This check, with the indorsements, is copied into the record, and was dated January 19, 1871, five days before the day upon which the first ballot was taken. Mr. T. J. Anderson testified that Mr. Carney handed him the check and asked him to have it cashed, which was done, and the proceeds handed to Mr. Carney, who says it was left on his table in his private room. This, so far as the testimony is concerned, was the last seen of that money. The committee say this raises a strong presumption that the money was used in the purchase of votes. Mr. D. R. Anthony testified to a conversation had with Mr. Anderson a year after the election, in which the latter is represented as saying that Sol. Miller, a senator from Doniphan County, went in, put the money in his pocket, and took it off, and that it was for the Doniphan County delegation. Mr. Miller was called and emphatically denied that any such thing ever transpired. Such is the testimony and such is the finding. It is for the Senate to say whether the latter is sustained. And if sustained, where is the syllable of proof connecting me with the transaction? No one says I knew anything about it.

The transaction with Mr. Clarke, as stated on the third page of the report, is as flimsily sustained as that with Carney. It is said Clarke withdrew in my favor, in consideration of my agreeing to pay his expenses in the canvass, estimated at twelve or fifteen thousand dollars. What this finding is based upon is difficult to be ascertained from the testimony. Mr. Clarke denies emphatically any arrangement to pay his expenses, and re-iterates the denial through twelve or fifteen pages of the record, commencing with the first, saying many times that no arrangement was made for the payment of his expenses; that he could not consent to such an arrangement, and did not do so; that his friends voted for me against his protest; but upon being recalled, ten days thereafter, he took it all back, and swore that I did agree to pay his expenses, amounting to $15,000. In a statement made before the committee by myself, I emphatically deny any such arrangement. And such is the testimony upon which it is found that I agreed to pay Mr. Clarke $15,000.

It is stated that I admitted to Carney, Clarke, Anthony, and Burke, that my election cost me from sixty to one hundred and fifty thousand dollars. I have endeavored to show who these men are, and their animus, as manifested by the testimony; and, in addition, beg to call attention to the fact that Clarke and Anthony, when before the investigating committee at Topeka, more than a year ago, never made mention of any such admission, or gave the most distant hint of it, although properly interrogated thereto. In addition, in the statement I made before the committee, all such admissions are explicitly denied.

When the committee undertake to account for the fifty thousand dollars said to have been drawn under circumstances to make it probable the funds were used to procure my election, it is not pretended that there is any direct proof that a single dollar found its way from me, or from anybody else by my authority, to any member of the legislature. The only instances mentioned as approaching it are the three mentioned in the last paragraph on the fifth page of the report, viz, Messrs. Crocker, Bayers, and Legate. With reference to Mr. Crocker, the charge is founded upon the following testimony: Spriggs testified that Anderson told him he (Anderson) had given Crocker $1,000 to vote for me; that Crocker gave the money to one Carson to hand back to Anderson, and that Carson kept the money. Carson was called to corroborate this statement. Anderson denied having so stated to Spriggs, and Crocker published the following card:

A CARD.

MOUND CITY, KANSAS, *May* 20, 1872.

EDITOR SENTINEL: I see in the testimony brought out before the senatorial investigating committee, that among other things, William Spriggs testifies that after the election was over, T. J. Anderson wanted him to take an order on Carson, of Garnett, for one thousand dollars. Anderson stated to him that a member from Linn County (whose name he thinks was Crocker) had agreed to vote for A. CALDWELL for United States Senator, for one thousand dollars; but Colonel Snoddy brought such a pressure to bear that the member backed down, and delivered the money to Carson, to be delivered to Anderson, but Carson had failed to do so. Now, sir, I pronounce this whole thing a falsehood, from beginning to end, so far as it relates to myself. That I ever agreed to vote for A. CALDWELL for United States Senator for one thousand dollars, or for any other sum, is utterly false. As to Colonel Snoddy trying to influence my vote, here is what he says in regard to the matter:

"MOUND CITY, *May* 20, 1872.

"SIR: In answer to your inquiry as to your conduct during the senatorial election of 1871, I have to say that I understood and am satisfied that you were, during that whole contest, opposed to the election of CALDWELL. I have further to say, that I was not conscious of bringing any pressure to bear upon you to influence your vote one way or the other in that contest; and further, that I never saw any necessity for any such pressure in order to induce you to vote against CALDWELL.

"Very respectfully,

"JAS. D. SNODDY.

"D. A. CROCKER."

The rest of the delegation from this county most certainly understood from me that I would not vote for Mr. CALDWELL.

Hoping you will give this publicity in the Sentinel, I am, sir, one that opposed the election of CALDWELL,

D. A. CROCKER.

Now, who shall be believed, the thief who says he stole the money, or the two men who deny the whole transaction? At best it is mere hearsay.

As to Mr. Bayers, the testimony is that Mr. Carney and Mr. Anthony say I admitted to them, separately, that I had paid Bayers $2,500 for his vote. The only way to rebut such statements is to deny them myself, which I do, most emphatically, and to call Bayers. The record shows that his present whereabouts cannot be ascertained and therefore he cannot be called.

The fact that Bayers had failed in business, and had abandoned the country, was well known to Carney and Anthony, and therefore he was selected by them as the member to whom they allege I admitted to having paid money, they well knowing that he could not be produced before the committee to contradict them.

Mr. Legate unqualifiedly denies that anything was paid or promised for his vote.

It is charged that after the election I paid T. J. Anderson, for his services, $5,000. Mr. Anderson was on the stand, called at the instance of Sidney Clarke, and explicitly denied ever having received any money from me, directly or indirectly, for services in the election.

Much prominence is given in the report to the testimony of Mr. Spriggs, and I ask the attention of the Senate to some considerations respecting it. The record shows that every other member of the supposed committee, referred to in the first extract on the fifth page of the report, except Carney, denies the existence of any such body. The interview referred to in the other extracts on the same page are represented by Spriggs to have occurred at Topeka, on Tuesday, the 17th of January, but it is conclusively shown by the testimony of my family physician that I was not in Topeka that day, but was sick, at my home in Leavenworth, sixty miles distant from Topeka, from the 14th until the night of the 18th of that month. This statement is corroborated by J. F. Legate, who shows he had the means of knowing, and also by L. T. Smith.

The report sums up the whole case by stating that the friends who were most active in my interest, and were accused by my enemies of buying or offering to buy voters for me, deny every such charge, and that the members they were said to have bought or attempted to buy appeared before the committee and denied the truth of all such statements.

Upon reading the whole testimony taken by the committee Senators will observe that the prominent men in, and active prosecutors of, the investigation, were Thomas Carney, Sidney Clarke, D. R. Anthony, and William Spriggs. The history of their connection with it is a curious one, and I propose briefly to recount it for the purpose of showing that, so far as they were concerned, the proceeding was a wicked conspiracy, instigated and pushed for the purpose of removing me from the Senate, regardless of truth and justice, to gratify the animosities of all, and secure the aggrandizement of some of them.

Mr. Carney had, for many years, been a candidate for a seat in this body, and rather than await the spontaneous action of the people had subsidized newspapers and senile *literati* to trumpet manufactured notoriety and charlatanical pretensions from one end of the State to the other. Such appliances failed of their purpose, and so low had he fallen in the estimation of those who knew him best, that he was defeated for the legislature in his own ward in the fall of 1870, the same legislature which elected me to the Senate; and now his political bones lie buried in the gubernatorial graveyard made famous by the repeal of the Missouri compromise.

Mr. Clarke came to the surface in the troublous times when garret gallantry and parlor patriotism were at a premium. He had succeeded for six years in obscuring the mental vision of a chivalrous people by sounding phrase and blatant devotion, and hoped for a transfer northward in this edifice, so that he might further prostitute prominent place to personal profit, and perpetuate puerile platitudes to secure the plaudits of the populace.

Anthony and Spriggs were in the possession of qualities that made them valuable instruments in the hands of Carney and Clarke, and hence they were admitted into their councils. Anthony is malignant, turbulent, vindictive, and conscienceless, and has control of a newspaper. He was the candidate of that journal for the place I occupy, and no one seconding his pretensions he endeavored to contract with me, for a money consideration, to aid in my election, failing in which he resolved to do what he could to remove me from the Senate. Spriggs is, and for many years has been, the tool of Carney, ready to do his bidding at no matter what sacrifice of honor. The scheme concocted by these worthies was that Clarke, by means of false statements to be corroborated by the other three, should prevail upon the legislature to order an investigation, throw out a drag-net, collect all the scandal available, and induce the legislature to request the Senate to take action in the premises.

When the committee of the legislature had exhausted the subject it was found there was nothing shown against me, and the scheme was certain to fail. Clarke, Anthony, and Spriggs had told all they professed to know about the election, and most of what they had heard, without being able to trace one dollar from me, directly or indirectly, to any member of the legislature; and knowing well that the gossip about sums being paid for votes would be disproved by the persons alleged to have received them, should an opportunity be offered, they contrived the wicked plan of falsely attributing to me statements, at sundry times, to each separately, to the effect that the election had cost me large sums of money, and that I had paid certain members specific sums. The ingenuity of this scheme will be

apparent when it is considered that each was to testify to conversations occurring when no one but himself and myself were present.

As is usually the case, however, the conspirators made a serious blunder. The conspicuous fact that three of them were before the legislative committee over a year ago, was overlooked. When there, and the transactions comparatively fresh in their recollections, no one of them said a word about admissions. When their attention was called to the omission here, the hesitating, bungling, and unsatisfactory explanations attempted will, when read in the testimony, vindicate the assertion that all this admission business was an afterthought, concocted, arranged, and fabricated after it was thought probable that all the specific instances would be contradicted by the members who should be named. No two of the conspirators speak of the same instance, and hence, however groundless the statement might be, they knew they would be safe in a prosecution for perjury, as but one witness could be produced against them.

The part assigned to Spriggs was that he should lay the foundation by inventing a committee, of which he should be a member, having in charge the canvass before the legislature, and then to detail the supposed confidential conversations heard therein; and he did so with an innocence of honorable instincts worthy of Benedict Arnold. Carney had instructed him in his part; and he swore it through to the end unblushingly. Before the legislative committee in Kansas, although a willing witness, he was oblivious of everything connected with the transaction, with a single immaterial exception; but here, under the inspiration of Carney, his faculties became so bright as to reflect the utmost minutiæ; yet he seemed not to have appreciated the very suspicious position in which he placed himself. Added to this is the fact that every material statement he made was either directly contradicted by his supposed fellows of the committee, or shown to have been impossible by gentlemen high above suspicion.

But it may be asked, what could have been the object of such a combination? This is susceptible of easy explanation. Carney hoped, in case of a vacancy, that he might repossess his lost chances, and immediately after his examination before the committee, proceeded to the capital of Kansas and commenced an earnest canvass. Clarke had been disappointed in his attempt to blackmail me. Anthony was always my enemy, both personal and political, and ready to join anybody in a war upon me; and Spriggs was a puppet in the hands of Carney.

These men have been so vindictive and unrelenting in the persecution of myself, and their characters are so well known to the people of Kansas, that their testimony in the proceeding against me would not be believed by those who know them best. Such are the men who come here, and by falsely testifying to alleged conversations with me, undertake to drive me in disgrace from the Senate of the United States.

If the Senate should establish the precedent of condemning one of its members on the testimony of such men, I ask, what Senator could feel secure in his place? Permit these unscrupulous men in Kansas to succeed in their plan for my ruin, and how long will it be before a Clarke, Carney, or Anthony may turn up in some other State, and by the use of just such means as they have employed in my case, unseat any member who may be so unfortunate as to incur their displeasure?

I beg therefore that Senators will stop to consider well before committing themselves to a precedent which will result in a great wrong to me, and may in the future work great injury to others.

When, at the request of hundreds of the most respectable citizens of Kansas, I consented to the use of my name for the place I now occupy, I did so with the most honorable ambition, and with the determination that no act of mine should ever bring discredit to me or dishonor on this body. I fully appreciated the dignity of the position of a Senator of the United States, and I am proud to say that not even the satanic malignity of my enemies has been able to invent a breath of suspicion as to my official conduct. Nor have they, after two exhaustive investigations, one at Topeka a year ago and the other here, been able to connect me with one dollar corruptly used to influence any member of the legislature.

They have been forced to rely upon their own false statements as to my admissions, which I here before this body and upon my conscience pronounce wickedly and maliciously false. If I had had any such communications to make is it at all probable that I should have made them to my most bitter enemies? No; never did I make such admissions to any person whomsoever, friend or foe. And I here most solemnly declare that I never did, directly or indirectly, pay, or cause to be paid, one dollar, or any other thing of value, or any consideration whatever, for any man's vote for me for the Senate. Am I then to be the victim of a wicked conspiracy? Are these bold, bad men, whose very names are the synonyms of crime and corruption in my own State, to succeed, by force of their own false statements, in bringing disgrace and ruin upon me? And that, too, because I chose to cross their political paths, and then declined to submit to their unrighteous demands.

For the past eighteen months I have been compelled to submit to misrepresentation and abuse to a much greater degree than usually falls to the lot of one man. My pursuers have been constantly on my track, following me from Kansas to Washington, and from Washington to Kansas, and wherever they could, by misrepresentation, prejudice me in the estimation of newspaper men, have turned upon me the wrath of an all-powerful press.

Until the present moment, with the exception of putting in a denial of the charges at the time the record was received from Topeka, I have not said or written a word in reply, and would not do so now were it not necessary in presenting the case to the Senate.

I beg Senators to reflect that it is not alone to retain a seat in this body that I have for the past eighteen months been resisting the wicked designs of these men, but rather to defeat them in their base and infamous attempt to attach disgrace and dishonor to my name.

If these men succeed, then indeed will I be forced to admit that the efforts of a life-time in acquiring an honorable name may be defeated by a wicked conspiracy of two or three bad men.

Mr. CARPENTER. I regret exceedingly, Mr. President, that I find myself to-day in a condition of voice which will make it impossible for me to submit more than a very few remarks upon this case. I may not be able to speak five minutes.

I had occasion the other evening to refer to the distinction between our legislative and judicial functions. We pass here so rapidly from one to the other that we are in danger of carrying into the judicial field something of the warmth which belongs to the legislative or political sphere.

We are here to-day on our oaths as judges. We are here to-day not to make a law, but to administer all the laws that have been made and which apply to the case of Mr. CALDWELL. If those laws are imperfect, if his case has developed the necessity for further and more stringent enactment, Congress may supply the defect; we cannot, sitting here as judges, any more than it could be supplied by the judges of the Supreme Court in a case before them.

The Constitution provides that the Senate shall be the judge; and what is involved in that word "judge?" Calmness and impartiality.

With this conception of our duty in the present case, you may imagine the surprise, not to say grief, with which I listened to the judicial opinion delivered yesterday by my honorable friend from Indiana, [Mr. MORTON.] I have witnessed his strength with admiration upon many an occasion; I have sometimes felt it when directed against myself; but I have never seen him in the warmth of political debate, in the excitement of a pending canvass, baring his red right hand for vengeance upon his foe, labor more to strengthen his own particular views and to undermine and weaken the views of his opponent; nor have I ever seen him in the heat of political discussion bear down with greater harshness and severity upon a political opponent than his opinion delivered yesterday bore down upon Mr. CALDWELL.

Mr. President, several years ago I was district attorney in the county of Rock, Wisconsin. There came down to serve on the grand jury a nice old deacon of the Seventh-Day Baptist Church, a sweet old man, a man of perfect integrity, a man whose seclusion from the world had kept him aloof from any accurate and detailed knowledge of its wickedness. There was nothing special on the calendar of that session to be submitted to the grand jury; only the ordinary routine of business, cases of petit larceny, and horse-stealing, and burglary, and swindling, and false pretenses, &c.; and yet the examination of those cases so wrought upon the feelings of this good old deacon as to make him sick; he could not sleep at night, and had to apply to the court, and Judge Whiton, to whom the matter was explained, with a smile for the old man's innocence, excused him from further attendance upon the grand jury at that term.

Now, Mr. President, it is very refreshing to find such innocence in the heart and life of a man; and yet it may well be doubted whether, in a case where the rights of a wicked man were to be tried, such a man would after all be as likely to do exact justice to a criminal as an old man like Shaw or Marshall, or Story or Gibson, or a hundred other judicial names which might be mentioned, who have been familiarized with the details of crime by forty years' experience on the bench.

I have no doubt, Mr. President, that this is the explanation of the remarkable warmth of indignation manifested by my honorable friend yesterday. He has not had much political experience. He has been a statesman for many years. He has been governor of his own State, and discharged its duties with honor to himself and advantage to the whole country. He has acted only in those sublimer spheres which are politics in its highest acceptation. He has known nothing of the dirty means or dubious struggles by which political campaigns are carried on. He lives in a State undoubtedly republican—a State where it is always unnecessary to expend money to secure a political result; none has ever been expended in that State. You can prove that by the national republican committee; you can prove it by the gentlemen in New York, and Boston, and elsewhere, who generally contribute money to carry on political campaigns in doubtful States, [laughter,] and to this fact I attribute the indignation of my friend from Indiana in this case, who, for the first time in his life, was informed of the methods employed in politics, by the testimony taken before this committee.

I respect and venerate, as I ought, the righteous indignation of my friend from Indiana at the thought of expending money in political campaigns.

Yet, Mr. President, we are to look at things as they are, and deal with the world as it is. We cannot reconstruct it for a particular occasion.

Why, Mr. President, even the devil is not as black as he is painted, and they upon whom the tower of Siloam fell were not sinners "above other men." There are certain infirmities of our common nature which we ought always to estimate when we sit in judgment upon our fellow-men. If we desire to throw a mantle around our own bosoms

and shield ourselves from observation, while we send Mr. CALDWELL home as the scape-goat of all the political improprieties of this generation, that is one thing. If we mean to stand up like men and meet the responsibility which rests upon us as judges; if we mean to say that the conduct of this man shall be fairly examined and fairly tested, and what he has done amiss shall be criticised without favor, but without malice, and that no matter what the press may say, and no matter what an uninformed public sentiment may demand, he shall suffer no wrong at our hands, then, Mr. President, we must look at things as they are, and not as we might desire to have them.

How a political canvass would have been conducted in the garden of Eden I cannot say. Perhaps upon the same principles as in the State of Indiana. [Laughter.] But, sir, in other States of this Union we have degenerated. In Wisconsin we use money in politics. I myself contributed five hundred or six hundred dollars during the last canvass—not to bribe voters, not to hire any man to vote the republican ticket, but to promote the general ends of the campaign, pay the expense of receptions, illuminated halls, pay the expenses of distinguished speakers, send out torch-light processions, circulate documents, and meet all the other expenses which are incident to a political canvass. Why, sir, we spend money in Wisconsin to maintain the church and promulgate the gospel. [Laughter.] We pay clergymen salaries. We build churches with money. We light them; we warm them; we carpet them; we cushion them; we make them as comfortable in every respect as possible; and we do all this with money. We pay money to encourage Sunday-schools and Bible societies. We send agents to distribute the Scriptures and Christian tracts, and to all of them we pay money. We seek in every possible way to throw around the institutions of religion all possible attractions; and I am forced to confess that we do the same thing in politics.

I may say, however, in this connection, that there has never been a charge or suspicion in our State that any election had been carried either at the polls or in the legislature by any improper means. Yet in Wisconsin money has been used in politics. In what State has it not been? Therefore, when you come to the fact that money was drawn out of a bank in Lawrence by men who went to Topeka the same day, you have not advanced a peg in the investigation, as to whether that money went to bribe a legislator or whether it was used for some perfectly legitimate purpose.

Mr. President, coming back to this subject as a judicial question, let me make another remark, and that is that we ought to confine ourselves to the judicial rules of testimony. Here is a volume of four hundred and sixty-odd pages of report and so-called testimony. I do not hesitate to say, after a pretty thorough knowledge of what that book contains, that there are not twenty-five pages in it of testimony that would be taken in any court of justice. It is not even respectable hearsay. It is not hearsay at first or second hand in many instances. It is one man's report of what another man told him of what was the common report in Topeka. It is not testimony upon which we can found any conclusions whatever, if we mean to analyze testimony and find facts and pass deliberate judgment upon them.

I have not the strength to-day, and shall not attempt to go over this testimony in detail. I dissent from all the findings of fact contained in the report, except as to the transaction between Mr. CALDWELL and Mr. Carney, which is conceded. But passing that transaction and coming to the findings of the report that members of the legislature were actually bribed, I do not find any testimony that satisfies my mind that such was the case. I do not find any testimony that, in my judgment, would be admitted by a judicial court to go to a jury on the question of Mr. CALDWELL's guilt of bribery in that election. That being my view of the testimony, of course I must dissent from this report, and I must dissent from its conclusions and must vote against the resolution the report recommends.

One moment as to the transaction with Mr. Carney; and preliminary to that, what is the effect of bribery in an election in the absence of any statute on the subject? There is no Federal statute, there is no statute of Kansas declaring what shall be the effect of bribery in an election of Senator. Of course Congress might regulate that subject and provide that if any candidate for Senator should bribe one member of the legislature such act should render his election void. But no such law has been passed. The Senator from Indiana read one authority yesterday which states it to be a principle of parliamentary law, that bribery of one elector avoids the election. I do not understand that to be the law of England apart from statutes. I understand that that consequence was created by statute because it was not a part of the common law. I understand that the two cases which are relied upon by Mr. Sheperd, are actually cases of expulsion and not cases of election declared void on account of bribery.

I cannot go at length into the discussion of this subject, and I regret that I cannot; but I state my view of it and my understanding of the law. If I am right in this, then of course we cannot here apply to Mr. CALDWELL any other rule than the common law. We cannot say that Mr. CALDWELL was not elected by that legislature, at least not unless we find that enough members of that legislature were bribed to have changed the result. Now it will not be pretended by any one, from this testimony, that there is even a reasonable ground of suspicion against more than four members of that legislature, and Mr. CALDWELL was elected by twenty-six majority. Mr. Bayers, one of them, has left the State, and could not be found by your committee; nobody knows where he is. The other three members of the legislature suspected of having been bribed were called before your committee, and every one, on his oath, swore that he never received a cent.

Mr. President, it was said by the Senator from Indiana yesterday, "It is true they all swear that, but we do not believe them." The report states that most of the testimony which is relied upon, which is stated in the report as matter of fact, is contradicted by different witnesses, and still it is said the committee believe so and so. Well, Mr. President, how are we to be satisfied of a fact? And this is a very important question. If we may be satisfied of facts here as we may in legislative proceedings; if we may find this man guilty as we would find a railroad company had been negligent in not performing its contract, and therefore say it ought not to have a renewal of its land-grant; if we may find the guilt of CALDWELL as we may find any alleged delinquency in the collection of the customs with a view to remedy it by legislation; in other words, if there be no difference between the methods of ascertaining the facts in our judicial and in our legislative capacity, then I concede the Senator may say he finds a great deal of testimony raising a painful suspicion as to the guilt of CALDWELL. And yet it is true that such testimony was met in almost every instance by more direct testimony to the contrary. I cannot go at length into an examination of it; but I protest here that we are to proceed only upon judicial testimony, by which I mean testimony that would be received in a court of justice.

What is the end proposed by a court of justice? Why do we look to those courts as the sanctuary of right? It is because they have, by actual experiment, acquired the method of ascertaining truth. If their method, then, after three centuries of practice, has been ascertained to be the only safe guide for ascertaining the truth, why is it that we can depart from it, and with what degree of prudence can we depart from their rules? Suppose you are trying a man for murder. You try him to ascertain whether he did kill the deceased or not, and you desire to obtain the truth. Why is it that you will exclude hearsay? Because all human experience shows that hearsay more often conveys falsehood than fact. Men will make statements when they are not under oath that they would not make on the stand and under the obligation of an oath; and if you may swear one witness and make him state what another man said when not on oath, you lose the whole benefit of swearing witnesses. Hence judicial courts exclude hearsay; and it would create a rebellion to pass a law authorizing hearsay evidence in a court of justice where the title to property could be determined, and where citizens could be tried on charge of crime.

If hearsay evidence be unsafe in a court of justice, where truth is the subject of inquiry, how can you defend hearsay evidence here except upon the ground that we are not after the truth? If you wish to ascertain whether Mr. CALDWELL did commit the crime charged upon him, and wish to do him justice, how are you to justify hearsay evidence here? Will you proceed by methods different from those in the courts of law—by methods which three hundred years' experience has discarded? No; if justice be your object, you will proceed here as a court of law would; and I would like to see my honorable friend from Indiana on the bench in a court of law, and see Mr. CALDWELL on trial before him for bribing the members of this legislature, and to see how he would take that pencil of his and gut this book called testimony. There would not be enough left of it to retain the form of a book. No judge would treat it with the slightest respect. We cannot, if we are to act like judges. If we take up that volume and examine it for the purpose of ascertaining what facts are proved, Mr. CALDWELL must be acquitted of the charge of bribing members of the legislature; that is, in my judgment, he must be so acquitted.

If we are determined to expel Mr. CALDWELL and wish for the best excuse possible for doing it, that book furnishes the best excuse that can be given. It is hearsay; it is hearsay at third-hand in many instances; it comes from men who swear that somebody else told them something, and when that somebody else is called on the stand he swears that he never did say so; yet you have there the best possible case that can be made out if you wish for an excuse for the expulsion of Mr. CALDWELL. But I submit to Senators that if that testimony is to be examined as you would examine testimony on the bench, Mr. CALDWELL is to be acquitted of bribing any member of the legislature.

I am very sorry that I cannot go more fully into the details of this testimony. One or two things, however, I will abuse my voice to state.

Mr. Carney is the great witness relied upon by the committee to convict Mr. CALDWELL. Who is Mr. Carney? He is a party to one transaction, which, in the opinion of the committee, is sufficient to consign Mr. CALDWELL to everlasting contempt; sufficient to send him away from this body disgraced and branded for life, and yet Mr. Carney, the man who obtained the money in this doubtful transaction, stands here in the estimation of this committee, so far as the report shows, as fair as any witness ever stood. He appeared before the committee with that show of reluctance, that honest and sincere delicacy, which is so becoming a witness. He seemed to think that it might be suspected that he had some prosecuting hand in this business, and he desired to clothe his testimony with all the force that it would have if it came from a disinterested source; and so he goes on in this way:

> There are things that transpire in life between man and man that should be regarded as sacred—
>
> What a high sense of honor he has!
>
> and that, no matter whether in friendship or in enmity, should not be revealed

I am sorry to say that things of a similar character occurred between Senator CALDWELL, Mr. Smith, and myself; and I avoided going to Topeka before the legislative committee for the express purpose of not being called upon to reveal some such things;—

His sense of honor is so high that he will run away from the witness-box!

and I am sorry to say now that they have been revealed; that both the Senator and Mr. Smith have revealed things that it was agreed between us and God should remain strictly between us; and I relate to the things that were stated about myself; and that being so, I feel it to be my duty, and due to the facts and to justice, to state the whole of the facts in relation to that case.

That statement made such an impression on the honorable chairman of our committee that he took him to his bosom, as follows:

By the CHAIRMAN:

Question. We do not consider you a volunteer witness at all, governor. It is a question between Mr. CALDWELL and the Senate of the United States, in which you are here required under your oath to tell all you know.

Now, if you wish to see how much truth there was in all that by-play, turn to Mr. Carney's letter, to be found on page 240 of the testimony. I have not the voice to read it; but here is a letter by him to Clarke, dated April 9, 1872, nearly a year ago, written for the very purpose of goading on this investigation to expel Mr. CALDWELL. There is one point in it, however, to which I wish to call the attention of the Senate. This witness, who was not a volunteer witness—this witness, who ran away from the staud in Topeka rather than bring out facts prejudicial to Mr. CALDWELL, we find, on the 9th of April, 1872, was writing to Mr. Clarke, who was here in Washington for the purpose of instigating this very examination, and in that letter he says:

I know of my own knowledge of his paying and authorizing large sums of money to be paid for votes, and Mr. CALDWELL knows that I know it, and he knows that I can name other gentlemen who know it, and yet none of those men were before the examination committee at Topeka.

Now, when Mr. Carney is called upon the stand after that modest little blushing between him and the chairman—I mean the blushing was on the part of Carney, not the chairman—at page 196 he says:

By the CHAIRMAN:

Question. What do you know of any payment to any member of the legislature? Do you know anything about it? State any circumstances that you know about as to the payment, or promise to pay anything, or anything that throws light upon that question.

Answer. Well, all I know is what a man would found upon belief, and hearing men talk, and by actions, and so on, that followed.

Question. Go on and state what circumstances you know, governor. It will be for the committee to draw their inferences.

Mr. CARPENTER. Suppose you call for any fact within his knowledge and not his belief.

The CHAIRMAN. I am asking for the facts upon which he might found a belief. It will be for us to determine how much weight we will give to it.

Mr. CROZIER—

who was acting as counsel for Mr. CALDWELL—

I suppose you do not intend that he shall give any statements of persons not at all connected with this transaction as a ground of his belief.

The CHAIRMAN. No, sir; not persons who were not shown to be connected with it.

The WITNESS. Well, some of the strongest reasons I have, of course, for thinking that money was used were, first, the fact that Mr. CALDWELL had no status before the legislature; he had no status in Kansas as a politician when the legislature met; that when he went to Topeka there was scarcely anybody for him, or that recognized him to be even a respectable candidate, and the further fact that Mr. CALDWELL has repeatedly declared that his election cost him a large sum of money.

There is the testimony, when the witness was driven to it, of a witness who a year ago was writing here, stating that he knew of his own personal knowledge that Mr. CALDWELL had paid for votes and authorized other men to pay large sums of money; and I am reminded by my colleague on the committee [Mr. LOGAN] that that letter was sent here to Mr. Clarke, and was exhibited by him to members of Congress for the purpose of urging on this investigation. The testimony of Mr. Clarke, of Mr. Sherwood, and Mr. Van Dynn all shows that Carney was a bitter enemy of CALDWELL's, and that he had threatened a year that he would have CALDWELL out of his seat. So much for Mr. Carney.

Now take the case of Mr. Anthony and Mr. Clarke. They are two men who have been from first to last, as the testimony shows, violent enemies of Mr. CALDWELL. They both swear here, now, to enough to damn Mr. CALDWELL if we believe their testimony. They swear that Mr. CALDWELL has told them that he paid one man $3,000 to vote for him. They swear that he has told them that his election cost him sixty or seventy-five thousand dollars. But the testimony also shows that those two men went before the committee of investigation at Topeka and testified against CALDWELL, and that they were questioned as to all they knew on the subject, and that neither of them pretended to state at that time that Mr. CALDWELL had ever told him one word on the subject. There they were before that legislative committee in Topeka, with blood in their eye, and with malice in their hearts, determined to pull Mr. CALDWELL down by fair means or foul, and yet they had not up to that time the hardihood to say that Mr. CALDWELL had ever expressed one word to them upon the subject of his bribing members. It is all an after-thought.

Mr. President, it is impossible for me to go further through this testimony; my voice will not permit; but I desire to leave this whole matter with the Senate so far as I am concerned, (except that I shall vote against the resolution reported by the committee,) by referring again to this testimony, and asking Senators, before they cast a vote here that is to disgrace Mr. CALDWELL, at least to read and study the testimony. I know it is no trifling request. I know how this matter comes on at the heel of a session that has exhausted us all. I know the days and nights of excitement and toil that we have passed through in the last three or four weeks; and I know with what shrinking and reluctance any one of us sits down now to examine a volume of four hundred pages.

Mr. President, I simply ask for Mr. CALDWELL what a judge should grant to a murderer at the bar, what he should grant to any man charged with any crime. Any judge would perform his duty, no matter what the mob outside might say. He would remind the jurymen of their oaths, the solemn obligation under which, between themselves and their God, they were to declare whether the accused were guilty or not guilty; and I insist, it seems to me, upon grounds that cannot be resisted, that no man shall give his verdict until he is thoroughly familiar with the facts.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) Is the Senate ready for the question on the resolution submitted by the Senator from Indiana? [Putting the question.]

Mr. LOGAN. I did not expect the vote to be taken at this time.

Mr. SHERMAN. If my friend will give way I will move that the Senate proceed to the consideration of executive business. I should like to have a little time to examine some parts of this testimony myself.

Mr. LOGAN. I give way.

EXECUTIVE SESSION.

Several executive messages were received from the President of the United States, by Mr. BABCOCK, his secretary.

The PRESIDING OFFICER. The Senator from Ohio moves 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 twenty-five minutes spent in executive session, the doors were re-opened; and (at two o'clock and forty-four minutes p. m.) the Senate adjourned.

IN THE SENATE.

WEDNESDAY, *March* 12, 1873.

Prayer by Rev. J. G. BUTLER, D. D.

ELECTION OF PRESIDENT PRO TEMPORE.

The Chief Clerk (W. J. MCDONALD, esq.,) called the Senate to order, and said:

Senators, the following letter has been placed in the hands of the Secretary by the Vice-President, with a request that it be communicated to the Senate:

WASHINGTON, *March* 11, 1873.

SIR: Please inform the Senate that to-morrow and the next day I shall be absent from the city, and shall not, on those days, occupy the chair.

Yours, &c.,

HENRY WILSON,
Vice-President.

Hon. GEORGE C. GORHAM,
Secretary of the Senate.

Mr. ANTHONY. Mr. Secretary, I offer the following resolution, and ask for its present consideration:

Resolved, That in the absence of the Vice-President, Hon. MATT. H. CARPENTER, a Senator from the State of Wisconsin, be, and he is hereby, chosen President of the Senate *pro tempore*.

The chief clerk put the question on the resolution; and it was adopted *nem. con.*

Mr. CARPENTER accordingly took the chair as President of the Senate *pro tempore*, and said:

Senators, I thank you sincerely for the honor you thus confer upon me, and the best assurance I can give you that I esteem and appreciate your kindness will be my constant endeavor to perform my duties faithfully and impartially.

Mr. ANTHONY. Mr. President, I offer the following resolution, and ask for its present consideration:

Resolved, That the Secretary wait upon the President of the United States, and inform him that, in the absence of the Vice-President, the Senate has chosen Hon. MATT. H. CARPENTER, a Senator from the State of Wisconsin, President of the Senate *pro tempore*.

The resolution was agreed to.

THE JOURNAL.

The PRESIDENT *pro tempore*. The journal of yesterday's proceedings will be read.

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

CREDENTIALS.

Mr. STEWART. When my colleague was sworn in the other day, his credentials had not arrived. They are now here, and I beg leave to present them, and ask that they be read.

The chief clerk read the credentials of Hon. JOHN P. JONES, chosen by the legislature of Nevada a Senator from that State, for the term beginning March 4, 1873, which were read and ordered to be filed.

CHOICE OF COMMITTEES.

Mr. ANTHONY. Mr. President, before the morning business begins, in order that the business may be properly referred, I move that the Senate proceed to the election of the standing committees.

The PRESIDENT *pro tempore*. The Senator from Rhode Island

moves that the Senate do now proceed to the election of the standing committees of the Senate.

The motion was agreed to.

Mr. ANTHONY. Previous to the election I offer the following resolution:

Resolved, That the following committees be, and they are hereby, discontinued, viz, on Investigation and Retrenchment, on the Removal of Political Disabilities, on Alleged Outrages in the Southern States, and on the Pacific Railroad.

The resolution was considered by unanimous consent and agreed to.

Mr. ANTHONY. I also offer the following resolution:

Resolved, That there be added to the standing committees of the Senate a Committee on Railroads, to consist of nine members.

The resolution was considered by unanimous consent and agreed to.

Mr. ANTHONY. I offer the following resolution:

Resolved, That hereafter the number constituting the Committee on Privileges and Elections, the Committee on Appropriations, the Committee on Post-Offices and Post-Roads, and the Committee on Public Lands, be nine members each.

The resolution was considered by unanimous consent and agreed to.

Mr. ANTHONY. Mr. President, I move that the Select Committees on the Revision of the Rules, on the Levees of the Mississippi, and on Transportation Routes to the Sea-board, which were established at the last session, be re-appointed.

The motion was agreed to.

Mr. ANTHONY. I now move that so much of the rule as requires that the chairmen of the several committees be elected by ballot be dispensed with.

There being no objection, it was so ordered.

Mr. ANTHONY. I offer nominations for the standing and select committees of the Senate, in the shape of a resolution.

The resolution was read, as follows:

Resolved, That the following be the standing and other committees of the Senate during the present session:

STANDING COMMITTEES.

On Privileges and Elections—Messrs. Morton, (chairman,) Carpenter, Logan, Alcorn, Anthony, Mitchell, Bayard, and Hamilton of Maryland.

On Foreign Relations—Messrs. Cameron, (chairman,) Morton, Hamlin, Howe, Frelinghuysen, Conkling, and Schurz.

On Finance—Messrs. Sherman, (chairman,) Morrill of Vermont, Scott, Wright, Ferry of Michigan, Bayard, and Fenton.

On Appropriations—Messrs. Morrill of Maine, (chairman,) Sprague, Windom, West, Ames, Sargent, Allison, Stevenson, and Davis.

On Commerce—Messrs. Chandler, (chairman,) Spencer, Conkling, Buckingham, Mitchell, Gordon, and Dennis.

On Manufactures—Messrs. Robertson, (chairman,) Sprague, Gilbert, Johnston, and Fenton.

On Agriculture—Messrs. Frelinghuysen, (chairman,) Robertson, Lewis, Dennis, and McCreery.

On Military Affairs—Messrs. Logan, (chairman,) Cameron, Spencer, Clayton, Wadleigh, Kelly, and Ransom.

On Naval Affairs—Messrs. Cragin, (chairman,) Anthony, Morrill of Maine, Sargent, Conover, Stockton, and Norwood.

On the Judiciary—Messrs. Edmunds, (chairman,) Conkling, Carpenter, Frelinghuysen, Wright, Thurman, and Stevenson.

On Post-Offices and Post-Roads—Messrs. Ramsey, (chairman,) Hamlin, Ferry of Michigan, Flanagan, Dorsey, Jones, Kelly, Saulsbury, and Merrimon.

On Public Lands—Messrs. Sprague, (chairman,) Windom, Stewart, Pratt, Oglesby, Wadleigh, Casserly, and Tipton.

On Private Land-Claims—Messrs. Thurman, (chairman,) Ferry of Connecticut, Caldwell, Bayard, and Bogy.

On Indian Affairs—Messrs. Buckingham, (chairman,) Caldwell, Allison, Oglesby, Sherman, Stevenson, and Bogy.

On Pensions—Messrs. Pratt, (chairman,) Ferry of Connecticut, Oglesby, Dorsey, Ingalls, Hamilton of Texas, and Norwood.

On Revolutionary Claims—Messrs. Brownlow, (chairman,) Gilbert, Conover, Johnston, and Goldthwaite.

On Claims—Messrs. Scott, (chairman,) Pratt, Boreman, Wright, Mitchell, Dennis, and Merrimon.

On the District of Columbia—Messrs. Lewis, (chairman,) Spencer, Hitchcock, Ferry of Michigan, Robertson, Jones, and Saulsbury.

On Patents—Messrs. Ferry of Connecticut, (chairman,) Windom, Wadleigh, Hamilton of Maryland, and Johnston.

On Public Buildings and Grounds—Messrs. Morrill of Vermont, (chairman,) Gilbert, Cameron, Stockton, and McCreery.

On Territories—Messrs. Boreman, (chairman,) Hitchcock, Cragin, Clayton, Patterson, Cooper, and Tipton.

On Railroads—Messrs. Stewart, (chairman,) Scott, West, Ramsey, Hitchcock, Cragin, Howe, Frelinghuysen, Cooper, Hamilton of Texas, and Ransom.

On Mines and Mining—Messrs. Hamlin, (chairman,) Chandler, Caldwell, Sargent, Kelly, and Goldthwaite.

On the Revision of the Laws—Messrs. Conkling, (chairman,) Carpenter, Stewart, Alcorn, and Ransom.

On Education and Labor—Messrs. Flanagan, (chairman,) Patterson, Ingalls, Bogy, and Gordon.

To Audit and Control the Contingent Expenses of the Senate—Messrs. Carpenter, (chairman,) Jones, and Saulsbury.

On Printing—Messrs. Anthony, (chairman,) Howe, and Casserly.

On the Library—Messrs. Howe, (chairman,) Allison, and Edmunds.

On Engrossed Bills—Messrs. Casserly, (chairman,) Clayton, and Cooper.

On Enrolled Bills—Messrs. Ames, (chairman,) and Lewis.

SELECT COMMITTEES.

On the Revision of the Rules—Messrs. Ferry of Michigan, (chairman,) Hamlin, and Merrimon.

On the Levees of the Mississippi River—Messrs. Alcorn, (chairman,) Clayton, West, Schurz, and Gordon.

On Transportation Routes to the Sea-board—Messrs. Windom, (chairman,) Sherman, Conkling, Ames, Conover, Casserly, and Norwood.

The PRESIDENT *pro tempore*. The question is, will the Senate agree to this resolution?

The resolution was agreed to.

DUTIES OF COMMITTEE ON RULES.

Mr. ANTHONY. I offer one more resolution:

Resolved, That it shall be the duty of the Committee on Rules to make and enforce all rules and regulations respecting the reporters' gallery of the Senate and the occupation thereof; and said committee is directed to take such action, from time to time, as will confine the occupation of said gallery to *bona-fide* reporters for daily newspapers, taking not to exceed one seat to each paper; and said committee shall have power to provide a seat or seats on the floor for Associated Press reporters, and to regulate the occupation of the same.

The resolution was considered by unanimous consent and agreed to.

EXECUTIVE SESSION.

Mr. RAMSEY. I think, now that we have the committees, we ought to go into executive session for a few minutes, and distribute the business that belongs to those committees. 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 five minutes spent in executive session, the doors were re-opened.

ELECTION OF SENATOR CALDWELL.

The Senate resumed the consideration of the resolution submitted by Mr. MORTON on the 6th instant, declaring that Mr. CALDWELL was not duly elected a Senator from the State of Kansas.

Mr. MORTON. Mr. President, by leave of the Senator from Illinois, [Mr. LOGAN,] who is entitled to the floor, I will this morning, in answer to a question asked me yesterday in debate, and I believe the day before also, read some authorities upon the question whether bribery was an offense at common law before the enactment of any statute punishing it, and whether the seats of members of the House of Commons had been declared vacant on account of bribery before any statute had been passed upon that subject. With the indulgence of the Senate, I will read very briefly some authorities upon that point.

I read first from Rogers's Law and Practice of Elections. It is an English work, I believe of the highest character upon this subject, published in London as long ago as 1837. Mr. Rogers says:

But numerous instances have not been wanting, in more modern times, in which the court of king's bench have, by the rigor of their punishments, vindicated the freedom of elections. Informations, and indictments at the common law, as well as actions upon the statute of 2 George II, c. 24, have there been prosecuted, not only by private individuals, but by the attorney-general, by order of the House of Commons. To bribe a voter is not only an infringement of parliamentary privilege; it is more—a high misdemeanor and breach of the common law.

The first time the subject of bribery appears to have been brought before the house was in the reign of Elizabeth.

One Thomas Long gave the returning-officer and others of the borough of Westbury four pounds to be returned member. For this offense the borough was amerced, the member removed, and the officer fined and imprisoned.

I have here Coke's Institutes, in which that case is quoted, and I will read an extract from it:

Thomas Long gave the maior of Westbury four pound to be elected burgesse, who thereupon was elected. This matter was examined and adjudged in the House of Commons *secundum legem et consuetudinem parliamenti*, and the maior fined and imprisoned, and Long removed; for this corrupt dealing was to poyson the very fountain itself.

That was the first case, and was nearly a hundred years before any statute was enacted punishing bribery.

Mr. Rogers further says:

But it was not until the end of the reign of Charles II that corruption at elections prevailed to any great extent.

In the year 1669 a bill "to prevent abuses and extravagances in electing members to serve in Parliament, and for regulating elections," was thrown out.

In the Bewdley case, 1676, the committee of privileges and elections reported that Mr. Foley, one of the candidates, had been guilty of bribery. The house passed two resolutions, one declaring Mr. Foley's election to be void, and the other seating his antagonist, Mr. Hobart.

In 1677, the treating resolution passed, and in the year following was made a standing order of the house. By that resolution, for a candidate to give any person having a voice at an election meat, drink, or present, or gift, after the teste of the writ, was declared to be bribery, and to be a sufficient ground for the avoiding the election as to every person so offending.

That was a mere resolution of the house declaring what would be the action of the house in such a case. It was not a law, and did not become a law until a great many years afterward.

In 1680 a bill to prevent the offenses of bribery and debauchery connected with election proceedings was thrown out.

Parliament refused to pass it.

In 1689 a bill to prevent abuses occasioned by excessive expenses at elections of members to serve in Parliament, having been read once, was also thrown out. This was the year in which the Stockbridge case was determined, which, being considered to be of a very gross nature, it was proposed for the borough to be disfranchised. The case of Mitchell and Wootton Bassett followed, in the year 1690; the cases of Chippenham and Aylesbury in 1691, and the second Stockbridge case in 1693; in each of which, bribery being proved against the sitting member or members, the elections were avoided.

Mr. CONKLING. Will the Senator stop there one moment while I ask him whether the last case he read was antecedent to the order of the House of Commons which preceded the statute?

Mr. MORTON. No, sir; it is subsequent. The resolution of the house was passed in 1677; was simply made a standing order of the house, as it was called, but was not a law; and another authority shows that it was a declaration of the line of action that the house would adopt in such cases.

How general had become the system of corruption, and how insufficient the existing laws and resolutions to arrest its progress, is fully proved by the glaring examples just cited, following each other in such rapid succession. Those who had opposed the bills of 1669, of 1680, and of 1689, now found themselves called upon to adopt a different line of conduct. The opinions of the wisest and most honest statesmen, embodied in the resolutions and standing orders of the house, had been set at defiance, and the first and best principle of the constitution, the freedom of election, was daily and unblushingly violated. Taking, therefore, the treating resolution of 1677 for its basis, the house, in 1696, passed the 7 William III, c. 4, now generally known by the name of the treating act,

making it an offense to give meat or drink to a man who had the right to vote; and that was the first enactment ever passed by the British Parliament upon the subject.

Hitherto treating had been considered as a species only or mode of bribing. Since the act of William, however, treating and bribery have usually been considered as separate charges and distinct grounds of petitioning. First, then, of bribery, properly so called.

A candidate or other person is said to be guilty of bribing, if, "by himself, or any person employed by him, he doth or shall, by any gift or reward, or by any promise or agreement, or security for any gift or reward, corrupt or procure any person to give his vote, or to forbear to give his vote, in any such election." Such is the definition which is given of bribery in the statute 2 George II, c. 24,

which was the first act ever passed punishing bribery, and that was passed in 1727. Mr. Rogers goes on to say:

This statute, however, did not create the offense; bribery, as we have seen, had always been a misdemeanor at common law, and a violation of the privilege of Parliament; but the above statute armed courts of law with new and extraordinary powers to check the growing evil, by attaching a penalty of £500 on every conviction of an offense against its provisions, and by disqualifying the offender from ever again voting in any election for members of Parliament.

Not only this authority, but Sheperd lays it down distinctly, that the power of the House of Commons to declare an election void upon the ground of bribery is not affected by the statute at all, but grows out of the principles of the common law.

Now I will refer to a case that I referred to the day before yesterday, in Burrows——

Mr. SHERMAN. I wish to ask my friend from Indiana a question upon the very point he is now discussing, especially in connection with a quotation from Sheperd, used by him in his remarks the other day. The quotation that I refer to is this:

Bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in his favor, will avoid the particular election.

I wish to ask him whether he finds in our own parliamentary history in either House of Congress, or in England, any particular case where the bribery of a particular person, though it did not affect the election, or did not control the election, unseated the member. Must not the bribery extend to a sufficient number of votes of the constituent body to affect the result? That is the question upon which I desire information.

Mr. MORTON. I will state that in all these cases no reference is made to the number of votes that had been purchased. It is never put upon that ground, but it is put upon the ground expressed by Lord Coke, that bribery poisons the whole fountain. The effect of bribery in avoiding an election is never put upon the number of votes that have been bribed, but simply upon the act as poisoning the whole election, to use the language of Lord Coke, poisoning the whole fountain; and it has been compared by another author to fraud in a contract. What fraud is to a contract, bribery is to an election.

Mr. SHERMAN. In the House of Representatives there are many cases—I do not know whether cases of bribery, but many cases of fraud in elections; but unless the frauds in the election go to a sufficient extent to affect the majority of the elected candidate, they are governed by the actual number of legal votes cast, although frauds, violence, intimidation, and perhaps bribery may have entered into it. That is the point I want to get at, whether there is any distinction in parliamentary law between fraud and bribery.

Mr. MORTON. I am not prepared to answer that question any further than this: I consulted with the chairman of the Committee on Elections in the House, who, I believe, has been the head of that committee for many years, and he told me there had been no case of bribery arising in the House with which the candidate was connected. I think he said he did not doubt but that the law would be in the House, as it is in England in a case of bribery with which the candidate or sitting member was connected, to invalidate the election.

Mr. President, I will read an authority from Lord Mansfield. This decision was made in 1762. In this case the prosecution was based on the common law, not on the statute of George II, and a motion was made for a non-suit, upon the ground that the case should have been brought upon the statute, and not upon the common law. Lord Mansfield said:

Bribery at elections for members of Parliament must undoubtedly have always been a CRIME *at common law*, and, consequently, *punishable* by *indictment* or *information*. But the act of 2 George II, c. 24, has introduced a *very severe penalty* in order to *enforce* the laws then already in being, and because they had *not* been *sufficient* to prevent the evil.

He then goes on to quote the statute, and after that he says:

This crime certainly still *remains* a crime at *common law*. The legislature never meant to *take away* the common-law crime, but to *add* a penal action.

There is more of it, but that is sufficient to explain its character.

Now I come to the statement that my friend read from Sheperd just now, and I will detain the Senate for a moment by calling his attention to a passage in the argument read by Mr. CALDWELL yesterday, which, I suppose, it would be no breach of etiquette to say must have been prepared by a lawyer, not by himself; he does not claim to be a lawyer. He makes the statement that there is no case where a member of Parliament had been expelled before the enactment of the statute punishing bribery. His lawyer ought not to have made such a statement, because it is directly in conflict with what he ought to have known was the law. But he makes another statement:

English statute-law provides that "bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in his favor, will avoid the particular election, and disqualify him for being re-elected to fill such vacancy."

The passage is put in quotation marks as being taken from an English statute. There could scarcely be an excuse for this. He refers to Sheperd, page 103. Now, I will read that. The fact was, that Sheperd said that the power of the House of Commons over the election did not depend upon the statute-law at all, but depended upon the law of Parliament, and then he gave the law of Parliament, which is quoted here as the statute. Says Sheperd:

The bribery act makes no mention of any parliamentary disqualification affecting a member's seat; the effect, therefore, of an act of bribery not within the words of the treating act act of 7 William III, c. 4, is in that respect determined by the law of Parliament, as follows: "Bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in his favor, will avoid the particular election, and disqualify him from being re-elected to fill such vacancy."

Here Mr. Sheperd expressly states that the power of the house to declare an election void does not depend upon the statute, but depends upon the law of Parliament; but Mr. Caldwell's counsel just reverses it, and he says that the statute of England says so and so in regard to bribery avoiding the election, which is the particular point which Mr. Sheperd was contradicting.

There are several other authorities which I thought I had here, but I have left them on the table in my committee-room. Perhaps I shall have occasion to read them afterward, as the debate progresses. This is all I intend to say this morning.

Mr. CONKLING. By the indulgence of the Senator from Illinois I wish to occupy a moment on the question which has been put by the Senator from Ohio—a question which we cannot avoid, and which goes in one aspect of this case to the root of the matter. It has been said by the Senator from Indiana, and by others, that, anterior to any British statute, and anterior to that standing order of the House of Commons which immediately afterward became a statute, two cases can be found in English history in which the Commons avoided an election, held it to be null and void, because of bribery by a member. I had received this statement as a verity until we were called upon to investigate this case; and now, as we are all engaged in a common pursuit of knowledge, I want to confess my inability to vindicate, by examination, this assertion. I can find no instance in which, in the British Parliament, anterior to the statute, or to that order of the House of Commons which I will read, and which immediately after became a statute, any exercise of power was even proposed going to the extent of annulling *ab initio* an election because of bribery by the candidate of a particular person. I say now "of a particular person," in order to guard my statement, although the authorities do not so guard it.

The two cases so continually referred are the case of Long and the case of Halle. They were neither of them instances of avoiding the election. I will say also, in passing, lest I fail to recur to it, in a moment, that under the English statute of George, and its repetition in the reign of Victoria, no power is committed to the House of Commons to annul an election because a particular person is bribed. The statute works a forfeiture in the sitting member; works a forfeiture in the nature of a penalty.

Now, let me look at these two cases. I read from Male on Elections, a work very familiar in its authority to the Senate, perhaps to all the members of the Senate:

The famous case of Walter Long, bribing the mayor and corporation of Westbury, in the reign of Elizabeth, is no otherwise worth noticing in a legal treatise than to show the punishment the House of Commons fixed upon it by fining the parties and vacating the seat.

"By fining the parties and vacating the seat," a procedure, the Senate will see, not under a clause, had there been such, in the British constitution, endowing Parliament with the power to judge of elections, qualifications, and returns, but an exertion of power under that inherent attribute in every parliamentary assembly—I should have a right to say that it inheres, if I had not the authority of Chief Justice Shaw behind me, inherent without any constitutional endowment—to protect itself, to guard its privileges, to expel intruders, to expel the authors of disorder, to rid itself of a man with either a physical or a moral infection. Proceeding under that, as punishment, they fined a member, and they fined the mayor and corporation of Westbury, and they vacated the seat.

And in Arthur Halle's case, at no great distance of time, they did the same. The unusual exercise of this assumed power of fining, and the difficulty of enforcing payment, occasioned a doubt whether such a power had, in fact, been assumed by the House of Commons.

Mr. MORTON. The power to assess the fine.

Mr. CONKLING. I read the text again:

The unusual exercise of this assumed power of fining, and the difficulty of enforcing payment, occasioned a doubt whether such a power had, in fact, been assumed by the House of Commons.

It led to a historical dispute whether in truth any such thing had ever been done, but unquestionably it had been done, because there has descended to us the order placed upon the journals of the house in the very words. This commentator proceeds:

It was held in the case of The King *vs.* Pitt—

That is the case which the Senator read from Burrows—

that bribery is an offense at common law, subject to indictment on information. * * * Prosecutions at common law for this offense were never put in practice, however, till of late years, since the 2 George II, for which Mr. Douglas seems to have given satisfactory reasons.

Male then proceeds to say that this evil being crying, the House of Commons "made a standing order of the house, and, with some trifling variations, was shortly after molded into a statute."

Now I will read the latter part of this standing order of the House

of Commons. I pass over all the recitals of the things which should constitute the offense, and I come to the penalty denounced against it:

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.

Mr. President, I need not dilate upon the distinction here manifest between the force even of this statute—I call it a statute because, although it was first an order of one house, they adopted the phraseology "declared and enacted."

Mr. MORTON. To what did that order extend?

Mr. CONKLING. I will tell the Senator in one moment.

I need not, I say, dilate upon the manifest distinction between the force and effect of this statute as it was, and of this statute as it would have been had it declared that in such case no forfeiture of the right to sit should be worked, but the election should be, and was in point of fact, null and void *ab initio*.

But these two cases are referred to to show us that, anterior to the statute, anterior to an order of the Commons which was observed with the force of a statute, it was the common law of England, not merely that bribery was indictable or the subject of information, but that the common law of England or the law of Parliament held that showing that a member returned had been guilty of giving a bribe to any person, *ipso facto* undid, annulled, vitiated, obliterated the whole proceeding called an election.

Mr. President, if these two cases are to be taken to establish only as much as is reported of them, we are left as to the precedents, upon my understanding, as we are upon reason, to solve the question put by the Senator from Ohio; and for the sake of stating that question I assume that there is no distinction between inquiring into the case of one returned to the House of Representatives and of one chosen by a State a member of this body. Assuming, for the sake of the argument, that the cases are upon all-fours, then it seems to me in this present case, in one aspect of it at least, we must confront this question. A member comes, as one did quite recently, a former colleague of my friend from Illinois, from a district in Illinois, by a majority of fourteen thousand; it turns out that he, or another acting for him, promised to one elector that, on condition of his support, the candidate, if chosen, should nominate his son as midshipman at Annapolis. That is the case clearly proven as I will suppose; there can be no doubt about it. The question which arises is whether, although a majority of fourteen thousand unbribed and uninfluenced voters concurred in the election of the member of Congress, that member is to be refused his seat or ousted, not because of his turpitude, not because he ought to be expelled for having groveled in the degradation of tampering with one of his constituents, but because in truth and in fact the whole election is vitiated.

Mr. President, in considering that question there is one other consideration, and only one—because I am trespassing on the politeness of my friend from Illinois—to which, at this moment, I ask attention. You will observe, by looking at all the petitions that I have been able to find in the books which have been referred to, that the contestant or protestant alleged, in so many words, that the election of the sitting member had been controlled by bribery. That was the stereotyped allegation, "controlled by bribery," and I think Senators will find, by examining the authorities, that, except in regard of the personal forfeiture worked in the member if he was privy to the bribery, it never was held material whether the bribery proceeded from the member, or from somebody else. To illustrate, a member comes to the House of Representatives with a majority of three hundred. It turns out that when he was chosen he was beyond seas; he could not have been physically or constructively present; but, in the heat of the canvass, passionate and unadvised partisans corrupted electors to the number of more than one hundred and fifty, which would neutralize the majority. I think the cases show—I think the Senator from Ohio will bear me out in saying—that the practice of the House is such as to imply that that election is tainted, that it is stricken down as effectually, the bribery being proved, if it turns out that the man elected to the seat was no party to it, as if it turns out that he was. The question is, was the election controlled by bribery? Suppose his friends have controlled it by bribery? A Roman poet has told us that there is no color in money; one man's money is as filthy as another's, and if it went into the pockets of those whose votes were controlled by it, how does it matter, in considering the vice or the validity of the election, whether the money proceeded originally from the man who claimed the seat, or from ill-advised and wicked partisans who espoused him?

Thus, I think, the Senate must see, in considering this question, if we are to act in the absence of a statute which works a personal forfeiture by way of penalty, and inflicts it upon the man guilty of the turpitude of bribery—if we are to act without that, and come to the broad question of the effect, upon the election itself, of bribes given and received, the case must be the same whether the bribe be paid by the man who chiefly profited by it, or whether it be paid by partisans who, perhaps, with designs equally selfish, expected to promote themselves by the work they did. Am I right in that? If I am, I have reached a point in this inquiry which reveals a grave consideration.

Can it be that if a Senator, be he as pure as the driven snow, or a member of the House of Representatives, be he never so guileless, has been so unfortunate as to be espoused by some man fool enough or knave enough to give to an elector, or two, or three, or some other number falling short of affecting the majority, money or any lucrative consideration—and a promise of office is that—can it be, I say, that if a wicked or rash friend has promised one elector that he shall be sustained and promoted to office by the man whose election is in question, that that election is vitiated, and that we have a case satisfying the immemorial allegation of the petitions in the British Parliament that the election was controlled by bribery?

One other word, Mr. President, and I have done. When we come to consider Mr. CALDWELL'S case, if we do, upon the question whether his act, although it be with only one member of the legislature, or only two whom he bribed, fastens upon him that turpitude in his action as a candidate for the Senate which authorizes us, under the expulsion clause, to lay our hand upon him and place the seal of our disapprobation upon him, many of these questions will vanish. But when we consider the case as it has been considered up to this moment, upon the question whether the bribery alleged, of one, or two, or three, or four members of the legislature in which he received a majority of twenty-five, is sufficient cause not to expel him; not ground on which a forfeiture might be worked in him to hold his seat, but a ground on which we can say that, in point of fact, no election whatever took place, that the whole thing was null and void *ab initio*, then, so long as that question confronts us, I think it material to bear in mind the length to which the doctrine may carry us.

Mr. LOGAN. Mr. President, I desire, in the presence of the Senate, to examine this question, and shall probably do so in a somewhat different light from that in which it has heretofore been examined. I shall not detract from the truth as presented in this case in any way whatever. I wish to present it in a fair and impartial manner, to give such weight to the testimony as it is entitled to, both bearing against and for the Senator here charged with an offense.

When we reflect upon the history of the recent past, we need not wonder that examinations of questions recently before the country have been prosecuted in a somewhat novel manner. There have been excitements of all kinds and characters in different ages of the world. We are but human; our prejudices can be aroused, and sometimes to such an extent as to override our reason and better judgment. We read of times gone by when no man's liberty or character was safe; when communities were aroused to such an extent that they seemed to thirst for the destruction of human life. We have read of times gone by, when to charge an individual with an offense was sufficient to cause the courts to announce their judgment of condemnation. There was a time, even in this country, when the best were selected as victims, charged with offenses, and upon whom the death-sentence was pronounced from the judge's bench without evidence or reason.

We have the history of the past before us; we read of the cruelties that have been at times perpetrated by those in power, the condemnation of innocent persons, the trials and convictions of persons for pretended offenses that could not possibly have been perpetrated. We see, too, in this very day of ours, in this Republic, the people aroused to a great extent, and we all know it to be the fact that in the feverish excitement of the public mind, now to charge a man with crime is almost a condemnation without a hearing. We know it to be a fact now in this country that on the mere publication of a charge against an individual, it is taken for granted that it is true, and when his defense is presented it is not even read by the people who have misjudged and prejudged his case. We have seen, I am sorry to say, in recent investigations, the order of trial reversed.

We who have read and understand the rules of law have been taught to believe that each and every man charged with an offense is presumed innocent until the contrary appears by legal and competent testimony. It has been the rule heretofore that men when put upon trial were to hear the charges against them, were to be confronted with their ccusers, face to face, to hear the testimony against them, and then, if any offense was proven, were required to answer. Strange to say, this rule is now reversed. We now find, in some instances, that the man charged with an offense must come and prove his innocence, without any evidence whatever being produced against him. If he fails in that he is pronounced guilty; and if he accomplishes it by his own statement, then search is made for testimony to contradict him.

The time has been when the word of a Senator was worth something in this chamber; but, I am sorry to say, that time has passed away. Formerly a Senator's word was taken as true until competent and proper testimony should overthrow it and show that he was unworthy of belief. But now the rule is changed. The veriest and vilest wretch on earth may charge a Senator with an offense, and he may come before a committee and swear to that charge, and it is taken for granted that he has sworn the truth; but, if the Senator swears to the contrary, it is taken for granted that he has perjured himself. This appears to me to be a strange mode to adopt.

Mr. President, we sit here to-day judges and jurors. Each Senator is a judge, to examine the law and the testimony for himself, having within his control and judgment the rights and reputation of those who are presented for trial before this august body. Our duty is to hear and determine this case according to the law and the testimony as it has been produced before the committee and before the Senate. If a person were on trial before a court for the crime of murder; if a

thief were on trial before a court for grand larceny, or a robber were on trial for robbery, the testimony would be heard, and then the court would say to the jury, the law is so and so as to larceny, or, the law is so and so as to murder, or, the law is so and so as to robbery; but you, the jurors trying this case, must weigh the testimony in the case, and if you have a reasonable doubt in your minds, arising from all the testimony, as to the guilt of the party accused, you will find "not guilty."

That would be the rule in trying a murderer; it would be the rule in trying a thief or a robber. But what rule do we propose to apply to one of our own body when he is tried upon the charge of bribery and corruption which would render him infamous in the eyes of the American people? The rule, according to the argument we have heard here, is this: that his denial and testimony in his favor are taken for nothing; no reasonable doubt is permitted to arise in our minds; every one who swears against him must necessarily swear the truth; every one who swears for him must be presumed to swear falsely; every charge made against him must be true, but all testimony tending to exculpate him must be perjured testimony. This is the tendency of the argument that we hear in reference to those charged with offenses in this Senate-chamber. We are supposed, at least, to try men according to law; to try them according to the rules of justice, and to determine the rights of those who are sent here by States of this Union according to the principles of justice, and at least give them the rights of murderers.

Mr. President, I shall examine, before I conclude my remarks, what I conceive to be the law in this case, but will merely give it a passing examination at present. Suppose we take the rule laid down here as the rule by which we are to be guided in the judgment of this man's rights to-day; that is, that if any one single instance of bribery is proven, (which I deny *in toto*,) though having no effect upon the election whatever—even if it were a mere attempt without the fact itself being accomplished—the election is void by reason of fraud, and the Senator must be unseated. Would that be just? Let us examine for a moment and see whether this is a proper rule for us to be guided by in the examination of a legislative act.

Suppose that a legislature passes an act, and after the act is signed and becomes a law, you prove that a portion of the members who voted for that law were improperly influenced to cast their votes for it, I ask you as Senators whether that would vitiate the law? It is a recognized act of the legislature, and one that the courts have decided you cannot go behind. Now take this case as far as the act of the legislature is concerned; the election of Mr. CALDWELL is an act of the legislature, certified to and regularly presented to the Senate of the United States. If the position of my friend from Indiana is correct, that a mere attempt to bribe a member of the legislature vitiates that election, you go behind the whole act after motives; you drive the member elected out of the Senate; you declare the act of the legislature void because of that mere attempt. Upon what rule or theory do you do this? On a rule based upon certain statutes of England, which have been read here, but which have no application and no binding force so far as we are concerned. There is—I state it to be the fact—not one solitary case of the kind under the common law, and the common law is applicable, if anything, for we have no statute ourselves, and I defy the production of one solitary case which is a parallel to this. Long's case and Halle's case, the two which are cited, and the only ones that can be referred to, are not cases that can be made to apply to the one before us.

Mr. MORTON. Will my friend allow me to interrupt him?

Mr. LOGAN. Certainly.

Mr. MORTON. I think I ought to make a statement here in justice to myself and other members of this committee. The question came up in committee, about the time the report was agreed upon by the majority, as to whether we should report a resolution of expulsion or a resolution declaring the election invalid on account of the charges made. I believed that both remedies existed, that it was competent to declare the election invalid, or it was competent to report a resolution of expulsion upon the ground that the power of expulsion was absolute. I think the Senator from Mississippi, [Mr. ALCORN,] and the Senator from Georgia, (Mr. Hill,) not now a member of this body, agreed with me; but, according to my recollection, the Senator from Illinois who is not now a member of the Senate, (Mr. Trumbull,) and the honorable Senator from Illinois, now on the floor, [Mr. LOGAN,] and the President of the Senate, [Mr. CARPENTER,] and perhaps one other Senator, thought it went to invalidate the election rather than to expulsion, and it was their opinion that determined the character of the resolution which was reported. That being my distinct recollection about it, of course I was not prepared to hear an argument from the Senator from Illinois to the effect that there was no authority for saying that these things would invalidate the election.

Mr. LOGAN. Mr. President, I did not know that a Senator was confined to any remarks he may have made outside of this chamber in discussing a question such as that now before us. The Senator might have saved himself the trouble of interrupting me, for in a few moments I would have stated to him and to the Senate what my views are in reference to this matter. I do not desire to detail the discussions we had in a committee-room, or to state how a committee arrived at a certain conclusion. As I said yesterday, it is enough for the Senate to know that I dissented from the report, and I have a right to base my dissent upon any argument that seems proper in my judgment. I did say to the Senator, and I say now, that at the time we first commenced investigating this case, I was inclined, in case the proof should be sufficient, to hold that the charge went to invalidate the election; but on examining the subject further I came to the conclusion that I was incorrect in that impression, and I dissented from the report generally. The reasons for my dissent the Senators will ascertain before I am through.

Mr. President, without detaining the Senate longer in regard to the legal question at this stage of the argument, I propose, if I have the ability, as I believe I have—because it does not require very much—to show that upon the testimony produced before the investigating committee you are not warranted in finding Mr. CALDWELL guilty of any act of bribery. Further, I propose to show that there is not one solitary witness that testified against Mr. CALDWELL, upon whom my friend from Indiana relies, who is not contradicted by from two to three witnesses. We differ in reference to this matter; but it ought not to be any cause of feeling between us; it is a mere difference of judgment in reference to what the testimony proves; and I say that I propose to show that every witness, upon whom the Senator from Indiana relies to convict Mr. CALDWELL, has been contradicted by from two to three and sometimes four witnesses, men of better reputation than the man who testified against Mr. CALDWELL. I think I can do that.

In the first place, if Mr. CALDWELL is to be found guilty of anything, he must be found guilty from the testimony. That testimony must be competent testimony, it must be believable testimony, such as will have weight before a body of men who are inclined at least to do justice to a fellow-man. God knows we ought not to desire to do injustice; and as the length of time allotted to us in this world is but a span, we ought to approach a case of this magnitude with nothing in our hearts to cause us to do injustice to any man.

The first testimony that I will examine is that of the honorable Mr. Clarke, for he is an honorable man; the Senator from Indiana says he is an honorable man. Let us see how this honorable man testifies against a better man than himself. Let me tell you before I come to his testimony something of Mr. Clarke's conduct, and if I do not state it correctly I am subject to correction. Mr. Clarke was a candidate for the United States Senate at the same time that Mr. CALDWELL was. He denied under oath that he ever had any arrangement with Mr. CALDWELL, denied time and again, in his testimony, that he ever had any arrangement, either directly or indirectly, with Mr. CALDWELL by which he was to turn over his friends to Mr. CALDWELL'S support, for any consideration whatever. He came to the Senate-chamber over a year ago with a blood-letter in his hand, presenting it to certain Senators to read, in which it was charged that fourteen members of the legislature of Kansas were purchased, and that Governor Carney could swear to their names. He presented this letter to Senators in order to prejudice them, and then went to Mr. CALDWELL showing him this letter, as Mr. CALDWELL states, (and I believe every word of it,) and demanded blackmail of him, saying that if he did not give it he would punish him here before the Senate. This is the kind of man the honorable Sidney Clarke is. He admits that he came to Mr. CALDWELL several times, denies, however, that he demanded money, but says that each time he came Mr. CALDWELL made excuses for not having paid the money prior to that time. The honorable Sidney Clarke was a witness before the Committee on Privileges and Elections. I hope it is revealing no secrets to state that fact. He was not only a witness, but he was the prosecutor from day to day, furnishing testimony to the committee, examining witnesses as counsel, and when the *finale* came, and we were winding up the testimony, this honorable Sidney Clarke asked leave to file a written argument against Mr. CALDWELL before the committee, which was denied upon my objection. This is the honorable witness who testifies against Mr. CALDWELL, a prosecuting witness, and then, after being both witness and prosecutor, asks leave to file an argument beside his testimony against this man, that he might destroy him.

I propose now to examine the testimony of the honorable Sidney Clarke, and see how he swears. If he does not swear swiftly, then the record lies. I will refer to the pages, so that the Senator from Indiana can see what I read.

On page 2, after speaking of visiting Mr. CALDWELL, he mentions a conversation in regard to which he makes the following statement:

> Mr. CALDWELL then said, in substance, that success, his own success, would do away with the stigma of the transaction, replying to my idea that the use of money, as he understood it—I can't express it exactly as he did—but that his own success would do away with it; and said to me, "You see what I have done here, and you must have been at considerable expense in paying the expenses of your friends and conducting the canvass;" and he manifested his willingness to defray such expenses—political expenses—as I had been to in the canvass.

That is what the honorable Mr. Clarke testifies to—that Mr. CALDWELL proposed then to him to pay his expenses.

Then the Senator from Rhode Island [Mr. ANTHONY] asked him the question:

> Question. How did he manifest his willingness? Did he say he would do it?
>
> Answer. Yes, sir. He proposed to me to do it. He also said to me that another senatorial election was to occur two years hence, and if I would give him my political influence, or if my friends would, he would pledge me to do whatever was in his power to secure my election.

After that Mr. Clarke testifies that he declined this proposition; he declined to have anything to do with it.

You will find, then, on page 287 what Mr. Clarke says further:

> Question. Did you ever at any time or place make any request of Mr. CALDWELL, or any of his friends, that he should pay your expenses, or any portion of them, or contribute at all to them?

Answer. No, sir; unless the statement I made to him that he should conclude or settle this arrangement that he made with Stevens—

He says he never did, unless what he said to Mr. CALDWELL in reference to concluding an arrangement that he made with Mr. Stevens—

can be construed into that. For myself, individually, I can answer, I did not.

Question. You say you never had conversations with him at any time in regard to any expenses, except those of Stevens.

Answer. You do not understand me; except as to the arrangement which he made with Stevens. * * * * * *

Question. That comes to this: that when you said he ought to pay Stevens's claim, you meant he ought to pay all these claims?

Answer. I meant that he ought to carry out the understanding he had entered into with Stevens.

Question. Which was to pay all your expenses?

Answer. Yes, sir.

First he declined any arrangement whatever with Mr. CALDWELL; then he says in conversation he meant nothing except that Mr. CALDWELL ought to carry out the arrangement made with Mr. Stevens, and finally he says that that meant to pay his expenses.

Question. What amount did Mr. Stevens claim?

Answer. I do not know. I think twelve or fifteen thousand dollars was talked of as what it should be.

Question. Were your expenses included?

Answer. I do not know that they were mentioned, but I think they were included.

Such is the testimony of Mr. Clarke in reference to that proposition, but I wish to follow it up by this statement: Mr. CALDWELL denies the arrangement *in toto;* and Mr. Stevens, Mr. Clarke's friend, with whom he pretends this arrangement was made, could not be found, although he was their witness. Nobody knows why he was not produced. The testimony further shows that Mr. Clarke called on Mr. CALDWELL three or four times, and that he demanded of Mr. CALDWELL—and Mr. Clarke testifies to that himself—that Mr. CALDWELL should procure the appointment of certain persons in Kansas to office; but Mr. CALDWELL declined to do it; that they had a disagreement about these appointments; that afterwards Mr. Clarke came to see Mr. CALDWELL; Mr. Clarke still persisted in saying that Mr. CALDWELL merely excused himself for not having carried out this arrangement. You will find on page 16 that Mr. Clarke makes this statement, speaking of a conversation that he had with Mr. CALDWELL:

Question. Was there anything in this conversation in which Mr. CALDWELL said he wanted to fix the matter up with you instead of Stevens in regard to the amount—any question raised in regard to the sum?

Answer. I do not remember that there was. As I have previously testified, I had remarked, without having a definite idea myself, that I supposed all the expenses incurred, meaning my own expenses and the expenses of Mr. Stevens's party, and Colonel Abell's party, and others, would amount to some $12,000 or $15,000—perhaps $15,000.

Question. I remember that you have stated that.

Answer. Nothing was said, only this amount may have been mentioned; but I cannot say whether it was or not, but that was the general idea of the matter.

Question. That was the general idea?

Answer. Yes, sir. I carefully avoided, in this conversation with Mr. CALDWELL, in regard to which I am testifying now and will testify further, making myself a party to this transaction. I regarded Mr. CALDWELL's course as highly dishonorable and untruthful.

Question. In reference to the postmaster?

Answer. Yes, sir; and therefore I was very cautious in what he said to me in reference to the other matter.

Question. Is that all you recollect of that conversation?

Answer. Yes, sir.

Question. When did you have the next one?

Answer. I do not remember. In fact, Mr. CALDWELL, in these calls which I made upon him in reference to the postmaster, mentioned the matter two or three times, that he had not fixed up the matter, but was going to do it—chiefly in the form of apology.

Question. That is the post-office matter?

Answer. No, sir; these other matters; and whenever I went to see him in reference to the post-office matter, he seemed anxious to introduce the other matter, on frequent occasions. I avoided it as much as possible, making the same general reply I have already stated.

Question. You say he said to you on several other occasions that he would do it?

Answer. Yes, sir; that he would fix the matter up with Stevens.

Question. Have you had any other interviews with him on that subject?

Answer. Yes, sir; I went to see him at his rooms. The interview that I distinctly recollect, that made the most impression on my mind, occurred at his room, I think on F street, somewhere near the Ebbitt House, if I remember aright.

Question. When?

Answer. Whether it was in the spring, or at the session called to ratify the Alabama treaty, I cannot remember, but one or the other. I have located the place wrongly, and I will ask to correct in regard to F street. What is the street passing the Arlington Hotel?

Mr. ANTHONY. That is H street.

The CHAIRMAN. Now begin and state where your next conversation with him was in regard to this matter.

Answer. The next conversation I had with him was at his rooms on H street, near the Arlington Hotel. I had met him at the Capitol, and he remarked to me that he was going away and that he would like to have me call and see him. My recollection now is, since I have commenced to make the statement, that the Senate had adjourned and he was to leave for home. I called at his rooms and he was packing up his things, and I went into his back room, where he was engaged in packing his trunks. He commenced a conversation with me in reference to this Stevens business and the agreement which he had made with Stevens in reference to the payment of the expenses, and I replied to him in some general terms as I had before, being upon my guard, as I have said, and regarding the matter as an effort on his part to compromise me. He indulged in a good deal of conversation, apologized for not effecting the settlement with Stevens, and said to me that the election had cost him $75,000 in money, and that he was very poor in ready money.

Mark this language; I call the attention of the Senate to it. Mr. Clarke swears positively that he had this interview with Mr. CALDWELL on F street, but afterward he changes it to another street, in which Mr. CALDWELL said he would fix up this Stevens matter; that he would pay the money; and he goes on further in this same conversation and speaks of the cost of the election. He states that Mr. CALDWELL told him that his (CALDWELL's) election had cost him $75,000. The reason I call attention to this testimony is that I want now to refer you to other testimony of Mr. Clarke. Mark you, he says this conversation took place (in which the cost of Mr. CALDWELL's election was stated by him, and in which Mr. CALDWELL proposed to fix up these twelve or fifteen thousand dollars with him) at the session of the Senate, either in the spring or at the time of the ratification of the Alabama treaty, which took place in May, 1871.

In January and February, 1872, the Kansas legislature investigated this matter at Topeka. On the 31st of January, 1872, Mr. Clarke—this honorable Mr. Sidney Clarke—after stating time and again, in the testimony before our committee, that he had conversed with Mr. CALDWELL, that he agreed to pay this amount, and that his election had cost him $75,000, testified before the Kansas committee as follows:

Question. Do you know whether or not, in that contest, any money or other valuable considerations were offered or used by Mr. CALDWELL or his friends to secure votes for Mr. CALDWELL?

Answer. I know it only as it was communicated to me by other persons.

Question. Well, sir, by whom were such facts communicated to you?

Answer. On the day following the election, just about as I was leaving the Tefft House at Topeka, to proceed to my home at Lawrence, I was met, I think in the hall, between the room that I occupied and the office, by four gentlemen, whose names, as near as I can recollect, are G. W. Wood, member of the house of representatives from Cherokee; William Peckham, member of the house of representatives from Douglas County; Mr. Rucker, from the Cherokee Neutral Lands, and by Dr. O'Connor, from Baxter Springs. One of these gentlemen, I don't remember which, handed to me a written instrument, setting forth in substance that Mr. G. W. Wood had been offered a sum of money to vote for Mr. CALDWELL. I think I had packed up my trunk to leave the city; was in a great hurry; remarked to the gentlemen that I was about leaving town; that it was a matter that I knew nothing about, and handed back the paper.

Question. Did you receive such or similar information from any other persons?

Answer. Yes, sir.

Question. From what other persons?

Answer. From Mr. T. L. Bond, member of the house of representatives from Montgomery County.

Question. Any other?

Answer. I don't remember any other at this time.

He states in his Kansas testimony, and reiterates it, that these parties, giving their names, told him that money was used; but he never intimates there that Mr. CALDWELL said it cost him $75,000, or that Mr. CALDWELL had agreed with him to pay $15,000, or that Mr. CALDWELL had agreed with anybody for corrupt purposes to pay this money; but he testifies before that committee that this is all he knows about it, and he gives the names; and now what follows? Of the very persons who were named by Mr. Clarke three were called on the witness-stand before our committee, and all three testified that they never had any such conversation with this honorable Sidney Clarke. The fourth was not obtained, but three out of the four swear positively that Mr. Clarke has sworn falsely in his statement; and yet when Mr. Clarke comes charged before this committee with a letter in his pocket to prejudice the committee, with blood in his eye, against this man, and attempts to blackmail him, and there swears to every fact that he thinks can possibly convict him, yet before the Kansas legislature, long after he should have had these conversations with Mr. CALDWELL, he denies that he knows anything about it, except what these men, naming them, have told him; and these men all come forward and say that he told a positive falsehood. This is the character of the testimony of the honorable Sidney Clarke, and this is the kind of testimony on which this Senator must be convicted—the testimony of a man who is contradicted by three men as honorable as he is, and when he himself swears contrary to what he swore before the Kansas legislature after these things had transpired and after these conversations should have occurred. But, forsooth, Mr. Clarke must be believed. Why? Because he swore against this accused Senator; but these men who swore in his favor have all committed perjury. Mr. Clarke is an honorable man!

On pages 22 and 23 you will find that Mr. Clarke testifies, in answer to questions put by Mr. Trumbull, as follows:

Question. This is for the purpose of furnishing the committee with means to get at the fact?

Answer. Yes, sir. I have frequently had conversation with Major T. J. Anderson, of the Kansas Pacific Railroad, in reference to the subject.

Question. Was he one of the persons you named as being present at the election?

Answer. Yes, sir.

Question. Was he the agent of the road there at that time?

Answer. Yes, sir.

Question. He made statements to you to the same effect?

Answer. Yes, sir.

Question. That money had been improperly used?

Answer. Yes, sir; and that he had a personal knowledge of the matter and had acted in the capacity of disbursing money.

There is Mr. Clarke's statement on pages 22 and 23, that Thomas J. Anderson, agent of the Kansas Pacific Railroad Company, was there at the time, told him that he used money, and that he was the agent for that purpose. Well, now, suppose we turn to Mr. Anderson's statement, on page 71, and examine what he says for a few minutes:

Question. State, Mr. Anderson, to this committee what you know, if anything, in regard to the use of money or other corrupt means to procure votes for Mr. CALDWELL for the Senate, either upon the part of Mr. CALDWELL or any of his friends.

Now listen to Mr. Anderson:

Answer. I know of no money being used to purchase votes, directly or indirectly

Question. You know of no money used?

Answer. No money. I expended some money as the agent of the road in our own legislative matters in dining and wining members, and so on, which is usual, I believe.

Question. You say you know of no money being expended in connection with Mr. CALDWELL's election in the way I speak of?

Answer. No, sir.

Question. I will ask if you were present at one time at an interview between Mr. Carson and Mr. Crocker, a member of the legislature from Linn County?

Answer. I was interviewed by Mr. Carson; Mr. Crocker I do not know. I might possibly have spoken to Mr. Crocker during the session, as I did to all the members, probably, at some time during the session. Personally I do not know him, and never had any conversation with him on that subject.

This is Mr. Thomas J. Anderson, the agent of the railroad, who, the honorable Sidney Clarke swears, told him he was disbursing agent for Mr. CALDWELL and used money, positively swearing that he did not even know of any money being used, directly or indirectly, for such purpose.

Mr. MORTON. Allow me to ask a question.

Mr. LOGAN. Certainly.

Mr. MORTON. I ask the Senator from Illinois if he did not agree in the committee with the rest of us that this man Anderson's testimony was perjury throughout, and if he did not agree to the passage as put in the report to that effect, which was passed upon, but which I afterward struck out, as I thought it was harsh to put it into a report, that this man Anderson's testimony was perjury throughout. I ask my friend if he did not agree to that distinctly.

Mr. LOGAN. Mr. President, this is the most peculiar way of prosecuting a man that I ever heard of. Has it come to this, that a Senator will stand in this chamber and demand what a man may have said out of doors, or anywhere else, in order to ruin a man who sits here? What I have read is the evidence of a man who was testifying, and more than that, I will answer the Senator from Indiana, that Mr. Anderson bore himself more like a man than any person who was there pursuing Mr. CALDWELL. I say further, that Thomas J. Anderson, upon the stand, showed himself a cool, deliberate, self-possessed, sensible man, and you cannot say that of your honorable Sidney Clarke. Now, I will say to my friend from Indiana, who is so indignant, and desires to lug in trash and everything else that I would spurn the idea of trying to bring forward against the character of a man, that this is the sworn testimony, and there was no witness to contradict him, and not a man could be put on the stand who would swear that he would not believe him under oath. But the Senator's honorable friend, whom he dilated upon so profusely the other day, the mayor of Leavenworth, was contradicted and impeached by competent testimony; a man who had been tried for murder; a man who had led a mob and tore up the railroad of that man whom he is persecuting. Yet the Senator held him up before this Senate as an honorable gentleman.

Sir, I say to the Senate that this testimony appears upon the record, and it impeaches the evidence of these honorable gentlemen; hence it would be a sort of fancy sketch for some of us to come in here and say, "Well, we did not believe him when he swore that." How could you disbelieve him? He was not impeached; he did not contradict himself; he did not act in a manner to show that he was alarmed; he did not exhibit any trepidation; he did not exhibit the signs of a man who was committing perjury, and no man will say that he did; but yet you want me to say he was a perjured man. That is exactly what I have refused to say. That is exactly what I refuse to say here to-day. I will not say that a man perjures himself unless the testimony shows him to be contradicted, and then I leave it for the Senate to judge as to whether his testimony is worthy of belief.

But this witness contradicts the honorable Sidney Clarke. There is the sensitive point. His honor must not be attacked. The honor of a Senator may be trampled under foot, but you must preserve with especial sacredness the honor of the honorable Sidney Clarke!

The honorable Sidney Clarke, on page 24, swears that Len. T. Smith said that they were bound to have this election if it cost them a quarter of a million dollars. This is said by this honorable ex-member of Congress. Now, who is Len. Smith? Is Len. Smith a disreputable man? He is a man who has always stood high in Kansas; he is a business man. He is a wealthy man, it is true, and my friend intimated the other day that this was the trial of a millionaire, and therefore he must be convicted anyhow. I am free to confess that Mr. Smith happens to be a man of some wealth and is considered an honorable man in Kansas, and a man of great business capacity. No man has ever impeached his veracity; no man has ever impeached his integrity. Even the honorable Governor Carney, in his testimony, swore that Len. Smith was an honorable man; but Sidney Clarke says he said he intended to have the election if it cost him $250,000.

Now, let us see what Len. Smith said. Mr. Smith was recalled (on page 429) and questioned as follows:

Have you ever, at any place, in conversation with Mr. CALDWELL——

Mark, Mr. Clarke swore that this statement was made, not to him directly, but that Mr. Smith and Mr. CALDWELL said that they would have the election if it cost $250,000. Now, Mr. Smith makes this statement:

Question. Have you ever, at any place, in conversation with Mr. CALDWELL and Governor Carney, said in substance that you were bound to have the Senatorship, if it cost $250,000, or made any such remark?

Answer. No, sir; I never made any such remark in the presence of any one.

Question. Did you at the First National Bank at Leavenworth, or in Topeka?

Answer. No, sir.

He swears positively that he never made any such remark to this man or anybody else; and yet the honorable Mr. Clarke swears that he and Mr. CALDWELL said this. Mr. Len. Smith swears he did not say it. Mr. CALDWELL says that no such conversation ever occurred. There is the statement of Mr. CALDWELL, the Senator; there is the statement of Mr. Len. Smith sworn to, palpably contradicting the statement of Mr. Clarke in reference to this particular fact. As I said in the commencement of the examination of this testimony, every material fact sworn to by a witness against Mr. CALDWELL has been contradicted by from two to four witnesses of better reputation than the men who swore to it.

Now, I want to call attention to another little fact in reference to the honorable Sidney Clarke. The honorable Sidney Clarke swears, on page 291, and Senators will see the animus of this gentleman:

Question. Were you actively instrumental in bringing about the investigation that occurred in Topeka in January, 1872?

Answer. Well, sir, I have always been in favor of having this matter investigated by the legislature and the Senate.

Question. You were actively promoting that object?

Answer. Yes, sir. I published a card in the Topeka *Commonwealth* addressed to the people of Kansas, inviting, so far as I was concerned, the fullest and freest investigation into the whole matter.

Question. Do you know Mr. Nathan Cree?

Answer. Yes, sir.

Question. Did you furnish him with a memorandum of the persons who had been bought, or supposed to have been bought, or whose votes had been bought, together with the names of persons by whom that could be proven?

Answer. I had two or three conversations with Mr. Cree. He was then editor of the *Standard*, published in Lawrence, where I reside. I had conversations with him, in which I urged the propriety of having these transactions investigated, and spoke to him of some members of the legislature in reference to which testimony has been submitted here.

There Mr. Clarke testifies in reference to getting it up; but, mark you, he says he spoke to Mr. Cree, the editor of a Lawrence paper, suggesting it to him, and Mr. Cree comes forward and swears positively that Mr. Clarke with his own hand wrote out a list of names, quite a number, and gave them to him to publish in his paper, stating the fact to be that they were all bribed, and he handed it to Mr. Cree to publish, and it was published. And yet Mr. Clarke, in his own testimony, cannot name a solitary man; but he himself was the man who went to the newspaper editor and gave the names and had the publication made, and had the charge first made in Kansas, that certain men—naming them, pointing them out on the journal giving the list—were bribed. Yet he is an honorable gentleman, and he must not be disputed! The facts show that this man was the promoter of the investigation; that he was the man who first made these charges; that after making the charges, and giving the names, and putting himself upon the record in the manner in which he did, he necessarily, in order to sustain his statement, must come forward and, when sworn, give at least some semblance of truth to what he had stated and published before the people of Kansas.

Mr. President, let me now call your attention to the sworn statement of Mr. Sidney Clarke before the Kansas legislature on this very same question. As I read the testimony, he went to Mr. Cree and gave him, in his own handwriting, the names of the members of the legislature who were bribed, and Mr. Cree published them in his paper, as Mr. Cree himself swears. Now let us see what Mr. Clarke swore before the Kansas legislature at Topeka. On page 297 of the Kansas investigation you find this:

Question. Did you or did you not give said N. Cree names of several members of the legislature of 1871, among which were the name of Senator Wood, as having voted corruptly in the senatorial election of 1871?

Answer. I gave him no list, but I talked with him about it as I would with any other person.

This is what Mr. Clarke swears before the Kansas legislature shortly after this thing transpired; that he talked with Mr. Cree as he would with any other person and gave him no list of persons; and he comes before our committee and admits that he pointed out on the journal the names of members of the legislature, but Mr. Cree comes forward and swears that Mr. Clarke, with his own hand, wrote the names and gave him the list. In a few weeks after the thing should have occurred, and in the Topeka investigation, he swears he never did any such thing, and he comes here and repeats it; and this is the honorable Sidney Clarke, in whom there is no guile!

We asked Mr. Sidney Clarke why he did not testify before the Kansas Topeka investigating committee the same as he testified before our committee—that Mr. CALDWELL told him it cost him $75,000—and I will read you his answer to show why he did not tell it. On page 294 he is asked by Mr. Crozier:

Question. Before you testified in that examination—

Speaking of the Topeka examination—

were you sworn to testify the truth, the whole truth, and nothing but the truth?

Answer. I don't remember the form. I think that very similar.

Question. Did you omit to state then that Mr. CALDWELL had said to you that his election had cost him $75,000, for the reason that you considered Mr. Snoddy unfair?

Mr. Snoddy was chairman of the committee, a man who voted persistently against Mr. CALDWELL.

Answer. That was partially the reason, but not entirely. The investigation at Topeka was conducted in such a way that the witnesses were refused by Mr. Snoddy to be allowed to answer except such questions as he proposed to them.

Now he says the reason why he did not testify at the Topeka investigation that Mr. CALDWELL told him he had paid $75,000, was that the investigation was unfair and Mr. Snoddy did not allow him to answer any questions except such as Snoddy put him. Now let me read the questions in the Topeka investigation, and see how that is. Speaking about his information in regard to money and expenses:

Question. From whom did you receive the information?

The question is a fair one. He goes on and gives names, as heretofore, and finally he is asked:

From any other person?

And he answers:

I do not remember any other person at this time.

There is the answer. Being asked if he received information about expenses at the legislature from any person, he gives the names of a few. Then he is asked, "From any other person?" and he answers, "No, sir." Then he comes here and swears that the reason he did not tell it there was, that the investigation was unfair and the questions were not put fairly, and he was only permitted to answer such questions as were asked. There he was asked the direct question and denied it, and yet this is his excuse.

The next witness the Senator from Indiana relies upon—and we only disagree so far as our theories are concerned about this testimony; he thinks one side of it is fairer than the other, and I am willing to take it altogether; the next witness that my friend relies on—is a gentleman by the name of Spriggs. Mr. Spriggs was said by my friend to be a highly respectable gentleman, formerly State treasurer of Kansas, a man that everybody believed. Now, whether everybody believes Mr. Spriggs or not, is a question for the Senate to determine when we get through his testimony; and I ask special attention to the testimony of this highly respectable gentleman, formerly State treasurer of Kansas. I do not think a man becomes respectable merely because he happens to have been treasurer of some State or of some county. I know it is not in the evidence, but perhaps I am about as well acquainted with the history of some of these gentlemen in Kansas as my friend from Indiana. I live as close to where they are, and know about as much in regard to them, as does my friend from Indiana. I happen to know that this respectable treasurer of his, of whom he thinks so much, was subjected to a very severe investigation of his conduct while he was treasurer in Kansas, and that he is not considered so highly estimable a gentleman there as the Senator would have him considered here. Still, that cuts no figure in the case. Now let us take the testimony of this highly respectable gentleman, and put our estimate upon him from his own sworn statements. Let us see what they are. I propose to examine Mr. Spriggs for a short while, and see how much weight he is entitled to. He is called and examined:

Question. Where do you reside?
Answer. I reside at Garnett, Kansas.
Question. Were you at Topeka during the senatorial election which we are investigating?
Answer. Yes, sir.
Question. In what capacity and for what purpose were you there?
Answer. Well, I was a private citizen. I had no official capacity whatever.

He goes on and tells that he went there a friend of Mr. Carney. In answer to the question "Were they friends of Mr. CALDWELL or not?" he says:

Answer. I believe some of them voted for him afterward. They did not say there whether they were friendly or unfriendly. After they had retired Mr. George Smith said that he was negotiating with these gentlemen for their votes and Mr. C. B. Butler; he said his house had a note of $850 against Mr. Butler. Mr. Smith had been a wholesale merchant in Leavenworth, and he said their house had a note of $850 on Mr. Butler, and he had to surrender that note in order to get Mr. Butler to vote for Mr. CALDWELL.

That is the testimony of Mr. Spriggs. He swears that Mr. George Smith told him that he, George Smith, had to release a note of $850 that his house, a mercantile firm in Leavenworth, held against Mr. Butler in order to get Butler's vote. Who is George Smith? George Smith is now the treasurer of Leavenworth County, elected since this senatorial election. So there is one treasurer against another treasurer. What does George Smith swear? You will find by turning to his testimony, on page 330, that George Smith swears that he never had any such conversation with Mr. Spriggs, or with any other man, and that he never did, directly or indirectly, purchase, bribe, or attempt to purchase or bribe, a solitary member of the legislature of Kansas, and that Mr. Butler was never indebted to the firm. Then Mr. Butler is called, the man to whom Mr. Spriggs swears $850 was given to secure his vote for CALDWELL. Mr. Butler comes forward and swears that he never owed any such note; that he never owed the firm a cent, and that the whole thing is false. Mr. Spriggs, the honorable treasurer of Kansas, swears that George Smith, a reputable citizen, told him he was to give Butler a note for $850 which their firm held against him, and George Smith and Butler both come up and swear that no such note ever existed, and that no such conversation ever occurred.

Senators, I ask you, as honest men, on the reputation given to Mr. Spriggs by my friend from Indiana, whether you are to believe that statement, and to believe that Butler was bribed by CALDWELL for $850, when two honorable gentlemen swear that no such conversation ever occurred, and that no such note ever existed. In God's name, I ask you, as honorable men, if you are to be called upon to convict a man upon such statements as that by merely saying that the man who makes them has been treasurer of Kansas, and, therefore, must be a respectable man. That is all there is to it. He happened to be treasurer once, and therefore you must believe him!

But that is not all of Mr. Spriggs. I am not through with him yet. You will find on page 48 of the testimony that Mr. Spriggs swears that a committee was organized at Topeka, consisting of "Governor Carney, Governor Osborn, Len. T. Smith, Frank Drenning, and myself"—that is his language. Then he was asked:

Question. Was George Smith a member of it?
Answer. No, sir; he was not a member of that committee.
Question. Did that committee have a meeting?
Answer. We had one, two, or three meetings every day. We had two rooms.
Question. Did Mr. George Smith come to make a statement to you of these negotiations; was he reporting to you as a member of the committee?
Answer. No, sir; I do not suppose he was. I do not know why he came to do it. He knew I was one of the committee; but it was not at the committee-rooms, it was at the hotel he had this conversation with me.

Mr. Spriggs goes on and testifies that they organized a committee consisting of these members: Mr. Osborn, Mr. Carney, Len. T. Smith, Frank Drenning, and himself; and he testifies that that committee received reports; that Mr. Len. T. Smith would report that such a man's vote was a little too high, but after awhile he would come down; that they could get him for less. Now, I wish to call the attention of the Senate especially to this particular fact stated by this man Spriggs.

Mr. STEWART. I should like to inquire of the Senator, right in that connection, whether Spriggs was one of the committee that was operating to promote CALDWELL'S election?

Mr. LOGAN. That is the man.

Mr. STEWART. And he is another one that has turned state's evidence?

Mr. LOGAN. Yes, sir; I will state the facts, so that Senators can find them just as I state them. Mr. Spriggs swears, on page 48, that Governor Carney, Governor Osborn, Len. T. Smith, Frank Drenning, and himself were a committee organized to promote CALDWELL'S election, and that reports were made to them as to the price of votes, and that is where Mr. Spriggs got his information about this $850; that at this place this man, George Smith, told him of the fact.

Let me call the attention of the Senate for one moment to the testimony of this honorable gentleman, Mr. Spriggs. My friend, the Senator from Indiana, wants you to believe, upon the testimony of Mr. Spriggs, that there was such a committee. Mr. Len. T. Smith comes forward and swears that there never was any such committee organized. Frank Drenning comes forward and swears that no such committee ever existed. Mr. CALDWELL states that no such committee ever existed. Every man who was called swears that no such thing ever occurred; and yet he is contradicted by every man he mentioned belonging to the committee, all of whom swear that his statement was false; still the Senate is asked to believe that his statement is true.

That is the character of the testimony we have here, and that is the witness. I could tell the secret of this action of Mr. Spriggs, but I will not do it. It would be no testimony. But the idea that we shall be asked to condemn a man to everlasting infamy, to brand him as Cain was branded and marked to go out before the earth to be scoffed at by everybody; that his children may be marked in after times by such testimony as was adduced before this committee against this unfortunate man, because he happened not to be so well versed in the arts of men as others are! I say pause long before you perpetrate such an act as this. Why, sir, you could not, in any State, convict a man before a jury for the smallest offense, on such testimony as this, no matter whether his character was good or bad. There is not a court on earth but would instruct the jury that the evidence was conflicting, and therefore of doubtful character.

Mr. Spriggs also swears that T. J. Anderson told him that he had given a thousand dollars for Mr. Crocker's vote for CALDWELL. What does Mr. Anderson say? Mr. Anderson was called on the stand, and you will find his testimony commencing at the bottom of page 70.

On page 71 you will find the following statement by him, to which I call the attention of the Senate:

Question. State, Mr. Anderson, to this committee what you know, if anything, in regard to the use of money or other corrupt means to procure votes for Mr. CALDWELL for the Senate, either upon the part of Mr. CALDWELL or any of his friends.
Answer. I know of no money being used to purchase votes directly or indirectly.
Question. You know of no money used?
Answer. No money. I expended some money as the agent of the road in our own legislative matters, in dining and wining members, and so on, which is usual, I believe.

I read that awhile ago. Right in this connection, before I go further, I desire to call attention to one point made the other day by my friend, the Senator from Indiana. He exhibited a great deal of anxiety about a ten thousand dollar check that was drawn by Mr. Anderson in favor of the attorney of the Kansas Pacific Railroad. Mr. Anderson states in his testimony that that money was drawn for taxes and for other purposes, but that not one dollar of it was used for the benefit of Mr. CALDWELL. Mr. Anderson does say that that road required legislation from that legislature, and that he used money in buying wine and in giving dinners to the members of the legislature and other people. That accounts for the money which my friend from Indiana thinks, of course, must have been used for CALDWELL, although there is not one scintilla of testimony to show that one dollar of it was ever used in his interest. If there is, I do not remember it.

Mr. MORTON. Does my friend forget that Governor Carney testified positively that Len. T. Smith told him two days before the election that he had just received $10,000 from the Kansas Pacific Railroad Company, and that he was now in funds again, speaking of the conduct of the canvass? That is the positive testimony of Governor Carney.

Mr. LOGAN. No, sir; I do not forget that Governor Carney swore that; neither do I forget that Len. Smith swore that Governor Carney did not tell the truth.

Mr. MORTON. So far as Mr. Len. T. Smith is concerned, my friend, I presume, does not forget that after we had examined him for two hours, and he had testified over and over again that he knew of but the use of $7,000 that had been paid to Mr. Carney himself, he dropped a remark which was seized on by the committee, and being pressed upon it, he then revealed the $15,000 transaction. Right in the face of what he had testified to a dozen times, that the $7,000 was all he knew about, he revealed the $15,000 transaction, and remarked in his confusion that he had not intended to tell about that if he could help it, and then went on to swear to a state of facts wholly inconsistent with the idea that Mr. Carney had got the $7,000.

Mr. LOGAN. Well, Mr. President, I was not particularly discussing Mr. Carney's testimony. I shall discuss it, however, before I conclude, to the satisfaction of the Senator, for I propose to hold on to that for awhile.

Mr. STEWART. I should like to hear the Senator from Illinois as to the value of the testimony of a witness who acknowledges that he blackmailed a candidate for the Senate.

Mr. LOGAN. It is no answer for the Senator from Indiana to get up here and attack Mr. Len. Smith. I am talking about the testimony of two men compared together; and when he speaks about the $10,000, I do say, and I defy contradiction, there is not one scintilla of testimony here that shows that one dollar of that money ever went to purchase a vote or to influence a vote in that legislature. Undoubtedly there is a fruitful imagination at work in this case that can fancy that money was used when there is no testimony whatever that it was used, just as though you were to say that because a man draws money to-day, he must necessarily use it for corrupt purposes. We are not required to come to a conclusion of that kind; we are not expected to do so unless there is testimony upon which to base it.

But I was speaking of Mr. Spriggs's statement about Mr. Anderson having made this remark, and have shown you that Mr. Anderson says he never made any such statement; that he never used a dollar in the election; he knew of no money whatever being used, and never said any such thing to Mr. Spriggs or to anybody else. I am therefore putting Mr. Spriggs in opposition to other witnesses who have contradicted him. Now, when Mr. Spriggs is held up as being a very honorable man, why should not Mr. Anderson be held up as being equally honorable? I have said that I could reveal the secret workings of this thing from Mr. Spriggs's own pen, but I refuse to do it, because it is not testimony. I did not know it in time, or I would have made it testimony.

Mr. Anderson testifies as follows:

Question. I will ask if you were present at one time at an interview between Mr. Carson and Mr. Crocker, a member of the legislature from Linn County?
Answer. I was interviewed by Mr. Carson; Mr. Crocker I do not know. I might possibly have spoken to Mr. Crocker during the session, as I did to all the members, probably, at some time during the session. Personally I do not know him, and never had any conversation with him on that subject.
Question. Did you make any arrangement with Mr. Carson by which he was to procure the vote of Mr. Crocker for Mr. CALDWELL?
Answer. No, sir.
Question. You state that unqualifiedly?
Answer. I state it unqualifiedly and most positively.

Again Mr. Anderson was asked:

Question. Do you know Mr. Spriggs?
Answer. I do.
Question. Did you ever have a conversation with him in regard to some money which was in Mr. Carson's hands, which had been paid back to him by Mr. Crocker?
Answer. I think not.
Question. Are you sure of it?
Answer. I am very positive.

There is the language of Mr. Anderson. Spriggs swears further that Frank Drenning had put $2,000 for votes in the treasury of a certain county in Kansas. Mr. Spriggs says he understood that to be so; that is to say, somebody told his aunt, and his aunt told her niece, and her niece told Mr. Spriggs's nephew, and Mr. Spriggs's nephew told Mr. Spriggs that Mr. Drenning had placed $2,000 in the county treasury to pay for the votes of the members from his county. What does Mr. Drenning say, (page 373?) In the first place, when Mr. Drenning's attention was called to the fact, by the Senator from Indiana, that Mr. Spriggs swore that he was a member of that committee, he testified as follows:

Question. What do you know about a committee of six in the interest of Mr. CALDWELL there?
Answer. Well, I didn't know there was any such thing as a committee. I didn't know of any being at Topeka.

That is the testimony of Mr. Drenning, a man who, Mr. Spriggs swears, was on the committee with him. What does Mr. Drenning swear in reference to the $2,000 question?

Question. Did you ever tell Mr. Spriggs substantially this: that you had put money in the hands of the treasurer, or in the treasury—the old treasury of Nemaha County—two thousand dollars, for the votes of members from that county?
Answer. I never told Mr. Spriggs any such thing.
Question. Or anything like it?
Answer. No, sir; nor anything like it, to him or any other person.

Mr. Spriggs testifies to conversations with four different men on that committee, and each one of those men comes here and swears positively that no such committee existed, and each one positively swears that he never had any conversation with Spriggs in reference to the matter he mentions; but yet we must believe Mr. Spriggs and disbelieve all these other men! Why? Because if you believe these men and disbelieve Mr. Spriggs, the Senator from Kansas goes aquit; if you believe Mr. Spriggs and disbelieve five other men, more honorable than he, then the Senator must be convicted. The desire to convict somebody comes up with such great force now that we must have a victim, and inasmuch as possibly, by the lapse of time, one has escaped, we must have another, and, therefore, testimony must be pressed to its utmost limit; it must be made strong when it is weak, and made weak when it is strong in his favor.

Now, Mr. President, digressing for a moment before I go on with the testimony, it is true that we are so constituted that the winds waft us to and fro, and when the breeze is blowing in the direction of the overthrow of some individual we naturally follow along in the gale; but I believe that the great God who made man loves men who have the courage to stand against this tempest of persecution, and who show their manhood by standing up for the right, that no man shall be destroyed unjustly by his fellow-men, if they can prevent it. So far as I am concerned, the tempest may howl; but before I will lend my aid to the persecution of a man whom I do not believe to be legally guilty of any offense for which he can be punished, as it is proposed to do here, I will, if necessary, throw myself into the breach, even at the risk of suffering from the weapons of reproach.

Now, returning to the line of argument, let us examine our friend Spriggs a little further. Mr. Drenning says Mr. Spriggs was mistaken. Of course Mr. Drenning does not say that Mr. Spriggs was willfully mistaken; but he was mistaken; no man can doubt that.

Mr. Spriggs, further on in his testimony, says that Len. T. Smith told him that he, Smith, said he offered Sears $2,500 for his vote, but could not give $5,000. Sears's price was $5,000, but Smith told Spriggs he had offered him (Sears) $2,500. Mr. Smith comes forward and says (on page 429) that he never made any such statement to Mr. Spriggs, nor to any other living man; and that, if he had made such a statement, it would have been untrue. What does Mr. Sears say, the very man whom Spriggs swears Smith said he had this conversation with, and who is not implicated by being bribed, nobody pretending that the money was given to him? He comes forward and testifies as follows:

Question. Do you know Mr. Len. T. Smith?
Answer. Yes, sir.
Question. What conversation, if any, did you have in the senatorial canvass in regard to the selling of your vote, with Mr. Smith?
Answer. I never interchanged a word with Mr. Smith during the entire senatorial contest upon the subject—nothing except to interchange the ordinary courtesies of the day.

There is the testimony of Len. T. Smith and the testimony of Mr. Sears, both positively and emphatically contradicting the testimony of Mr. Spriggs; therefore I repeat that the testimony of Mr. Clarke and of Mr. Spriggs, on every material point that they testify to, has been disputed by from two to four witnesses of better character than themselves.

Let us go further with Mr. Spriggs's testimony. He testifies that on Tuesday, precisely one week prior to the election in Topeka, he had a conversation with Mr. CALDWELL in Mr. CALDWELL'S own room. That he went to see Mr. CALDWELL, and Mr. CALDWELL told him that if he found any voters who wanted to sell their votes he should refer them to Len. Smith, but that if he should find a gentleman who would not sell his vote, but would take money for his expenses, to send him either to him (CALDWELL) or Len. T. Smith. Now, sir, mark this fact: Mr. Spriggs was asked the question, "Are you certain as to the time?" He replied, "If you will tell me when the election took place, then I will tell you the exact day." We then told him that the election took place on Tuesday the 24th. Said he, "Then I know positively that it was the Tuesday prior to the election." He stated that positively after fixing the time of the election. Now, sir, we have the testimony of three witnesses—the testimony of Len. T. Smith, the testimony of Mr. Legate, and the testimony of Dr. Thomas—as to the whereabouts of Mr. CALDWELL at that time. Mr. Spriggs, after we had told him that the election was on Tuesday the 24th, said, "Then I am positive that this was on the Tuesday prior to the election." Hence he fixed it on that day, which was the 17th of the month. Mr. Smith swears that Mr. CALDWELL left Topeka on the 13th, and remained in Leavenworth until the night of the 19th. Mr. Legate says that Mr. CALDWELL left Topeka on the 13th, and remained there until the night of the 18th, and came to Topeka on the two o'clock train on the night of the 18th. What does Dr. Thomas swear?

Question. Dr. Thomas, where do you reside?
Answer. In Leavenworth City.
Question. What is your business?
Answer. I am a practicing physician and surgeon.
Question. Do you know Mr. CALDWELL?
Answer. Yes, sir; very well.
Question. Do you know where Mr. CALDWELL was on the 17th January, 1871?
Answer. He was in his sick-chamber; sick.
Question. Where?
Answer. At his residence.
Question. Where?
Answer. In Leavenworth.
Question. You say he was in his sick-chamber?
Answer. Yes, sir; at his residence in Leavenworth.
Question. How long before and after January 17, 1871, was he at home?
Answer. Mr. CALDWELL was at home——
The CHAIRMAN. First, what day did the ballot take place?
Mr. CALDWELL. On Tuesday, the 24th.
By Mr. CROZIER:
Question. How long preceding the 17th and subsequently thereto was Mr. CALDWELL in Leavenworth?
Answer. To the best of my knowledge, from Saturday, 17th, to the following Monday, inclusive. He was in his sick-chamber at his residence in Leavenworth.
Question. Were you in his sick-chamber on the 18th?
Answer. I was.

Question. Was he there?
Answer. He was there.

He testifies that he prescribed for Mr. CALDWELL on that very day, and that that night he (CALDWELL) left for Topeka. There is not one scintilla of that testimony of Mr. Spriggs from beginning to end, that is material to this question, that has not been contradicted by the best character of evidence. So that this conversation between Mr. Spriggs and Mr. CALDWELL in which Spriggs swears that Mr. CALDWELL told him that if he (Spriggs) found men who wanted to sell their votes, to send them to him, (CALDWELL,) could not have taken place; it is not true in point of fact. It was an impossibility, because Mr. CALDWELL was in Leavenworth at the very moment that this man swears positively that he had this conversatian with him in his room at Topeka.

Now, Mr. President, we come to testimony that is very reliable—the testimony of a gentleman by the name of Carson. Perhaps you recollect him. My friend from Indiana thinks that a certain man by the name of Crocker was bribed because a man by the name of Carson testified that he got a thousand dollars. Let us see who Mr. Carson is. My friend, the Senator from Indiana, said to me the other day I did not believe some of these people, and that I must believe the statement of witnesses on their side. I am not going to ask my friend from Indiana if he believed Mr. Carson. I do not propose to defend this case in any such way as that. I do not think that is the legitimate way to argue the case—to ask somebody what he believes about this man or that; but let us have the facts. Mr. Carson says he was once a merchant; that he went up to Topeka, but that he did not have any particular business there. He was a good deal like a man who was once indicted for counterfeiting. The prosecution did not prove anything against him, but called up one of his neighbors, and asked him if he knew the character of the man. He said, certainly he did. "What is his occupation?" "Well," said he, "I do not know exactly; he is generally hammering around in the country." "What do you mean by 'hammering around'?" "Well, passing a few dollars of counterfeit money, and things of that sort." [Laughter.] I do not know anything about Mr. Carson or about what his occupation is; neither do I think any of the committee can tell from the testimony what it is, nor do I think anybody else can, except that every witness who was asked about him said he would not trust him with a penny, and would not believe anything he would say.

This man Carson swears that he went to Judge Crozier and asked Judge Crozier if he could sell thirteen votes. The judge told him that that was a matter he did not know anything about; he did not have anything to do with that kind of business. "Well," said he, "judge, if I had votes to sell, and if I was to sell them, could I take a receipt for them if I sold them?" This is the witness who comes here to prove that Mr. CALDWELL is a dishonest man! Carson testifies that Mr. Anderson paid Mr. Crocker a thousand dollars for his vote, but that after he paid Crocker the thousand dollars he would not vote for CALDWELL, and that after Crocker failed to vote for CALDWELL, Anderson told him to get the money back. Carson says he went to Crocker and made him pay back the money. We asked Carson, "What did you do with the money?" He said, "I kept it; I thought I was entitled to that myself." [Laughter.]

Now, what is the truth about it? Mr. Anderson comes forward and swears that he would not trust Carson with a penny, and there was not a witness on the stand who would have trusted him with a cent. Mr. Anderson swears that he never had any conversation with him on the subject; that the statement is wholly and totally false. Mr. Crocker, who was not in the State, hearing of the fact, publishes a card in which he denies the whole transaction, and asserts that the charge is false and villainously so; and Mr. Snoddy, another member whom this man mentioned—who was, I think, president of the senate, who opposed Mr. CALDWELL and did not vote for him, but was a candidate himself, though he received very few votes—asserts that it is totally and wholly false.

What else do we know about this man Carson—one of these honorable gentlemen who is persecuting Mr. CALDWELL? He came here, to Washington, I think, about a year ago, as his own testimony shows, stopping at a hotel in this city. A highly respectable gentleman from Kansas by the name of Captain Insley was also here at the same time. This man Carson, while here at that time, drew up an affidavit, in which he charged Mr. CALDWELL with having procured Crocker's vote for $1,000—the same charge he makes in his testimony. He did not swear to the affidavit, but went to Mr. Insley, a friend of Mr. CALDWELL, showed the affidavit to him, made him read it, and told him that he would publish that affidavit on CALDWELL unless CALDWELL paid him money, and requested Insley to go and tell CALDWELL so. Insley did tell CALDWELL so, and Mr. CALDWELL'S reply to Mr. Insley was, "Tell him to publish it if he wants to; it is a lie." This shows the character of this witness. He came here a year ago and undertook to blackmail Mr. CALDWELL, by threatening to publish an affidavit, and after Mr. CALDWELL told Mr. Insley that he would have nothing to do with Carson, that he had never seen him and did not know him, and could not point him out, yet this man, having failed to blackmail Mr. CALDWELL, failed to get money from him, told Mr. Insley that if he could not get money to pay his hotel bill he would "cut on that," as he called it, and go home without paying it. This is one of the witnesses brought here to persecute and prosecute men in this Senate-chamber. This is the kind of evidence we have here in this case, and the published testimony states every fact precisely as I have stated it.

The next witness who comes forward against Mr. CALDWELL is another highly respectable gentleman. My friend, the Senator from Indiana, said the other day in his remarks that no man who heard the testimony could fail to believe old man Chester Thomas. O, he was a saintly creature! He comes forward, and what does he testify? He admits that he offered to buy the vote of a Mr. Steele for $1,000, but at the same time he admits that he had no authority from anybody to make the offer. He admits that he did not have the money to give, and that he had never talked with anybody on the subject. We asked him why he made the offer. He said because he wanted to defeat Mr. Clarke, and he was willing to make any kind of promise to get a vote. This is the kind of bribery Mr. CALDWELL is guilty of. A man outside, that Mr. CALDWELL knew nothing whatever about, goes to a member, as he says, and offers him $1,000 for his vote. The member refused it, denounced him, and would have nothing to do with the offer; and Thomas swears he had no authority to make the offer and did not have any money to give. But who is our friend Thomas? We have read of a man by the name of Thomas who was a doubting man. This may not be a doubting man, but he is certainly a doubtful man. [Laughter.] I dislike to say these things, because the witnesses on the other side are all honorable gentlemen; but unfortunately Mr. Thomas was arrested by General Sheridan for stealing cattle in Texas; (I say nothing but what the record will bear me out in.) He sued General Sheridan for false imprisonment. The case was tried in Topeka, and General Sheridan proved the charge, and Thomas failed to get a cent for false imprisonment. General Sheridan proved that he had authority for and was justified in arresting Thomas; hence the general was excused. That is the honorable Mr. Thomas! That is the character of the men who come here to put down a Senator, and that is the character of testimony that Senators rely upon in order to destroy their fellow-Senators!

The next testimony that my friend from Indiana relies upon is the statement in regard to some checks that were given. He says that Dr. Morris drew a check on his own bank for $5,000. That is true. There was testimony that Dr. Morris drew a check for $5,000. Dr. Morris was at Topeka, and my friend from Indiana says that Dr. Morris was a friend to Mr. CALDWELL. That is also true. Is it to be presumed that Mr. CALDWELL'S friends do not engage in business the same as other people? Does my friend from Indiana trace a dollar of that $5,000 to anybody? Does he show that a dollar of it was ever expended in this election? Does he show that a dollar of it ever went into the hands of any member? Dr. Morris drew a check on his own bank for $5,000, and that is all we know about it, and that is all there is about it. He had a right to draw it, and what he did with the money nobody knows. He is a business man, and is it such an unusual thing, for a man engaged in business to draw a check on his own bank? Are we to presume that every time a man draws a check, he uses the money for corrupt purposes? If the presumption is that every time a member of Congress draws a check in the city of Washington, he uses the money for corrupt purposes, each one of us might be indicted, and tried for it, too. But the presumption is that a man is innocent; there is no presumption that he is going to commit a crime because of the fact that he draws a check. That proves nothing in the world, except that he drew that money. That is all you can make of it, and that is all there is to it.

But my friend argues that Mr. CALDWELL drew a check on some friend of his for $10,000; that there were some $40,000 passed back and forth, and he cannot tell anything about it, nor could anybody else; but because checks were drawn, therefore the money was used for corrupt purposes! My friend knows that in the examination of the bank-books from Leavenworth the evidence shows that there was nothing extraordinary in the use of checks during that month, either in Mr. Len. T. Smith's account or in Mr. CALDWELL'S account. Would it not be fair for him to say that? Why is it that you take the account of a man for a month and show he used a large amount of money, and do not take the account for the preceding month, or the succeeding month? The evidence shows that Mr. CALDWELL was largely engaged in railroading, in building a railroad, and that he had money deposited in Philadelphia, and at times drew upon Jay Cooke & Co., and at times upon other banks, sometimes one bank and then another, in order to prosecute his business, and the books show, and the testimony shows, that there was nothing irregular, nothing to create surprise or astonishment, in the amount of drafts drawn during that month; that it was merely in the ordinary course of business according to regular bank account; and yet there is a great deal made out of that. You might as well say to me, "Why, LOGAN, you drew $40,000 this month; what have you done with it? You must have used it for some corrupt purpose." You do not ask how much was required for my business; you do not state that last month I drew $40,000 also. For what? To prosecute my business. Is there anything extraordinary, then, in this month's drafts on the bank? That was just the condition of the business of Mr. CALDWELL; it was just the condition of Mr. Len. T. Smith's business; and Mr. Len. T. Smith's checks drawn at Topeka during that month were small in comparison with what they were the month before, as the books show; and yet we are asked to believe that it was all corrupt. You can drive any man out of this Senate-chamber if you will take that character of testimony, if you charge him with an improper use of money this month on account of the amount of his drafts, although he uses no more

than he ordinarily does in his business transactions. That seems to be a strange way of prosecuting men. The evidence showed that Mr. CALDWELL was largely engaged in business, and had been for years; that his deposits were large, and had been for years; that his drafts were large, and had been for years. Because he happened to be elected to the Senate, his business did not stop, but went on that month the same as any other month; and yet we are asked to say that the money which was used in his business that month must have been used for corrupt purposes. That is a strange process of reasoning, to me. I cannot understand it. It is not a process of reasoning that strikes my mind with a great deal of force, and yet it appears to have made a deep impression on some other minds.

Having spoken until three o'clock without concluding,

Mr. STEWART. The Senator from Illinois gives way that I may move that the Senate proceed to the consideration of executive business.

Mr. STOCKTON. I desire to say something to the Senate on this question, and I am obliged to leave here this evening at forty minutes past five to fulfill an engagement, and unless there is something particularly requiring an executive session, I should like to proceed now.

The PRESIDENT *pro tempore*. Does the Senator from Nevada withdraw his motion for the present?

Mr. STEWART. The Senator from Illinois is not through with his speech, and will not be for some time.

Mr. MORTON. I suggest that the Senator from New Jersey be allowed to go on now, and that the Senator from Illinois be permitted to conclude his speech to-morrow morning, if he desires to do so.

The PRESIDENT *pro tempore*. The Senator from Indiana suggests that the Senator from New Jersey be allowed to proceed now, and that the Senator from Illinois conclude his remarks to-morrow morning.

Mr. LOGAN. I have no objection to that.

Mr. STOCKTON. I would not ask that. I had no idea of interfering with the Senator from Illinois.

The PRESIDENT *pro tempore*. The Chair understands that the Senator from Illinois is quite willing to suspend his remarks at this point.

Mr. LOGAN. I am perfectly willing to give way to the Senator from New Jersey, if I am to be permitted to have the floor to-morrow morning.

RAILROAD LANDS OR BONDS.

Mr. CONKLING. Before the Senator from New Jersey proceeds, I ask leave to offer the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire and report, at the next December session of the Senate, whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignee of such company, will be entitled to lands or bonds for any road which such company may hereafter construct; and that until said committee shall report, the executive officers of the Government are requested to issue no bonds or patent certificates that may be claimed for roads constructed and reported after this date.

The resolution was considered by unanimous consent and agreed to.

ELECTION OF SENATOR CALDWELL.

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

Mr. STOCKTON. Mr. President, it being perfectly understood that I proceed by the acquiescence and the desire of the Senator from Illinois, it will give me great pleasure to present to the Senate the few legal propositions that I desire to present in this case. I have nothing to say in reference to the facts of the case, save this: that volume of testimony is of no earthly use except, perhaps, to show to the country the condition of things that exists in some of our States in reference to the election of Senators. So far as this question is concerned, in the limited view that I take of it, so far as it comes before us as judges, all the evidence in the case has no bearing at all upon the judgment which we are called upon to give.

It may not be inappropriate to say that no graver case was ever presented to the Senate of the United States. It is a question that involves the very foundations of our Government. It is a question, the proper decision of which may be more important to us and our posterity than any question that has come before Congress for years. I am not in favor, and never have been, of obliterating all the landmarks of our fathers; and I know there are gentlemen in this chamber, and on the other side of the chamber, who feel as I do, that the time has come to stop, to pause, and look well, before, for any party purpose (which I do not charge in this case) or any other purpose, we break down any more of the land-marks which our fathers set up to protect the people in their rights and the States in theirs.

In this report I find the following:

It is testified by Mr. Len. T. Smith, a former business partner of Mr. CALDWELL, his active friend at the time of his election and during this investigation, that he made an agreement with Thomas Carney, of Leavenworth, by which, in consideration that Mr. Carney should not be a candidate for United States Senator before the legislature of Kansas, and should give his influence and support for Mr. CALDWELL, Mr. CALDWELL should pay him the sum of $15,000, for which amount notes were given, and afterward paid.

I find, turning to another page:

The testimony of Mr. Spriggs is very full, and shows that the canvass of Mr. CALDWELL was thoroughly corrupt, and that money was the chief argument relied upon.

I think that that much of the testimony is all that I need to refer to; those two points cover the whole ground. I take it, the whole mass of this testimony is idle and worthless. If I can demur to those two points, if my duty as a judge obliges me to demur to these propositions, I cannot permit myself to examine the testimony further before coming to a decision; if, in other words, the Senate of the United States, who, we are told, are the judges of the qualifications, elections, and returns of their members, have no cognizance of this case, if the testimony be all true, then I think it were better not to waste more time in examining this testimony.

Mr. President, the views that I am submitting are presented hastily and without preparation, for I did not expect to be in the Senate to-day, but still they are not crude thoughts, although the language be so. Circumstances have occurred in my life which have made it my duty to examine these questions before, and my views of the constitutional points involved are not hastily formed, although they may be crudely expressed. The Constitution says:

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

I beg leave to ask the attention of the Senate to that word "chosen," selected, elected, *eligere*, chosen, the wish manifested, the choice of the legislatures of the States. That is where the power exists, and no man can ever take his seat honestly in this body, and no man can sit in this body, unless he is the choice, the wish of the legislature of his State. The first question that comes up, therefore, in every one of these cases is, is it the legislature of the State? and the next question is, did they *choose*? and further than that there is no question, and there never has been a question. In all the great debates that have taken place on matters of this kind, on this provision of the Constitution, arguments made by the ablest men that this country has produced, in which Mr. Bayard, and Mr. Clay, and Mr. Badger took part, the question always was this, and this only, was it the legislature, and did they choose? and there never was any other question. As to the matter of qualification, of course the reasons which disqualify a man, being given in the Constitution, were always plain and simple questions of age and citizenship.

It so happens that in this case we have no doubt that it was the legislature that elected. That position is not controverted.

In Mr. Harlan's case the majority of the two houses were gathered together without such resolutions as the State legislature required to bring them into joint meeting. They voted and elected Mr. Harlan, and he was unseated. Why? Because the Senate held that it was nothing but a mob; that where two bodies were required to act separately, and then to join, they must do that act as prescribed; that their meeting together as individuals, no matter if the time and place were such as were required, did not make them the legislature.

In the case that occurred from New Jersey, where the majority committed the power to a plurality to decide who should be the Senator, after a long discussion, after great debate, in a time of great political excitement, it was held that the majority could not permit the plurality to decide, because they must have the legislature there.

These examples are sufficient for me to show you that the question in these cases always has been, was it the legislature? That question, I say, happily does not embarrass us in this case. It was doubted in early times whether these elections could take place as other than legislative acts—whether they could be made in joint meeting at all. The earliest commentators and the last commentators say that, if it were not for precedent to the contrary, it would even now be held that these elections should take place as legislative acts; that authority alone justifies an election in joint meeting. An examination of the customs of the different States shows that the manner of election was almost as varied as the number of the States themselves. Why was this? Because Congress had power to prescribe the time and manner of holding elections for Senators and Representatives, but, in the absence of any prescription by Congress, each State was left to prescribe for itself. The method of electing members to the Continental Congress in my own State was the method by which I was elected when I was first sent to the Senate. The two houses assembled in joint meeting, and every joint meeting made its own rules for its own government, for the elections to be made by it. Congress, however, has since prescribed, as it was authorized by the Constitution to do, the time and manner of electing Senators; but until Congress did so prescribe, each State had a right to prescribe for itself, and the Senate could judge only whether the election had been according to the manner prescribed by the State. The Senate are not judges of the election, in the broad sense of the term. They never were made judges of the election in the sense contended for. There is no such power given to the Senate by the Constitution. They are judges of the time and the manner of the election; but when a man comes here with credentials from a State, if they are in form, the rule in old times was universal, to receive on the *prima-facie* evidence presented by his credentials. When, however, after the civil war, we adopted a new rule; when the relations of States became uncertain; when, to use the phrase of the Senator from Indiana, "we began to deal with States;" when the question arose as to whether States were in the Union or out of the Union, we began to refer credentials to committees. Now, you remember, we have prescribed by statute what the credentials are. On those credentials coming here, unless there is something to oppose the *prima-facie* case, unless there is something to show according to the modern doctrine that the State sending the member here is not in a healthy condition; or unless there is a charge of fraud on the face of the credentials themselves, the gentleman presenting them is admitted, of course. Then, how much further can we go? The time and the manner may be prescribed by the States in

the absence of prescription by Congress, but both are now prescribed by Congress. That which Congress could do, that which the States did do before Congress acted, that is the power and the sole control that this body has over the election, the sole subject of their judgment as judges of it.

Mr. MORTON. Will the Senator allow me to ask him a question?

Mr. STOCKTON. Certainly.

Mr. MORTON. I understood the Senator to say that the Senate was not the judge of the election.

Mr. STOCKTON. I am coming right to that point I will answer any inquiry that the Senator desires to put with great pleasure, but this question is the very point I am now coming to naturally in the course of my remarks.

Mr. MORTON. I only wish to know whether I understood the Senator correctly or not.

Mr. STOCKTON. That is the view I intend to present to the Senate. I stated it as broadly as I could, with the object of attracting the attention of the Senator from Indiana and other Senators to the proposition. I stated it as broadly as it can be stated, and if the very words may not be strictly correct—if too broadly stated—I am glad that its breadth has called attention to the view which I am trying to impress upon the Senate, to the fact that it is the manner and form of election alone which the Senate can consider, of which they are judges.

It will be recollected that, by section 3 of Article I, "the Senate of the United States shall be composed of two Senators from each State, *chosen by the legislature thereof*"—that is, *elected* by the legislature; and section 4 of the same article provides that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators;" and then, immediately after that, comes the clause, "Each House shall be the judge of the elections, returns, and qualifications of its own members." I know very well that the power of dealing with States has been stretched to a great extent under that clause of the Constitution which guarantees to each State a republican form of government. At the time the Constitution was adopted that phrase, "republican form of government," meant nothing whatever except that the Government should not be monarchical; and yet that clause has been used to stretch that word "republican" to do anything you pleased in the Southern States. Here is the word "elections." The Senator asks me whether I insist that we are not the judges of the elections of Senators. I say I do. The language is, "Each House shall be the judge of the elections, returns, and qualifications of its own members." The Senator is too good a lawyer to believe or to insist that he can take that single word "election" out of its connection, deprive it of the control which the first clause has over it, which says that the Senator shall be *chosen* by the legislature, and deprive it of the control over it of the clause immediately preceding, which says that "the times, places, and manner of holding elections for Senators shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the place of choosing Senators." Do not both these clauses control the power you have over the elections? How can the sovereign legislature of a State *choose* a Senator to be their representative here, if you at any moment, under the plea that you are the judges of the election, determine whether he is a proper person to be here? No, sir; on this pretense you may turn a man out to-morrow because he is a Roman Catholic, and the next day turn a man out because he is a Methodist, and the next day turn him out because he is disloyal. The word "choice" absolutely expresses the free will and expression of desire on the part of the legislature of the State.

That the words "chosen" and "elected" are used in the Constitution as synonyms is manifest from other clauses in the Constitution: "Who shall not when *elected* be an inhabitant of the State for which he shall be *chosen*." "The Senate shall *choose* their other officers, and also a president *pro tempore*." "Each House shall be the judge of the elections, returns, and qualifications of its own members." "No Senator or Representative shall, during the time for which he was *elected*." The House of Representatives shall be composed of members "chosen" every second year. No person shall be a Representative who shall not, when "*elected*," be an inhabitant of the State in which he shall be "*chosen*." The House of Representatives shall "*choose*" their Speaker. They mean no more; they can mean no less; and when you come to this clause, controlled by the two others, separating it from its context, and insisting that you are the judges of the election, and can go into details and inquire into the motives of the members who voted in the legislature, you destroy this frame of government beyond all question. Let this power be established, and the Government of our fathers exists no longer, the States are no longer represented; and, therefore, I say that if I have, by the bluntness of my proposition, called the attention of Senators to it, I have done well. We are not the judges of the election; it is not our business to inquire whether Mr. Carney was bought off for $15,000; it is not our business to inquire whether this gentleman corrupted the legislature of his State. The cases maintain this position. I know of no case that does not maintain it, and I think I have examined them all.

Mr. MORTON. Will the Senator allow me to ask him a question?

Mr. STOCKTON. Certainly.

Mr. MORTON. The Constitution provides that each House shall be the judge of the elections, returns, and qualifications of its own members. Here are three distinct matters in regard to which each House is to judge: first, whether the member returned has the qualifications required by the Constitution; second, whether the returns of the election are legal or in proper form, showing that he was elected by the proper legislature on the face of the returns; and, third, to judge of the election. Now, I want to know from the Senator from New Jersey what power is given to the Senate to judge of the election according to his view, aside from the other powers under the heads of qualifications and returns.

Mr. STOCKTON. I will answer the Senator again if he desires it; I have answered him, I think, in what I have already said; but I am still obliged to him for the question. The Senate have the power in the first place to examine the constitution of the State of Kansas and see if the body which sent this gentleman here was the legislature of Kansas, as the Senate did in Harlan's case. They have the *power*, as they did in the case from New Jersey, (against the righteousness of which decision I enter my solemn protest,) to examine whether there was a majority vote or whether a majority vote was required; and in that case they not only did examine it, but in all that long discussion there never was a person who doubted the authority of the Senate, under their power to examine into the "manner" of the election, to decide whether the "manner" pursued was a proper one. The manner unprescribed by rule is the manner prescribed by parliamentary law, which Mr. Cushing says is the majority vote, but, as he says also, the majority may provide that a less number or a greater number may determine any question, as when two-thirds are required and made necessary to do any particular act. The legislature of Kansas might have sent out a committee and pledged themselves by a majority that the report of that committee should be adopted, and that whoever that committee might report should be elected.

Mr. MORTON. If an interruption does not trouble my friend, I wish to call his attention to the fact that the power which he says the Senate may exercise in regard to the title of a member to his seat comes under the head of the return entirely. The power to judge of the return includes, of course, whether he has been elected by the legislature of the State. That is a distinct branch of inquiry, and so is the matter of qualification; but, in addition to these heads, we have the power also to examine as to the election, and I submit to my friend that if he reads the history of that clause as it went into the Constitution, it was intended to vest each House of Congress with the same power to examine into questions of election that the House of Commons had under the English constitution.

Mr. STOCKTON. I am afraid my learned and distinguished friend from Indiana is like another person whom too much learning made mad. If he would leave the English House of Commons and the English parliamentary law, and be governed by our own Constitution and the theory of our Government, I think he would be better able to arrive at a correct conclusion as to this question. I say most distinctly that the point I am now inquiring into has nothing whatever to do with the *returns*, and I can hardly see how a gentleman of the Senator's acute intellect and power of refining can fail to see the distinction between a return, which is nothing but the evidence of election, coming from the governor as the evidence of a Senator's title to his seat, and the election itself, which is the free choice of the legislature properly spoken.

Mr. President, must I go back to elementary principles of parliamentary law and say to you that the voice of that body when spoken in the manner prescribed by that body is the voice of all, of every individual member? When a vote is taken here *nemine contradicente*, it is the voice of every member of this body. When a vote is taken which requires two-thirds, and those two-thirds are obtained, the result is the vote of all. It is so declared by parliamentary law. When you get a majority it is the vote of all. When a minority are enabled to determine by a pre-ordained rule, that result is the vote of all. The standing committees of the Senate are required by the rules of the Senate to be voted for by ballot, and yet since I have been a member of the Senate there has never been a vote by ballot on any one occasion, but the result is the vote of all, and that, as Mr. Cushing says, is the voice of the body. So we speak, and so the legislature of Kansas speaks, and so alone can it speak.

In Harlan's case the two bodies composing the Iowa legislature assembled as a mob, and although there was a majority of the whole number of members present, they could not speak because they had no tongue. The legislature has but one tongue, and that is its own rules. The manner of the election may be controlled by Congress; but when Congress does not control the manner, each State does for itself. The manner includes the number of votes and the method of organizing. Now, as Congress has prescribed the manner, the election must be in accordance with the law of Congress, which matter is not here made at all a question. When the legislature speaks in accordance with the law in the manner prescribed by the law, it speaks absolute verity and truth, and you have no right to hear any other voice on that subject. The legislature of the State of Kansas are to choose the Senator. They have a right to a free choice. No other power has anything to say in their election. I say, too, to the Senator from Indiana that they have but one way to let us know what their choice is, and that is by the credentials they send here. When an attempt is made to go behind the credentials on the ground of fraud, this additional fact must be shown, that there was not an election, there was no choice; because if there was not an election, if there was no choice,

the credentials were a fraud. The words, as I have said before, are synonymous. The clause of the Constitution which lodges in the legislature the power to choose, winds up with the declaration that each House shall be the judge of the elections, returns, and qualifications of its members. The words "choose" and "election" are used as synonyms. Unless, therefore, you can establish by evidence that the legislature of Kansas did not choose Mr. CALDWELL, you are logically compelled to say that there is no case presented to the Senate for action.

I insist upon it that the examination into the motives of the individual voters is not only a violation of the Constitution, is not only a violation of all precedents, but is the most dangerous doctrine that ever was introduced into any parliamentary body in this country.

This doctrine I maintained when Mr. Revels presented himself as a Senator from Mississippi. Although he was the first colored man who presented himself as a Senator, I then insisted that if the legislature of his State had chosen him, and he was qualified, he must be admitted.

If we are to go into the motives of the voters, how will it be with promises to assist in procuring office, which many of you, Senators, have given, or, if not that, have at least permitted your friends to inform members of the legislature that you were a good fellow and would take care of them? There may be a thousand motives which actuate the human heart besides the simple fact of fitness for the position. Is the private, personal love of those who sent me to the Senate because they liked me to be inquired into by you, and compared with the sordid motives of those who may have been bought in some other State? In conclusion, what motive is the justifiable one? Is that a question for you to go into under your power to judge of the manner of an election? No, sir; your power is confined to the manner of the election.

As I said before, if gentlemen would simply sit down and examine the custom in all parliamentary bodies on such questions, the simple rules of parliamentary law which prescribe that, in the failure of any rule prescribed, the majority rule should apply, and that the majority may prescribe other rules, and when they connect with the clause of the Constitution, as to the prescription of the time and manner of the election, the other clauses to which I have referred, you see the tremendous power of the word "choose," the power on which this Government is built. When the States cannot choose their Senators I simply have to say that they have lost their representation as States, and the Government has been entirely changed, and its most valuable and conservative features destroyed.

Mr. President and Senators, I think you have changed this form of government recently about as much as the people of the country desire; and, if you wish to change it further, let me beg you not to change it in the manner you have been doing, not by the insidious power of construction. The clause which empowers you to see that the States have republican forms of government has been perverted already to destructive purposes. Do not change now further the form of government by changing the meaning of words, and dragging them from their context. Let us at least feel that there is some safety in constitutions after all; let us feel that the written law is a permanent law which we all try to expound candidly; let us try at least to do that and not to distort it.

The question as to the decision of this case, as to the principle involved, cannot compare in importance with that of protecting the integrity of our written Constitution and the maintenance of honest interpretation.

I have nothing to say in reference to the evidence in this case. As to the constitutional question, all the decisions support me in the position I have taken, and it will be my duty to call your attention for a brief moment to one or two of them.

Before going any further, let me make a brief allusion to the New Jersey case. In that case, decided wrongfully, as I thought, wrongfully, as the Judiciary Committee of the Senate thought, who made a unanimous report, written by the late Senator from Illinois, (Mr. Trumbull,) they had at least this excuse: there was a question raised as to whether the majority could permit a plurality to declare the vote of the majority. Parliamentary law was with the election in that case; the judgment of the Judiciary Committee was the same.

Mr. SHERMAN. I should like to ask the Senator from New Jersey, with his permission, if the point in that case was not this: the constitution of New Jersey required the two houses to meet together; and did not the joint convention undertake to establish the plurality rule? The plurality rule in that case was not adopted by the two houses in separate session, but was adopted by the joint convention after they had met together in a joint convention. That was the ground, I think.

Mr. STOCKTON. I will answer the Senator with pleasure, although to do so leads me off from the tone of the remarks I was making. What he has stated is undoubtedly true, but that rule had been made in sending Delegates to the Continental Congress. At that time the rules governing our joint meetings were made.

Mr. SHERMAN. Before the Constitution was framed?

Mr. STOCKTON. Yes, sir; before the Constitution was framed; and they have been made every succeeding year by the joint meeting—changing them, altering them, amending them every succeeding year. Senator after Senator was elected according to the rules so made by said joint conventions, the rule prescribed on each occasion by the joint meeting for itself. Those rules have been changed from time to time, and some elected by pluralities and some by majority. I merely allude to this New Jersey case because it is an important part of the history of this great constitutional question. The Senator from Ohio is right in saying that the point was made that the rule allowing an election by a plurality was adopted by the joint meeting; it was adopted in joint meeting; but that had always been the practice in New Jersey, and Congress never having prescribed the *manner* of elections under the power reserved to it in the Constitution, we had exercised and claimed the right to prescribe the manner, as every other State in the Union had done.

Now, sir, to answer the Senator, let me read from some remarks that I made on the occasion when the New Jersey case was before the Senate:

> Chosen "by the people" is always by a plurality vote in New Jersey; the legislature has so prescribed.
>
> That is, in the general election.
>
> Chosen "by the legislature" is as the senate and assembly, in whom our constitution has vested all legislative power, shall prescribe; and in failure of a special rule prescribed, the rule of the body is prescribed by parliamentary law.
>
> "The times, places, and manner for holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof."
>
> In some of the States it is prescribed by statute that the election shall be by concurrent action, in some by joint vote, in others an effort is first made to elect by separate action, and, on failure thereof, resort is had to joint meeting. Some States require a majority of all the members elected to choose a Senator, some only a majority of those present and voting, some leave the number of votes necessary to the joint meeting to determine either by rule for that purpose or parliamentary law, while some States it would seem have never passed any law on the subject, and must, therefore, prescribe the manner at the time by the action of the body electing.—*Congressional Globe, part 2, 1st sess. 39th Congress*, 1865-'66, *page* 1671.

And here follows the history in every State of the Union of its manner of election, showing that almost every one had adopted a different plan. Then follows the comment made on these different plans by our best commentators, Kent and Story, who assert that by practice, by uniform custom, all these various "manners" of election were valid—if it was the custom of the State it was the law of the State—and Congress never having prescribed the manner, the States had a right to prescribe it for themselves in that way.

The only use I intended to make of this New Jersey case—and my fuller allusion to it has been a mere digression in answer to the Senator from Ohio—was to show, so far as that case can be used as a precedent, that it is a precedent showing that the Senate has the right to examine into the manner of election; that there the question was the manner of election, not the return. It was whether a majority had a right to permit a plurality to express its choice. That question was examined by the Judiciary Committee, reported on, debated before the Senate, and no question was ever made but that that was part of the manner, a part that Congress could prescribe, a part that the State had prescribed, and the question was, whether the prescription of the State was a proper one and a legal one, in the absence of any prescription by Congress. But here there is no such question. I now ask gentlemen to forget for a moment my digression. The whole use I sought to make of that case was to show that here there is no such question. There is no question as to the manner of the election, and there is no question as to anything over which you have control or power. The question which is here sought to be inquired into concerns the *motives* which actuated individual members of the legislature. You are not inquiring into the action of the legislature as such at all. You are not seeking information as to whether they as a legislature "chose."

If you drive me to examine a question not now before the Senate, if you will call my attention to the beautiful and eloquent remarks of the Senator from Indiana the other day, in reference to the necessity of purging our body, in reference to the necessity of preserving the purity of elections, I reply that it excited my admiration very much. You may inquire "What do you mean to do about it? Are you willing to establish the proposition that you may seat in this chamber, without the power to get rid of him, a horse-thief, or a man guilty of any crime such as burglary or murder? Are you willing to establish that principle and say that that was the law our fathers made for us?" No, sir; no; but our fathers were wise, and wiser in their generation than some of their children. They knew what party passion and what party heat were, and they prescribed that it should require a two-thirds vote to expel a man for crime; that it should require two-thirds to send a Senator out from this body who was unworthy to sit in it, because a body that had two-thirds did not need the one vote. But the power is not given to a mere majority to expel, for it is nothing more, under the pretense of an extension of the word "election;" and if this power be conceded, the party in power can keep up their majority forever. The gentlemen of the majority can keep their power in this Senate forever if they are the judges of the elections of Senators in the sense laid down by the Senator from Indiana. Is there a gentleman here whose election cannot be examined into if this power does not stop with his credentials? I was here sitting and voting for nearly a year myself. It was not important that my case should be examined before, in the view of the party in power.

Now, the doctrine is boldly proclaimed that every one of you holds your seat by what tenure? The choice of the legislature? No, sir; but subject to a revising power, a court of appeals; the Senate of the United States is to be a court to decide on the action of the State legislature. I say if the majority can *expel* under the claim that they can extend the meaning of the word "*election*" beyond the manner and the form, and can inquire into the motives of individual electors, there is not a man who holds his seat in this body by virtue of the

power of his legislature. I, for one, sir, was not willing to hold my seat before under such terms, and I do not propose to hold a seat now under any such terms.

I am simply arguing a legal proposition, and I am trying to show that our fathers had a direct motive and purpose in drawing the broad distinction which they have drawn between the power of *expulsion* and the power of *judging of an election*. The power to judge of an election of a member is a power to be exercised by the majority, and it is only in reference to the manner of the election. The power to expel is a power unlimited. You may expel a man for spitting on your beautiful carpet if you can get two-thirds to do it; and you may keep him in his seat covered with crime, a disgrace in the eyes of the world and of the American Senate, an object which is a shame for you to sit by. Your power is unqualified, unlimited. You may expel for *cause*, and what that cause is each individual Senator is the judge of on his own conscience and his responsibility to the oath under which he acts.

Mr. President, let me call your attention for one moment very briefly to the case of a Senator from Pennsylvania. The report in the case was made by Mr. Benjamin, and if you do not follow me closely you may not possibly perceive how absolutely this case confirms my view of the subject, and how much more powerful its control is over the subject from the very fact that it is not precisely this case. The case made against the Senator from Pennsylvania was this:

1. That there was not a concurrent majority of each house in favor of the candidate declared to be elected.

2. That the senate did not comply with the requirements of the act of the 2d July, 1839, by appointing a teller and making a nomination of persons to fill said office, and giving notice of said appointment and nomination at least one day previous to the meeting of said convention.

In addition to the two grounds aforesaid, the protest presented by the members of the house of representatives charges—

3. That the election of the said SIMON CAMERON was procured, as they are informed and believe, by corrupt and unlawful means, influencing the action and votes of certain members of the house of representatives of this State, and they request that an investigation be ordered by your honorable body, not only into the regularity of the said election, but into the charges herein presented, in order that an opportunity may be afforded of submitting the proof upon which they rest.

It is proper to observe that the real ground on which the committee acted was that the charges were frivolous, and that they were not maintained by any testimony, and, as I am on the legal question, I might have omitted referring to that fact if I had not caught sight of my honorable friend from Pennsylvania, [Mr. CAMERON.] But going to the legal question, there was a direct charge that corrupt motives had actuated the individuals in the legislature who had voted for the Senator from Pennsylvania. If I am not mistaken, at that time the Senator from Pennsylvania represented the opposition party, and the power of the Senate was in other hands.

Mr. SHERMAN. That was in 1857?

Mr. STOCKTON. Yes, sir; in 1857. Mr. Benjamin at that time was considered one of the ablest lawyers before the bar of the Supreme Court, and certainly one of the most distinguished Senators in this body, representing the State of Louisiana. He wrote this report, and the part of it alone to which I wish to call your attention is this:

If it be, indeed, true that members of the house of representatives of Pennsylvania have been influenced by corrupt considerations or unlawful appliances—

That is precisely what is charged here in this evidence—

the means of investigation and redress are in the power of the very parties who seek the aid of the Senate of the United States.

Mr. MORTON. Will the Senator allow me right there to ask him what power a State legislature has in such a case; whether it has the power to make an investigation, and, if it finds that there was bribery, has it the power to annul the election of a Senator?

Mr. STOCKTON. I will let the Senator hear what Mr. Benjamin said first, because I have some confidence in that:

That their complaint will meet the respectful consideration of that house, your committee are not permitted to doubt. If upon such investigation the facts charged are proven, and if they, in any manner, involve the character of the recently-elected member of this body from the State of Pennsylvania, the Constitution of the United States has not left the Senate without ample means for protecting itself against the presence of unworthy members in its midst.

What clause of the Constitution? The clause relative to elections? No, sir. If that case is a precedent; if the action of the democratic party when it was in power, dealing with a gentleman of the Opposition, is a precedent; if the views of the learned and distinguished men who sat here then as judges, to administer the law on such questions, faithfully and truly, are worth anything, you must send this case back to the State of Kansas, and have the evidence sent here proving what is alleged, and, if it be proven, the Constitution has not left us without the power, by expulsion, to free ourselves from having unworthy members in our midst.

The case of Bright and Fitch, so far as it touches on this point, is very clear, and all the arguments in the case, which are set forth at length in the *Globe*, maintain the view that I have presented, so far as I can read them; but I shall not trouble the Senate with quoting from them, as it is growing late.

But the case of Potter *vs.* Robbins is so much in point that I desire to call attention to it for a moment. I quote from Contested Election Cases, page 900:

The Constitution of the United States provides that "each House shall be the judge of the elections, returns, and qualifications of its own members." (Article I, section 5.)

The members of the House of Representatives are to be chosen by the people of the several States having the qualifications requisite for electors of the most numerous branch of the State legislature. The members of the Senate are to be chosen by the legislature of each State, and the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Congress having passed no law on the subject, we must look into the statutes of the several States for those regulations, and conform our action to them. The Senators from each State are equal in number, and cannot be increased or diminished, even by an amendment of the Constitution, without the consent of the States respectively. They are chosen by the States as political sovereignties, without regard to their representative population, and form the Federal branch of the national legislature. The same body of men which possesses the powers of legislation in each State is alone competent to appoint Senators to Congress for the term prescribed in the Constitution.

In the performance of this duty, the State acts in the highest sovereign capacity, and the causes which would render the election of a Senator void must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the Constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their legislatures by the Constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he, at the time of his election, a citizen of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs; and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the legislature, or into the peculiar organization of the body, for reasons to justify the Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature, whose elections were contested, might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void, who possessed the requisite qualifications, and was chosen according to the forms of law and the Constitution.

But let me call the attention of the Senate for a moment to the case of Mr. Yulee of Florida. The case of Yulee *vs.* Mallory is familiar to Senators, and yet they may not see how much it bears on this point. There it was decided that—

The State legislature may choose its own method for the election of a United States Senator.

Look at the effect of that upon this question of prescription upon the long custom that grew up as the common law in all the States of choosing in their own way, until Congress interfered within a few years past.

On the first ballot Mr. Yulee, the contestant, received 29 votes, and 29 other votes were given to "blank." Mr. Yulee claimed that as he was the "only qualified person voted for" he was duly elected Senator. The committee held otherwise.

The report of this committee was made by a gentleman not less distinguished for his examination and knowledge of this constitutional question than any of the gentlemen I have heretofore alluded to; I mean Mr. Bright, of Indiana. He says in the report:

In deciding the questions which are raised out of the facts, the Constitution of the United States must, to the extent of its provisions, prevail over all other authority. That instrument gives to each State the right to elect two Senators. Article I, section 4, is in these words: "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislatures thereof."

The words of the third section in the same article are: "The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years."

The first question, then, which arises is, what constitutes the legislature of Florida? for that, and that only, has the right to make the choice. The Constitution of the United States, Article I, section 1, says: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." The constitution of Florida declares that "the legislative power of the State shall be vested in two distinct branches, the one to be styled the senate, the other the house of representatives, both together the general assembly." These authorities leave no doubt that the two houses constitute the legislature of Florida, which holds the unqualified right, under the Constitution of the United States, to elect the Senators for the State.

Has this body executed the trust confided to it in such a manner as to satisfy the terms of the Constitution? The time, the place, and the manner of holding the election are all to be prescribed by it. To the time and place no objection is made, but the validity of the manner is questioned.

The present case is a great deal stronger than this. This case of Yulee is much more like the case in New Jersey. The question was whether you should count blank votes; and that was the "manner;" that was not the "return." That was the manner, which they had the absolute right before the passage of the Federal statute to prescribe. It was so held, and this report was unanimously adopted by the Senate of the United States. I read further from it:

No mode of election is prescribed by the Constitution, but this duty is left to the discretion of the several legislatures of the States. In carrying out the power, some elect by a concurrent vote of the two branches, the one having a negative upon the action of the other; others elect in a convention of the two houses, in which case (as far as your committee are advised) a majority prevails.

If numbers be regarded as a material element in such elections, it is manifest that in the same body of men different results may be produced, according as one mode or the other is pursued. There may be in convention a majority in favor of a candidate, making his success by this mode certain, while with the same number

in his favor he might be defeated in one of the houses, if a concurrent vote is required; and such cases have occurred.

Again, it may be observed that the power given to the legislature to regulate the time, place, and manner applies as well to Representatives as to Senators; and here again are other diversities in the manner of exercising it. Some States elect by a plurality of votes; others by a majority; and others have required at the first trial a majority, and a plurality afterward. Some again (until Congress made a law upon the subject) elected by general ticket; others either by single districts or districts entitled to more than one, according to convenience. None of those modes of electing Senators or Representatives have been held unconstitutional, but members have uniformly been admitted to their seats, whether elected in one or other of these modes.

Then the report concludes:

The will of the two houses, when ascertained by vote in their respective chambers, is for this purpose a sufficient law, because they alone are empowered to prescribe the manner of choosing in such mode or by such means as they please. On this point a State constitution can neither control nor modify that of the United States, for the latter is the supreme law.

That report is a simple summary of the law as declared in every case that I have examined which bears at all upon this question. There is, as I said when I began, but one question in reference to the action of the State since Congress has prescribed the manner of election; and that is, was the body which sent this man here the legislature, and did it choose him? In other words, did they manifest by their voice, by their method of speaking, which is the credentials when they are not attacked, and when they are attacked is by ascertaining whether a majority of the body on such rule as is now prescribed by the law of Congress did so manifest their choice. Can anything be clearer or plainer? Will it be insisted that "election" is not a synonym for "choice?" Will it be insisted that the manifestation of the will of the legislature, made in the form prescribed by law, is not the choice of the legislature, and that the choice is not an election? How far back must we run to refine upon words?

Mr. MORTON. Will the Senator allow me to interrupt him for a moment?

Mr. STOCKTON. Yes, sir.

Mr. MORTON. I simply want to say to the Senator, as he has referred to the case of Mr. CAMERON, that if it does not disturb him I should like to call his attention to that case for the purpose of information. I want to suggest to him that upon the report itself in that case the question here involved was not even intimated. If the Senator will allow me to read a single paragraph from that report of Mr. Benjamin, it will bear out what I say. The question there was simply this, whether there was such information sent to the Senate of the United States as would justify it in instituting the investigation. The committee said not. They intimated that the legislature itself might make the investigation, and that the house of the legislature to which the petitioning members belonged might investigate the conduct of those members, and if, upon such investigation, that house found that any of their members had been guilty of the charges alleged, which involved the character of the Senator-elect, that upon such information being communicated to the Senate of the United States, the Senate was armed with the power to protect itself. There was no question before this body as to how it should do it, whether by declaring the election void or by expulsion. No such question was raised, but it was suggested that the legislature of the State should first investigate the matter, just as they have done in Kansas in this case, and if they found the charges sustained, upon that information the Senate of the United States could proceed, and, as the committee said, was armed with power. They did not say how, whether by expulsion or by judging of the election; they expressed no opinion on that point, but said the Senate was armed with power to protect itself against unworthy members. There is no intimation in that report against the doctrine for which I am contending, but, on the contrary, a distinct recognition of the doctrine that if there was bribery in the election of a Senator, the Senate had the power to protect itself against that bribery.

Mr. STOCKTON. So far from being annoyed by the interruption by the Senator from Indiana, I can only say that I consider it a great compliment that he should think the observations I am making so important as to justify him in interrupting me.

Mr. MORTON. I do not want to disturb the Senator, and I know interruptions are sometimes annoying.

Mr. STOCKTON. I am speaking seriously, sir—not ironically. I did not know my remarks were of so much importance before. I will reply to the Senator that it is undoubtedly true that the case of Mr. CAMERON, as I stated when I referred to it, was put upon other grounds. As I said to the Senator from Pennsylvania himself, his case, I am happy to say, is not one which when it came to be examined involved this question. Therefore, if the Senator from Indiana was in court, and was to ask me whether this was an authority which should control the court, or whether it might not be considered in some measure *obiter dictum*, I, perhaps, would agree with him. But nevertheless the opinions of distinguished legal gentlemen, as well as their arguments made on such cases, in Congress, I like to look to as guides, and they do help me very much when my mind is in doubt and trouble. I referred to this case for the purpose of showing that the Senate Committee on the Judiciary at that time supposed that even if the charge was true that Mr. CAMERON had obtained his election by corrupting voters, the proper course to take was for the legislature, the very parties, as the report says, who ask us to investigate, to do it themselves, and when they send us word that the allegations are true, the Constitution has not left us without power to free ourselves from having such a person in our midst.

Mr. MORTON. But that power was to be exercised here.

Mr. STOCKTON. Yes, sir; but the power of expulsion, not the power to unseat. I can make that no plainer.

Mr. MORTON. That is not intimated.

Mr. STOCKTON. Clearly. Now, in further answer to the Senator from Indiana, let me refer to some remarks of Mr. Badger, to be found in the *Congressional Globe* for the first session of the Thirty-second Congress, on the case of Mr. Yulee. Mr. Badger undoubtedly was one of the ablest lawyers we have ever had in the Senate, whose name is revered at the bar to this day in his native State, and who has left in his arguments in this body on constitutional questions a name that any of us might well be proud to have. Mr. Badger said, in the Yulee case:

An attempt is made to show that there is something in the decisions of other States and tribunals, something in the nature of a general parliamentary law, which controls the State of Florida on this point, and fixes the character of assent upon these blank votes, or makes them nullities. Permit me to say that if it were shown that every other State in the Union, or on the face of the earth, had laid it down as a rule that blank votes should be rejected, or counted as votes of assent, this would not, in the slightest degree, affect this election, if a different rule or practice has prevailed in Florida; for Florida, in the absence of any legislation by Congress, has as absolute a right to prescribe a rule or adopt a practice of her own, as to the mode of signifying assent or dissent, as any other tribunal, or legislature, or authority on earth.

The mode of signifying assent or dissent, that is the manner prescribed which I attempted to call the attention of the Senate to when I first commenced reading from the Constitution. Whenever one of these great men takes up the question, you will see invariably that he confines the power of the Senate in being judges of the election to the context in which that clause is found, and speaks of it as a power to judge in regard to the prescription of the manner. In every argument, the point has been as to the presumption of the manner which the States could make when Congress had not acted; but when Congress controls by its prescription, it prevents the elections from being made in any other manner but that which fulfills entirely the sum of the requisition; and if the election is in accordance with the manner thus prescribed, the Constitution and the laws as our fathers intended to leave them, provide that that shall be sufficient; and if we wish to purge our body by visiting upon individuals punishment for individual offenses, we must do it and can do it alone by the power of expulsion. We are then dealing with individuals, and not with legislatures.

Now, Mr. President, is there any danger in this alleged power being exercised in the way I have pointed out? I think I have shown you that there is great danger in exercising or assuming to exercise any such power. Admit, sir, that there is great doubt about its existence—suppose there be doubt whether I am right or not—which is the wiser, which is the safer construction? Suppose it be in great doubt whether my views are right, and whether these great lawyers to whom I have referred are right in their view, is there any better time than now to assert the true doctrine, when there can be no human being in this chamber who would not gladly see any gentleman accused of any charge fully vindicated?

After a party strife which has left us all with kindlier feelings toward one another, and toward one another's views, than we have had before, and than we may possibly have hereafter; now, when party heat does not excite our minds, is the time to maintain the safe construction of the Constitution. Is there any better occasion for gentlemen on the other side of this House to do as gentlemen on both sides did, as it appears in the volumes which I have before me, on this judicial question—come out and declare their opinions as constitutional lawyers, no matter what the result might be upon individuals?

Mr. President, I have occupied much more time than I expected when I rose, so much time, indeed, that I feel it my duty to close my remarks, although there are other points which I should have liked under other circumstances to have touched upon.

Trusting that in this case the Senate may act calmly and judicially, and keep in mind the landmarks of our fathers, I close my remarks on the case.

Mr. MORTON. Mr. President, just one word in regard to the report from which the Senator from New Jersey [Mr. STOCKTON] last read, to which I desire the attention of the Senate. It has been some time since I read that report, and I am very glad the Senator from New Jersey has called my attention to it, because it contains a distinct recognition of the power of the Senate to examine and determine for itself what shall be the rights of a member into whose election bribery or corruption may have entered. With this statement I wish to read the concluding part of the report.

Mr. BOREMAN. What report is that?

Mr. MORTON. In the CAMERON case.

The committee cannot recommend that this prayer be granted.

That is, the prayer of the petitioners that the Senate shall examine into the matter of that election.

The allegation is entirely too vague and indefinite to justify such a recommendation. Not a single fact or circumstance is detailed as a basis for the general charge. Neither the nature of the means alleged to be corrupt and unlawful, nor the time, place, or manner of using them, is set forth, nor is it even alleged that the sitting member participated in the use of such corrupt means, or, indeed, had any knowledge of their existence. Under no state of facts could your committee deem it consistent with propriety, or with the dignity of this body, to send out a roving commission in search of proofs of fraud in order to deprive one of its members of a seat to which he is, *prima facie*, entitled; still less can they recommend such a course when the parties alleging the fraud and corruption are themselves armed with ample powers for investigation.

The fifty persons petitioning in this case were members of the legislature of Pennsylvania.

If it be, indeed, true that members of the house of representatives of Pennsylvania have been influenced by corrupt considerations or unlawful appliances, the means of investigation and redress are in the power of the very parties who seek the aid of the Senate of the United States. Let their complaint be made to the house of which they are members, and which is the tribunal peculiarly appropriate for conducting the desired investigation. That their complaint will meet the respectful consideration of that house, your committee are not permitted to doubt. If upon such investigation the facts charged are proven, and if they, in any manner, involve the character of the recently-elected member of this body from the State of Pennsylvania, the Constitution of the United States has not left the Senate without ample means for protecting itself against the presence of unworthy members in its midst.

If the information given to the Senate, upon this investigation in the State legislature, shows that the member has been elected by fraudulent or corrupt means, then the committee say that the Constitution arms the Senate with ample power for self-protection. It does not say how that power is to be exercised. That question is not even hinted at, whether by declaring the election void, or by expulsion. There was no question of that kind before the Senate.

Mr. STOCKTON. I should like to ask the Senator from Indiana whether there is not a distinct clause in the Constitution which authorizes us to expel, and whether there is any distinct clause authorizing us to unseat. When, therefore, that report refers to the Constitution not leaving us without ample power, can it refer to anything but the power to expel?

Mr. MORTON. There is a clause which says that the Senate may expel, and there is another clause which says the Senate may judge of the election. That covers the case exactly. Here is an offense going to the election and a part of the election, and if the Senate cannot judge of the election in that particular, in what particular can they judge of the election? The charge is that the election has been poisoned—has been corrupted by bribery. That is the very question the Senate is empowered to judge about—to judge of the election; that is to say, of all questions that enter into the election. That was the meaning placed upon it when it was put into the Constitution, and we know historically that it was intended to correspond exactly with the power of the House of Commons to judge of the election of its members.

Mr. CONKLING. I should like a little information on this point. I inquire of the Senator from Indiana, who seems to have been reading the debate, as well as the report in the case he quotes, whether, as he understands it, the report admits of any doubt as to the meaning of the Judiciary Committee when they say that the Constitution has not left the Senate without power.

Mr. MORTON. I have not read the debate. I have just had my attention called to the report, and I had not seen that for a long time.

Mr. CONKLING. Then I ask attention to two points in the report. In the first place, the committee report that if the facts alleged shall be proven, and "they involve the character of the recently-elected member;" not if they involve his election, not if they involve his qualifications, not if they involve his returns, but if they "involve the character of the recently-elected member of this body," the Senate may proceed. I might say, a lawyer, as Mr. Benjamin was, holding the pen, it would be singular if, meaning to make the fact of election the point of doubt and inquiry, he should use these words, "of the recently-elected member of the body;" it would be odd for him to assume the very thing he meant to put in issue. But he proceeds:

The Constitution of the United States has not left the Senate without ample means of protecting itself against—

Against what? Against the presence of men whose elections are impugned for fraud, bribery, venality, pollution? Not at all, but against—

the presence of unworthy members in its midst.

Can any lawyer read that language and suppose that the lawyer who employed it intended to refer to that power found in the words, "each House shall be the judge of the elections, returns, and qualifications of its own members?" I submit to the honorable Senator from Indiana that if we are trying, as I trust we are, to aid each other to come to a correct conclusion in a painful and puzzling inquiry, it is not worth while to darken counsel by words, so far as to deny that this report unmistakably, at that point, means to declare that if an investigation should fix upon a member any stigma tainting his character as a Senator, the Constitution has armed us with the power to prevent him, elected though he be, from sitting in our midst.

I have not read the debate on the report; therefore I will affirm nothing about it; but I think it will show that Mr. Pugh, then a Senator from Ohio, who dissented sharply from the report, understood it, as others did, to mean what the Senator from New Jersey understands it to mean. I think the debate will show that every one who attempted to sustain or to assail the report understood the committee to say that the remedy in that case, if the facts should warrant it, would be under the expulsion clause, and not under the election clause of the Constitution.

Mr. MORTON. Mr. Pugh dissented from that report upon this ground, as I understand: The majority of the committee determined that they would not enter upon the investigation here upon the mere petition of fifty members, but that the legislature ought first to make the investigation, and, if they found that there was truth in these charges, they intimated that then the Senate had the power to take the matter up and protect itself from the presence of a member elected by fraud. Mr. Pugh thought the Senate ought to proceed upon the petition of the fifty members as individuals, and inaugurate the investigation itself. But my friend, I think, will look in vain to find that there was any question before that committee or any question before the Senate as to how the Senate should proceed in case it did come back to the Senate from the legislature of Pennsylvania—whether it should proceed by expulsion or by declaring the election void. I suppose that question was not even suggested, not even considered, and was not in the mind of anybody at that time, because there was no reason why it should be. All that is to be drawn from the report is, that the Senate has the power to protect itself against a member who has been elected by bribery. There is the recognition of that power. In what way it should be exercised they did not discuss. That is the question we have to meet now.

Mr. CONKLING. When I rose there was but one point between the Senator from Indiana and myself. He sits down now leaving two points apparently between us. He concludes by saying that there was no such point as this is in judgment before the Senate then. I understand that; and if his criticism is that this part of the report is *obiter dictum*, I agree with him. The Senate was not called upon in that case to decide any such question. They might have disposed of it without touching the question. But the point between my friend and myself was upon the meaning of this language—not upon what the committee was called upon to say, but upon what it did say—and I venture to affirm that nothing can be clearer than that the report refers plainly to the expulsion clause of the Constitution, and leaves no room to suppose that it refers to the other clause about judging of the elections, qualifications, and returns of members.

Mr. President, why does this report say that there is "nothing which implicates the Senator from Pennsylvania?" What difference would that make had it been true that his election was bought with money—that it was the result of bribery and corruption, and the Senate could annul it? What difference did it make in judging of his election whether he was "implicated" or not?

Mr. MORTON. That was Mr. Pugh's argument.

Mr. CONKLING. I beg the Senator's pardon; I am talking about the report. Suppose great railway corporations should combine and buy up a legislature bodily, would Mr. Benjamin or any other lawyer, holding that we could avoid an election because it was influenced by bribery, sit here and tantalize the Senate by stopping to consider whether the member was "implicated" or not? No, sir; concede once the right to inquire into the election of a Senator on the ground of bribery, and suppose a case where bribery is proved which controlled the election, and what difference does it make until you come to the expulsion power whether the Senator himself be implicated or not? Suppose him a mere dupe; suppose him a man of straw; suppose, in the presence of some great corporation, he was as ignorant, as innocent, and as helpless as a sheep that was to be shorn, and was dumb before his shearer, nevertheless, supposing his election to be bought, shall we be told that, when we judge of the virtue or the vice of that election, our decision is to hinge upon whether he was the cause of all this or not, or whether he was implicated? No, sir; I deny, in the interest of purity, in the interest of the power to test by legal rules the effects of bribery, that the privity of a particular man is the criterion by which bribery must be tried.

What, then, was the motive in this report in dwelling upon the fact that it was not alleged that the Senator was implicated? If the Senate could entertain jurisdiction to inquire whether bribery controlled and influenced his election or not, with a view to dissolve it, his being implicated or not was entirely immaterial; it could not be material until you come to the crucial test the committee applied. What was that? Is he an "unworthy member?" If he is, the report says the Constitution has not left the Senate naked to its enemies. The Constitution has armed each House with the power to do what? To ascertain whether the character of one of its members is involved, and then to protect itself against the presence of unworthy members. The Senate was not called upon, I repeat, to decide the question. I agree with the Senator from Indiana there. The committee might have performed its whole duty without deciding any such questions. But here stands the record of that which the committee did see fit to report. The issue at this moment is what it means, and I submit that no man can read it and seriously suppose that the committee intended to say that if, after an investigation took place, the Senate proceeded, it would be under the power given by the Constitution to judge of the election, returns, and qualifications of its members.

The PRESIDENT *pro tempore*. The question is, will the Senate agree to the resolution?

Mr. SCOTT. The Senator from Illinois, [Mr. LOGAN,] who was in the midst of his speech, yielded to the Senator from New Jersey [Mr. STOCKTON] with the understanding that the Senator from Illinois should retain the floor until to-morrow. I move now that the Senate adjourn.

Mr. RAMSEY. No; let us have an executive session.

Mr. SCOTT. If there be a necessity for that, I withdraw my motion.

Mr. CONKLING. 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 twenty minutes spent in executive session, the doors were re-opened; and (at four o'clock and forty-three minutes p. m.) the Senate adjourned.

IN THE SENATE.

THURSDAY, *March* 13, 1873.

Prayer by Rev. E. O. HAVEN, D. D., of New York.

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

COMMITTEE SERVICE.

Mr. MCCREERY. Mr. President, I ask the Senate to excuse me from service upon the Committee on Public Buildings and Grounds, and also the Committee on Agriculture.

The PRESIDENT *pro tempore*. The Senator from Kentucky asks the Senate to excuse him from service on the two committees named by him. Will the Senate so excuse him?

The question being put, Mr. MCCREERY was excused.

WITHDRAWAL OF PAPERS.

Mr. PRATT. I ask that an order be entered that Andrew Johnson, who has a claim against the United States for taxes which he alleges to have been illegally collected, be allowed to withdraw his petition.

The PRESIDENT *pro tempore*. Has there been an adverse report on the case?

Mr. PRATT. There has been no report at all.

The PRESIDENT *pro tempore*. The Chair is informed that that order has already been entered at this session.

Mr. PRATT. The order was incorrectly entered. An order was entered granting him leave to withdraw his application for a pension. He has no application of the sort.

The PRESIDENT *pro tempore*. The order will be entered as suggested by the Senator from Indiana, if there be no objection.

PAY OF LOUISIANA CONTESTANTS.

Mr. WEST. I offer the following resolution:

Resolved, That the Secretary of the Senate be, and he is hereby, directed to pay to John Ray and W. L. McMillen each full compensation as Senator for the unexpired term for which they were elected, as shown by their respective credentials, until the 4th of March, 1873.

I move the reference of the resolution to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. MORTON. I suggest that the resolution ought to go to the Committee on Privileges and Elections.

Mr. WEST. I have no objection to that reference.

The PRESIDENT *pro tempore*. That reference will be made.

REPORTERS' GALLERY.

Mr. ANTHONY. I offer the following resolution:

Resolved, That the Committee on Rules be directed to issue no more tickets of admission to the reporters' gallery than there are accommodations for them; and that no transient tickets or passes be issued thereto; and that the Sergeant-at-Arms be directed to exclude from the reporters' gallery all persons not having tickets of admission thereto.

I ask the reference of the resolution to the Committee on Rules, as the subject may require somewhat more careful consideration than I have been able to give it; but the object of the resolution is to protect the reporters in their gallery. We give them accommodations in order that they may make careful reports. The gallery now accommodates between thirty and forty people, and there have been times, on great occasions, when more than at any other time those who are the rightful occupants of the gallery are entitled to it, that they have been crowded out by strangers. Passes have been given, I think, sometimes for more than double the capacity of the gallery. The result is, that if the reporters leave their seats they find them occupied when they return, and if they stay in their seats they are crowded and elbowed by intruders. If the rule is made imperative that nobody shall go into the gallery but those who are entitled to seats there, it will be a great convenience to those entitled to them, and will not deprive others of any rights that they are entitled to.

The PRESIDENT *pro tempore*. The resolution will be referred to the Committee on Rules.

PETITIONS AND MEMORIALS.

Mr. HOWE. I present the petition of Radcliffe & Hopkins, publishers of the *Ogdensburgh Leader*, of Ogdensburgh, Waupaca County, Wisconsin, and the petition of Philip M. Pryor, publisher of the *Waupun Times*, of Waupun, Fond du Lac County, Wisconsin, remonstrating against any discrimination in the laws against newspapers not wholly printed in one county; and I move the reference of these petitions to the Committee on Post-Offices and Post-Roads.

The PRESIDENT *pro tempore*. They will be so referred.

Mr. RAMSEY. I suggest to the Senator that the matter of these petitions has been disposed of. There is no such law discriminating against newspapers only partially published in the county.

Mr. HOWE. This is the commencement of a Congress, and it is not known what may take place between this and the end of the Congress. I think it is well enough to let these petitions be referred to the committee.

Mr. RAMSEY. They recite a law which is not a law.

The PRESIDENT *pro tempore*. The petitions will be referred to the Committee on Post-Offices and Post-Roads.

Mr. HOWE. I also present the petition of John Alsop, heir of Thomas Jenkins, deceased, in aid of the bill for the payment of French spoliations, and I ask its reference to the Committee on Foreign Relations.

The PRESIDENT *pro tempore*. It will be so referred.

Mr. FENTON. As it seems to be in order to present petitions, I ask leave to present two or three that I have. I present the petition of Anton Sontag——

Mr. SHERMAN. The Senator from Maine, [Mr. HAMLIN,] who is not here now, entered a standing objection against the presentation of petitions at this session, and it seems to me that the objection was a reasonable one. I do not wish to object to the Senator from New York presenting his petitions, however, if others are received.

Mr. FENTON. The Senator from Maine made the objection upon me, but I see that others are presenting petitions, and so I hope my friend from Ohio will wait until I get rid of those that I have charge of.

Mr. SHERMAN. I will pass it over to-day, but I think myself it is objectionable in an executive session to present legislative petitions. Still, I will not object.

The PRESIDENT *pro tempore*. The Chair, on reflection, will rule all the petitions and memorials which have been offered looking to legislation, out of order at the present session, regarding the standing objection which was made by the Senator from Maine as continuing on that subject.

Mr. HOWE. This ruling, I take it, does not affect the petitions I have just offered.

Mr. SHERMAN. I am told that it was settled eight years ago, after full consideration, that the Senate had no power to receive petitions in an executive session.

The PRESIDENT *pro tempore*. The ruling does apply to all petitions offered this morning touching legislative business, or looking to it.

Mr. HOWE. Now, Mr. President, I have a word to say about that. I supposed the order to refer those petitions had already been made.

The PRESIDENT *pro tempore*. The Chair will state that the order was made inadvertently, not by the action of the Senate but by the direction of the Chair, understanding it to be assented to; and it having been done inadvertently, and the objection being made now to receiving other petitions of the same character, the Chair must sustain the objection, and, of course, it should be applied to all the petitions. The Senator from Wisconsin will be allowed, of course, to withdraw his petitions, to be presented at a subsequent time in legislative session.

Mr. HOWE. It is precisely that which I do not want to do.

The PRESIDENT *pro tempore*. The Chair does not compel the Senator to withdraw them, but only says that he may do so.

Mr. HOWE. I think, if the Chair will pardon me a single suggestion, that we can get along with this difficulty when it is reflected in the first place that there is no objection made, as I understand it, to the petitions offered by the Senator from New York, and if there is any objection made to the petitions that he offers, there certainly was no objection offered to the petitions which I presented.

Mr. SHERMAN. The objection was not personal, of course. It was made first by the Senator from Maine to petitions that looked to legislation, and the point was made by him that by the usages of the Senate and by the rules of the Senate we have no power at this session to consider any petitions of a legislative character, and it was so held by the Senate.

Mr. HOWE. I do not know when it was so held by the Senate, but I think I do know that on that day when it was so held the Senate made a mistake. It may not be very modest to say so.

The PRESIDENT *pro tempore*. If the Senator from Wisconsin desires it, the Chair will submit the question to the Senate whether these petitions shall be received.

Mr. HOWE. I should be very glad if the Senate would allow these petitions to be presented, and for a very plain reason. The petitions have already come into my hands, not in season to be offered at the late session. I do not care to tear them up. That would not be respectful to the petitioners. I do not like to keep them on my files during the long recess. I see no possible objection to their being received. Receiving petitions is not executive business, it is not legislative business, in my judgment. Of course we cannot legislate upon them; but why the Senate is not as competent to receive and file, or refer any petitions, as it is to make committees to which to refer petitions, or as it is to try members of our body, I cannot understand. I cannot understand what abuse can grow out of it. It seems to me it is being altogether too technical to raise an objection or to interpose an objection to doing this simple work. We are in daily debate upon a question which is not an executive question; to be sure, it is not legislative business. Neither is the receiving of petitions, in my judgment, legislative business. You simply afford a place on your files for these petitions now. The Senate always exists; your files always continue, and there is much less danger of petitions being lost when they are placed on those files. I really hope the Senate will consent to receive these petitions.

The PRESIDENT *pro tempore*. The question is, will the Senate receive petitions calling for legislative action?

Mr. SHERMAN. As a matter of course, if the idea of the Senator from Wisconsin is simply to secure the custody of these petitions, I have no objection to his handing them to the Clerk and letting the Clerk keep them until the next session, and then the Senator can present them; but it is the established usage of the Senate, decided on several different occasions, to refuse during an executive session, or during a called session, to receive any business that cannot properly be decided by the Senate itself, and therefore it has refused to receive

petitions which called for legislation. I have not had time to look up the precedents; but this matter was decided in the called session eight years ago. The book has just been handed to me, but I cannot turn to the case, as I have not been able to look into it. It has been settled that the Senate will not at a session called by the Executive, when it has no power to pass laws, or initiate laws, or take any step toward a law, receive petitions of a legislative character. If that is the practice of the Senate, it is not worth while for us to reverse that practice and open the door to the presentation of a multitude of petitions on a multitude of subjects, because if a petition is presented, it may be debated; its reference may be debated; the whole subject-matter may be debated, and so a called session for a particular purpose may be prolonged to an indefinite extent.

If the Senator is troubled about the custody of these papers and wants them cared for, I have no doubt, if he will hand them to the Secretary of the Senate, the Secretary will take good care of them, make a file of them, and at the next session the Senator can present them in due form. All that I did was in pursuance of the precedent set the other day by the Senator from Maine, whom we look upon as the Nestor of the Senate on all these questions. When a petition was presented by some one near him praying the passage of a law to prohibit the importation of liquors for use as a beverage in this District, he made the point of order at once upon it that it was legislative in its character, and, therefore, ought not to be received. The point of order was promptly sustained and the petition was excluded, and after that other petitions were also excluded. I have petitions that I could present, but I felt myself bound by the rule. It is the old established rule of the Senate. Now, I ask whether it is worth while for us to open the door by the presentation of petitions for debate that may be unlimited, debate upon a great variety of subjects upon which we cannot act, merely to accommodate and relieve my friend from Wisconsin. I think he can relieve himself in a much easier way. We pass no resolutions at this session except such as relate to business that the Senate alone can decide upon. For instance, membership in this body is a question entirely within the jurisdiction of the Senate, and we may pass upon that question; and so with executive business. Therefore it is a simple question whether the Senate will reverse its order. I will find the precedent of eight years ago in a few moments.

The PRESIDENT *pro tempore*. The point of order the Chair will submit to the Senate for their determination. The question is, will the Senate receive petitions and memorials offered looking to legislative action?

Mr. HAMLIN. Is the message of the President convening the body, on the table? If so, I ask that it be read.

The PRESIDENT *pro tempore*. The Secretary will read the proclamation.

The chief clerk read as follows:

A PROCLAMATION.

Whereas objects of interest to the United States require that the Senate should be convened at twelve o'clock on the fourth of March next, to receive and act upon such communications as may be made to it on the part of the Executive:

Now, therefore, I, ULYSSES S. GRANT, President of the United States, have considered it to be my duty to issue this, my proclamation, declaring that an extraordinary occasion requires the Senate of the United States to convene for the transaction of business at the Capitol, in the city of Washington, on the fourth day of March next, at twelve o'clock at noon on that day, of which all who shall at that time be entitled to act as members of that body are hereby required to take notice.

Given under my hand and the seal of the United States, at Washington, the twenty-first day of February, in the year of our Lord one thousand eight [L. S.] hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

Mr. HOWE. I was waiting for the law to be given us, the common law as I understand it to be affirmed, the usage of the Senate.

Mr. SHERMAN. I am hunting it up. There seems to be no index to the journal of a called session, and I have to look over many pages.

Mr. HOWE. Mr. President, I still assume, as I did before, that the Senate has decided as the Senator from Ohio says it has decided; I still repeat that I think it was an erroneous decision. I do not think there is a letter in the rules of the body, I do not think there is a line in the Constitution which called for any such decision. If it suited the convenience of the Senate to so decide, I do not know why they could not make such a rule. I do not think it would conflict with the Constitution for the Senate in executive session to refuse to receive a petition; but, inasmuch as I do think the receiving of these petitions does not interfere with the convenience of the Senate, and the receiving of them does promote the convenience of members, it seems to me the Senate would be hardly justified in refusing their assent.

The Senator from Ohio suggests that I can make a file of these petitions in the Secretary's office and present them to the Senate next winter. I can do so, undoubtedly; but one thing is very certain, that if I file them with the Secretary, before next winter comes around I shall forget all about them and I never shall present them to the Senate.

I do not know how much importance there may be in these petitions. I only know that certain citizens of Wisconsin seek to approach the legislature, and have asked me to present their petitions to the Senate.

Now, the Senator from Ohio says they may be debated. Whether the Senate will entertain debate upon them, is an entirely different question from the question I raise. I only ask that the petitions may be received, and either referred or laid upon the table, I do not care a cent which. If nobody has any objection to their reference, I take it they can be referred just as well as to be laid on the table; and if any Senator wants to debate the question, that right of debate, I take it, is within the control of the Senate. If they do not want to hear it, they will refuse to hear the debate; but because they refuse to hear the debate, I do not think that is a reason why they should refuse to receive the petition. That is all I ask to have done.

Of course, I do not want the Senate to reverse the common law of the body to promote my individual convenience. I can stand the burden of these papers all through the recess; but as I do not see any good sense in the law, I do not see any use in giving up the question.

The Senator says that the Senate may debate any question or consider any question which it can decide. Well, it can decide the question of referring the petitions. It cannot legislate upon the petitions, but it can decide that question, dispose of the petitions just as effectually as it can dispose of any seat here. If the Senator's own rule is to obtain, it seems to me it will cover the reception of this petition.

Mr. HAMLIN. Mr. President, I raised an objection to the reception of petitions a few mornings since for the simple purpose of preventing any act tending to legislation; and that was in accordance with the decision of this body, according to my recollection, some years ago when the matter was fully discussed. Papers were then referred, and some act beyond the reception of petitions, according to my recollection, was proposed; but, on discussion, the Senate determined that we were not a legislative body except when we were in session with the co-ordinate branch, the House of Representatives; and it was wise therefore, I thought, to observe the decision of the Senate and maintain it. I have noticed that sundry resolutions, when I have been out of my seat here, have been introduced and acted upon—all wrong, in my judgment. We have now no earthly legislative power; and I asked for the reading of the proclamation of the President for the purpose of inviting the attention of the Senate to the precise object for which we are convened—to consider such subjects as the President shall submit to us for our consideration, not for legislation, because we are in no sense now a legislative body.

As a mere matter of form, as a mere matter of convenience, my friend says he would rather present his petitions and lay them upon the table or have them referred to a committee. That is one step tending to legislation. There were several bills passed by the House at the last session of Congress which I believe just and meritorious; some of them affected the interests of my constituents; it would be very convenient for me to take those bills from the files of the Senate and have them acted upon now and have them ready for the House to act upon when it shall convene in December next, and it would be only legislative action in a second degree. The presentation of the case would be the first degree; the action upon it would be the second.

Now, it is wise, in my judgment, to maintain the precise position and character which belong to us, and that is, to discharge those duties which are only of an executive character, or, stepping one degree beyond that, those questions of privilege which relate to this body, and in which the House have no participation.

Mr. HOWE. Will the Senator allow me to ask him a question?

Mr. HAMLIN. Certainly.

Mr. HOWE. The Senator says it is wise to do so and so. If it is wise to do so and so, it is because the doing so will prevent some public mischief. Now, I wish the Senator, with all his experience, to explain what that mischief is.

Mr. HAMLIN. Well, I have tried to do so. If you present a petition, it is an act tending to legislation. That is the first step. Then I may present a bill and ask your action upon it, which is only one step more in the line of legislation.

Mr. HOWE. Will my friend allow me to ask him one more question?

Mr. HAMLIN. Certainly.

Mr. HOWE. It is whether when you came in here, and by a resolution appointed your committees, you did not take a step tending to legislation?

Mr. HAMLIN. Not beyond what was requisite for business of an executive character. Our committees were necessary to enable us to transact executive business, and we did not transcend what was required of us, and what was necessary in that direction.

Mr. HOWE. Will the Senator inform me what necessity existed for a Committee on Printing, or on Claims, or on the Revision of the Laws, at an executive session?

Mr. HAMLIN. Well, in relation to that matter, I do not know what business of an executive character may be presented to us that shall go for consideration either to this committee or that. It is true we do know that nominations for collectors go to the Committee on Commerce; foreign appointments to the Committee on Foreign Relations; and we know that the leading appointments go to various committees. I ask my friend from Wisconsin how he knows that there will be no subject which may come before each committee of this Senate of an executive character. I will take every committee he has alluded to; and first the Committee on Printing. How does he know that there

may not be matter here requiring the action of that committee? If you please, we have a treaty communicated to us, and the question of printing that treaty or of an extra number of that treaty will go necessarily, in an executive point of view, to that committee. And so of every committee in this body; there may be some subject which will go to it for its consideration, though I am well aware that mainly the subjects considered in executive session go to but a limited number of the committees.

Now, I do think it best not to transcend the rule. I know how anxious Senators are to get rid of papers sent to them. I have petitions in my drawer, and I should like to have them disposed of, but I do not believe they ought to be presented, because that is the first step in legislation, and we now possess no legislative function.

The PRESIDENT *pro tempore*. The Chair will state the point of order. This morning several petitions and memorials were presented, and, their reception not being objected to, were directed by the Chair to be referred to the appropriate committees. Subsequently the Senator from Wisconsin offered two petitions, addressed "to the Senate and House of Representatives of the United States of America in Congress assembled." To the reception of these petitions the Senator from Ohio objected. The Chair sustained the objection. The Senator from Wisconsin seeming to desire it, the Chair submits the question to the Senate, and the question is, shall these petitions be received?

The question being put, a division was called for, and the ayes were six.

Mr. HOWE. There are not enough to call the yeas and nays, and therefore I will not call them. I should like, however, to have the yeas and nays if I thought there was any reasonable prospect of obtaining them, but I content myself with the knowledge that I have offered——

Mr. DAVIS and others. We will give the yeas and nays.

The PRESIDENT *pro tempore*. Does the Senator from Wisconsin demand the yeas and nays?

Mr. HOWE. Yes, sir. I am so grateful to my friends that they volunteer me the yeas and nays.

The PRESIDENT *pro tempore*. The Senator from Wisconsin asks for the yeas and nays.

The yeas and nays were ordered.

Mr. ANTHONY. It seems to me that if it were an original question I would say that the reception of petitions is no more legislative business than the appointment of the committees, and I should, if the question were a new one, vote to receive the petitions; but if the question has been settled, and if the uniform rule has been otherwise, as I believe it has been, I shall vote to maintain the traditions of the Senate.

Mr. BAYARD. As I understand the proposition of the Senator from Wisconsin, it is that the petitions may be received during this session in respect to matters which the Senate, as a separate body, may take cognizance of and complete action in regard to.

Mr. SHERMAN. No; this is a petition addressed "to the Senate and House of Representatives in Congress assembled." There is no objection made to receiving petitions on anything that the Senate alone could act upon.

Mr. BAYARD. The Senate are fully aware of what commotion was at one time created in this country by the bare proposition of refusing to receive petitions. It seems to me that the time occupied by the reception of a petition, the stating of its contents, and its being laid upon the table, (for such would be the course of business respecting it,) is too small to make it expedient or to make it wise in any way now for any technical reason to avoid the reception of petitions. There is something in the right of petition, and I would rather not throw on the Senate or any member of the Senate the duty and the necessity of explaining why a petition was not received, when the answer would be, "Why not? it was a form to you; it was a substance of a right to me." The right of petition is something that I think either House of Congress or both Houses of Congress should sedulously protect, protect in its substance, protect even in the forms that are necessary to give substance; and therefore, while I am as anxious as any one to confine the business of this session to its legitimate and strictly legitimate and necessary matters, yet I shall vote for the reception of a petition, although addressed to the Congress of the United States, in order that petitions may be received, that they may be laid upon the table, as no action can be taken upon them at the present session, rather than even in form seem to deny the right of petition.

Mr. ANTHONY. I was under the impression that at executive sessions we had received petitions and laid them upon the table without a reference. I thought that had been our practice, that whereas we would not act upon any petition, we had received them and laid them upon the table; but I may be in error.

Mr. CONKLING. I am quite sure that my friend is thinking of this: We held an extra session once or twice of both Houses, in which a rule was adopted that we would consider only certain matters—the Senator will remember the rule—and under that, the subject to which the petitions related being excluded, the petitions were received and laid on the table. I do not think that has been done in a mere executive session of the Senate.

Mr. ANTHONY. It is very likely the case was as the Senator from New York suggests. I hold in very great reverence the right of petition. We do not know precisely what a petition is until it is presented. There certainly might be petitions presented here that would come within our present jurisdiction in the most limited form that we give to it, and we do not know precisely, when a petitioner approaches the Senate, what he has to ask. But still, if the question has been settled, and if the established rule of the Senate has been as stated by the Chair, I shall vote to sustain the old rule.

Mr. HOWE. I want to add one word to what I have said heretofore. The Senator from Rhode Island, as was to be expected, announces his purpose to adhere to the rule of the Senate once fairly established. What that rule is we only know from the information received from the Senator from Ohio and the Senator from Maine. The rule itself has not been read. There is a rule bearing somewhat upon this subject, which I find in the book I hold in my hand—it used to be called the Constitution—and it declares that Congress, I know it does not say the Senate, but "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government," not Congress, but "to petition the Government for a redress of grievances." I understand that if Congress had passed a law saying that these petitions should not be received, it would have been in violation of that section of the Constitution. I suppose the Senate, by a rule of its own, can step upon the Constitution with impunity!

Mr. CONKLING. I want to say only one word about this matter. If anybody wants to petition the Government, and the Senate or any other power should intervene, we can see the impropriety of that intervention. These petitions are not addressed to the Government, but to one of the three co-ordinate branches of the Government, namely, the Congress. The Congress is not here; the Congress is absent. The Senate is here. Now, replying to the suggestion made by the Senator from Delaware, which way shall I vote in the interest of the right of petition?

Mr. HOWE. Before the Senator passes to that, will he allow me to make one suggestion, and that is, that he never saw the Congress here and probably never will in his life-time; but always (to make myself understood) let the petition be addressed to the Congress, and it is presented either to the Senate or to the House of Representatives, never to the Congress.

Mr. CONKLING. But, Mr. President, if we do not know by sight we know by insight whether Congress is here or not. It is a fact, absent or present, of which every court and everybody else is bound to take notice. The courts take judicial notice; everybody takes historical notice and actual notice that Congress is absent or present at the time. In that way we are bound to take notice that our journals show affirmatively and distinctly that Congress is not here.

Mr. HOWE. I admit that Congress is not here.

Mr. CONKLING. My friend admits it. Then I inquire as I was going to, which way shall I vote in the interest of the right of petition? Shall I vote that a petition addressed to Congress shall be presented, not to Congress, but to the Senate holding an executive session? If I do, what shall become of these petitions? The rule of the Senate says that all committees fall with this session. During the vacation there are no committees unless they are expressly continued; and at the beginning of the next session there are no committees, because they die when your hammer falls with this session. Before your hammer falls no action can be taken upon them unless they relate to the business of this session, when nobody criticises their presentation. Afterward no action can be taken, because there is no committee and no Congress. Thus they fall; and what is to become of them? They are to go into the pigeon-holes of these committees that are now, and they are to sleep, unless, at the next session of Congress, my honorable friend or somebody else shall move that they be taken from the files, if they would be on the files, and recommitted to these committees, or referred to these committees. Therefore, while I should be glad to vote in the interest of the right of petition, it seems to me that I do so vote by reserving these petitions to take effect the first time that they can take effect, to be presented in the first moment of the first hour when their effective presentation is possible. It seems to me that it would be as little in the interest of the right of petition to vote to present them here as it would be to vote that they might be delivered to the Secretary of the Senate or to one of the officers of the Senate *de bene esse*.

Mr. HOWE. Do I understand the Senator to say that the committees appointed at this session fall with the adjournment of this session of the Senate?

Mr. CONKLING. Unquestionably.

Mr. SHERMAN. Unless continued by express vote.

Mr. CONKLING. I have said unless they are expressly continued. A committee may be continued; I am going to ask, myself, that a committee shall be continued, the Committee on the Revision of the Laws, which my friend referred to, because both Houses have passed and the President has signed an act which requires the existence of that committee to do specific things in vacation; but the rule says that unless specially continued, they fall and die with this session. Therefore these petitions are presented at a time when they cannot be acted upon, and they are to be laid away and buried, so that they can never be acted upon, unless, when a session of Congress does occur, they are brought up and presented. Hence it becomes a mere question of their custody in the mean time; that is all. If my friend thinks that it is safer, in point of custody, to commit them to men who cannot act upon them, who have nothing to do with them, who are under no obligation to re-present them, to ever have them ap-

pear again in the Senate—if he thinks such bodies of men are better custodians of these petitions than those to whom they are committed to be presented when they are in order, that, as an argument of convenience, might be very well.

Mr. HOWE. That is the whole argument.

Mr. CONKLING. My friend says that is the whole argument. Then I have done, Mr. President.

The PRESIDENT *pro tempore*. The Chair has stated the question pending before the Senate, upon which the yeas and nays have been ordered, and the roll-call will proceed.

Mr. FERRY, of Michigan. I was absent. Will the Chair state the question again?

The PRESIDENT *pro tempore*. The question is this: This morning on the opening of the Senate various memorials and petitions looking to legislation were received inadvertently by the Chair. Afterward two petitions were presented by the Senator from Wisconsin [Mr. HOWE] addressed to "the Senate and House of Representatives of the United States of America in Congress assembled." The Senator from Ohio [Mr. SHERMAN] objected to the reception of the petitions, and the Chair sustained the objection. The Senator from Wisconsin seeming to desire it, the Chair submitted the question to the Senate, and the question now is, shall these memorials be received? upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 20, nays 31; as follows:

YEAS—Messrs. Alcorn, Allison, Bayard, Bogy, Casserly, Cooper, Davis, Dennis, Fenton, Gordon, Hamilton of Texas, Howe, Merrimon, Morrill of Vermont, Ransom, Saulsbury, Schurz, Sprague, Stevenson, and Sumner—20.

NAYS—Messrs. Ames, Buckingham, Caldwell, Cameron, Chandler, Clayton, Conkling, Conover, Dorsey, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Gilbert, Goldthwaite, Hamilton of Maryland, Hamlin, Hitchcock, Ingalls, Logan, McCreery, Mitchell, Norwood, Oglesby, Pratt, Ramsey, Scott, Sherman, Tipton, Wadleigh, and Wright—31.

ABSENT—Messrs. Anthony, Boreman, Brownlow, Carpenter, Cragin, Edmunds, Johnston, Jones, Kelly, Lewis, Morrill of Maine, Morton, Patterson, Robertson, Sargent, Spencer, Stewart, Stockton, Thurman, West, and Windom—21.

The PRESIDENT *pro tempore*. The petitions are not received, and will be returned by the Secretary to the Senators offering them.

COMMITTEE ON CONTINGENT EXPENSES.

Mr. HOWE. I will take back the petitions, and ask the Senate to receive the following resolution:

Resolved, That the Committee to Audit and Control the Contingent Expenses of the Senate be continued and authorized to sit during the recess of the Senate.

The resolution was considered by unanimous consent and agreed to.

PROPOSED EXPULSION OF SENATOR CALDWELL.

The PRESIDENT *pro tempore*. The unfinished business is before the Senate, upon which the Senator from Illinois [Mr. LOGAN] is entitled to the floor.

Mr. ALCORN. If the Senator from Illinois will allow me, I wish to present a resolution, that it may lie on the table:

Resolved, That ALEXANDER CALDWELL be, and he is hereby, expelled from his seat in the Senate of the United States.

With the consent of the Senator from Illinois, [Mr. LOGAN,] I will state that I introduce this resolution with a view to save the time of the Senate. If the resolution now under discussion shall fall, it will then require that any resolution offered shall lie over one day. We may save a day by presenting it now. That such a resolution would be introduced, I entertain very little doubt. I desire to say that in offering this resolution I by no means abandon the report of the committee and the support of the resolution now under discussion.

COMMITTEE SERVICE.

Mr. DENNIS. If the Senator from Illinois will allow me a moment, I ask to be excused from serving upon the Committee on Claims, and that the Chair be authorized to fill the vacancy.

Mr. WRIGHT. I do not see the chairman of the Committee on Claims in his place just at this moment, but unless there be some good reason why the Senator from Maryland should be excused, I certainly shall oppose it.

Mr. DENNIS. I find that I am on two other committees, the Committee on Commerce and the Committee on Agriculture.

Mr. WRIGHT. The chairman of the committee is now here.

Mr. SCOTT. I understand that the name of the Senator from Maryland, [Mr. DENNIS,] who asks to be excused, was placed upon that committee by mistake. The name being so similar to that of the Senator from West Virginia, [Mr. DAVIS,] who was intended, the mistake occurred in that way. I hope that the Senator from Maryland will be excused and the mistake corrected by placing the Senator from West Virginia on the committee.

The question being put, Mr. DENNIS was excused.

Mr. SCOTT. I move that the vacancy be filled by appointment by the Chair.

The motion was agreed to by unanimous consent; and the President *pro tempore* appointed Mr. DAVIS to fill the vacancy.

ELECTION OF SENATOR CALDWELL.

The Senate resumed the consideration of the resolution submitted by Mr. MORTON on the 6th instant, declaring that Mr. CALDWELL was not duly elected a Senator from the State of Kansas.

Mr. LOGAN. Mr. President, yesterday I was attempting to discuss before the Senate questions in reference to this testimony, sifting it to see whether it proved anything or not; whether it was of such a character that the Senate could act upon it in the direction of convicting a member of the Senate.

Some discussion arose in reference to the legal questions involved, as to whether the act perpetrated rendered the election void, or whether it formed a basis for expulsion. Those points I reserved, giving them a mere passing remark, until I should get through the testimony, after which I did intend to discuss, in my feeble way, the question in its legal aspects.

Now, after the majority of the committee have made this report, asking that the election of Mr. CALDWELL be declared void and rendered nugatory, feeling somewhat doubtful in regard to the position, perhaps, one of them fires a back shot this morning and comes in with a resolution of expulsion. Hence, we find ourselves in this position: A majority of the committee first resolves that the election is void; this is discussed for a short time; and then one of the majority comes in and says, "If the election is not void, I want him expelled." It reminds me a good deal of an old hunter who fired at some kind of an animal. He was asked a question in reference to it, and said, "I fired just so as to miss it if it was a calf, and hit it if it was a deer." That is about the position I find the majority of the committee in this morning. They are so desirous that a heavy blow shall fall upon this man's head, that, before the argument of the question is concluded, they commence to stick swords in both sides, so that if one is not deep enough, an incision shall be made in another place that shall strike the vital part. This does justify me in what I said yesterday.

I said there was hardly a parallel to the manner in which this man had been pursued by testimony and by witnesses before the committee, and yet I find to-day that Senators are so desirous of destroying one of their fellow-members that they attempt one mode first, and then resort to another dodge, in order that they may inflict an injury of a serious character.

Mr. President, is there no such thing left in the human heart as tenderness? Is there no such thing left in the human heart as generosity? Is there no such thing left as kindness and charity? Are we so molded and our hearts so seared and steeled that we will resort to every machination, to every argument, and to everything possible that we can find according to parliamentary tactics, that we may succeed in destroying a fellow-man and sending him forth before the world branded as a scoundrel and a villain? Have we risen to such moral excellence in this day that we are contaminated by association with men whose course and conduct, since on the floor of the Senate, have been as generous and as proper as our own?

Then, sir, I have but this to say: that if a man is to have justice in the Senate-chamber hereafter, where an accusation is made, he must show himself as spotless as the driven snow, or else the moral excellence of some men and the standard which they have erected for themselves is so high that the Senate must be rid of a few men at least, for, Senators, this will not stop here. Adopt the policy that has been proposed recently, and we stop not at one victim. I do not say this in justification of wrong; I am not here to vindicate wrong; but I undertake to show to this Senate that the testimony in this case was not such testimony as would warrant a verdict of "guilty" by a jury or by a court of Senators. The country has been flooded with such reports in reference to this case that a man can hardly have an impartial hearing by his peers. What do we see this morning? I beg the pardon of Senators for calling their attention to it, but look at the manner in which the debate of yesterday is given to the country for the purpose of fixing their judgment. When the discussion first commenced in reference to the case of Mr. CALDWELL, the arguments made against him were given by the Associated Press almost by columns; but this morning, after the debate of a whole day on this question, we find in the morning papers, from the press report, four lines given to the argument I made—perhaps it was not worth four lines—and more was given of the answer of the Senator from Indiana against him, in what he said yesterday, than was given of the argument in his defense by myself and the Senator from New Jersey. I said yesterday morning that the feverish excitement of the country was such that it required a man of nerve to stand against it, because the cases were prejudged before they were heard, but that if the Senate would give their attention to the testimony, and examine it, and make the application of the testimony to the law as the law would be given in a court of justice, I myself have no doubt of the vindication of this man so far as the charge against him is concerned.

Now, Mr. President, let me continue the examination of this testimony; I hope I may be pardoned for it, because it is by this testimony we must try this Senator. It will not do for Senators to rise in their places here and assert that the law is so and so without any examination of the testimony. You cannot pass upon this man by the law without the facts. You must examine both the testimony and the law and make the application of one to the other, in order to come to a proper judgment in reference to the case. I propose then to examine this testimony as applicable to the law in two points of view: first, as applicable to the law in reference to the question of the validity of the election; second, in reference to the law in regard to expulsion.

The first testimony that I will examine this morning is that of Mr. Daniel R. Anthony, of Leavenworth. It was said here, and properly so, too, for I take no exception to what may be said in a fair and impartial manner in reference to this case, that Mr. Daniel R. Anthony

is the present mayor of Leavenworth City. That I do not dispute; I understand that he is. We are given to understand from the fact that he is mayor of Leavenworth that his testimony must be received. Now, although he is mayor of Leavenworth, I do not wish the Senate of the United States to consider his testimony on this account as better than the testimony of other men, but consider it in its proper light, take it and weigh it for what it is worth, and give to it the weight it appears to be entitled to. It is true, Mr. Daniel R. Anthony was an unfortunate man once; he stood before a court for thirty consecutive days, on trial for murder; still that does not depreciate the man, perhaps, yet it is true. I call the attention of the Senator from Mississippi, who offers his resolution of expulsion this morning, to the records of the Post-Office Department, in the city of Washington. While the Senator from Indiana was speaking of the honorable Governor Carney the other day, reciting his virtues, and those of Mayor Anthony, of Leavenworth, thereby assuming that they were men of such high character and spotless virtue, that their words are to be received as true against the testimony of other men and against the words of a Senator who has been honored by his State, I remembered the records of the Post-Office Department. This same Governor Carney, whose testimony the Senators bolster up by the testimony of Mr. Anthony, and whose testimony they use to bolster up that of Mr. Anthony, appears in a very different relation to his friend on the files of the Post-Office Department. By examining these records they will find a statement, signed by Governor Carney, asking the removal of Mr. Anthony from the post-office at Leavenworth on the ground of various charges of the vilest character, and it stands there to-day as a monument to that man's virtue. The committee support the testimony of Governor Carney by that of Mr. Anthony; and to-day the records show that Mr. Carney charged him with being a murderer and every vile thing that could be charged upon him, and I believe he was removed, or at least upon the charges action was taken against him as postmaster of Leavenworth. These are the "pinks of perfection" that are presented as models of virtue in connection with this case.

My friend from Indiana said the other day that General McDowell, who was marshal of the Territory of Kansas, was not a witness to be believed; that no man would believe him. Why should no man believe McDowell when the committee believe Anthony, who was removed on Governor Carney's charges in regard to his vile character, and Mr. McDowell appointed in his place? Nevertheless, Mr. McDowell is not a credible witness, but Anthony must be believed in all respects.

Now, let us examine Mr. Anthony's testimony for a few moments and see what it is. I will read a portion of it found on page 138. He says he is mayor of the city of Leavenworth, and tells where he resides.

I was opposed to the election of Mr. CALDWELL and opposed to the election of Mr. Carney.

Question. State what you know, if anything, in regard to the use of money or other improper means by Mr. CALDWELL, or any of his friends, to procure votes to secure his election.

Answer. I know nothing personally of the use of a single dollar. I saw no money paid. All I know is from statements made to me by other parties.

Then afterwards he says:

Question. Did you ever have any conversation with Mr. CALDWELL in regard to what that election had cost him, or anything on that subject?

Answer. He remarked to me, incidentally, I think last summer, in regard to the cost of the election.

Question. What did he say about it?

Answer. He said to me that it had cost him about $60,000.

Question. Where was that statement made to you?

Answer. That statement was made to me when he was conversing with me about my purchasing the *Bulletin* office, in Leavenworth.

Now, Mr. President, I wish to continue the examination to see what further this gentleman says in reference to this matter. I call the attention of Senators to his testimony on page 150. In reference to this same conversation he testifies as follows:

Question. Where was that conversation?

Answer. I think it was in front of Newman and Haven's bank.

Question. When was it?

Answer. Along some time previous to the purchase of the *Bulletin*.

Question. When was that?

Answer. A year ago last fall.

Question. That was the fall of 1871?

Answer. Yes, sir.

Question. Are you sure about that?

Answer. Yes, sir; just previous to the purchase of the *Bulletin*.

Question. You say that this conversation with Mr. CALDWELL, in which he said that he had purchased these notes of Burke, and that altogether his election had cost him $60,000, occurred there and then?

Answer. Yes, sir.

Question. Can you name the month?

Answer. No, sir.

Question. About the month?

Answer. It was some time after I purchased the *Times* until I got possession of the *Bulletin*. I saw him several times.

Question. Was it about the 1st of December, 1871?

Answer. Yes, sir.

Question. You testified before the committee at Topeka?

Answer. Yes, sir.

Question. How did it happen that in that investigation you said not a word about Mr. CALDWELL having admitted the payment of $60,000?

Now see his explanation:

Answer. He never had admitted it to me then.

Mark, he swears here that he had this conversation with Mr. CALDWELL in December, 1871, and now he swears that he did not tell it in Topeka because it had not been told him then; yet the investigation at Topeka was in February, 1872. This is the testimony of Mr. Anthony. He swears that the reason he did not tell it at Topeka was that it had not been communicated to him, and yet he turns around and swears that it had been communicated to him in 1871, whereas the investigation in Topeka was in 1872. He gives the place, the time, the date, and mentions the purchase of the paper to show that he cannot be mistaken. What further explanation does he give?

Question. You say it was in the fall of 1871, before this investigation, and this took place in 1872?

Now, he sees he is caught, and this is his explanation:

Answer. They never asked me about it.

He first swears that the conversation had not taken place before the investigation at Topeka, hence he could not detail it there. Then he swears that the reason he did not, was because they did not ask him the question. But let us go further and see whether they asked him the question or not. Here is the examination of the committee at Topeka, and I call attention particularly to the questions asked him in that investigation, which took place in February, 1872:

Question. Now, Mr. Anthony, where did Mr. CALDWELL keep his bank account in Leavenworth?

Answer. I was told in the First National Bank in Leavenworth, and in Philadelphia.

Question. How much money did Mr. CALDWELL or Len. Smith, either or both, bring up to use in that senatorial election?

Answer. I don't know.

Question. Did they use money directly, in your opinion—I mean money in kind—or did they draw against some fund somewhere?

Answer. They did both; I think they did. That is my opinion.

Question. What bank or house did they draw on?

Answer. I don't know.

Question. Did you ever hear any of CALDWELL's immediate friends say how much money it took to secure CALDWELL's election?

Answer. I have heard, but can't say it was from his immediate friends.

In his testimony before the committee here, he swears positively that he does not know of one single cent being used, and then that Mr. CALDWELL told him he had used $60,000, which he says Mr. CALDWELL told him in December, 1871. He says he did not think to tell of it at the Topeka investigation because Mr. CALDWELL had not then told him; but afterward, when he finds that will not do, he swears that he did not tell it at Topeka because he was not asked the question. In his Topeka examination he testifies that he believes money was used by Mr. CALDWELL and his friends, but when brought to the point says he heard it, but cannot say that he heard it from any of CALDWELL'S friends. The question was put to him directly, "From whom did you hear it?" and he said he had heard it, but he could not say that it was from any of Mr. CALDWELL'S friends; and yet subsequently he swears here that Mr. CALDWELL himself told him out of his own mouth that he had used $60,000. Such is the character of Mr. Anthony's testimony.

Now, I want to put this in a little different shape from what I did yesterday. Mr. Anthony there contradicts himself. In that statement he shows that he is not worthy of belief. He contradicts himself. And Mr. CALDWELL, a Senator of the United States, on his honor affirms, in his written statement presented to the committee, that he never did directly or indirectly use one dollar for the purpose of corrupting or procuring one single vote in the legislature of the State of Kansas. There is Mr. CALDWELL'S statement on his honor as a Senator, yet the Senator from Indiana the other day said that Mr. CALDWELL'S statement could not be believed. Why? Because it was not under oath. You can believe Mr. Anthony under oath although contradicting himself, but you cannot believe Mr. CALDWELL because he was not under oath; and I desire right here to make an explanation of that to the Senate.

Mr. CALDWELL was willing to swear to his statement. I have it from Mr. CALDWELL, and I know it to be true, that his counsel, Mr. Cushing, told him not to swear to it, for the reason that it was unusual, and that a Senator was never required to testify before a committee, but his statement was taken on honor. He was instructed by his attorney not to do it, and that is the only reason which prevented him from swearing. It was not because he was afraid that he would perjure himself, but because the argument to him was that if the committee did not believe him when he made his statement on honor, they would not believe him under oath. But I say to my friend from Indiana, and my friends on the committee who are prosecuting Mr. CALDWELL, I do not know whether they would have believed him under oath or not; I do not know whether the Senate would or not; but if they have any hesitancy in believing Mr. CALDWELL'S statement, if the Senate requires or demands that he shall be sworn, it can yet be done. Still, I make no such proposition. I mention this merely because it proves that you can produce testimony against a Senator and destroy him because you will not believe his own statements. Why? His oath is not to be taken; his statement is not to be believed, but the statement of the veriest scalawag or shyster in the land can destroy and despoil the reputation of a man, and he has no guard thrown around him that will protect him against the assaults of such men.

I am not yet through with Mr. Anthony. I want to examine his testimony a little further. He swears, on page 151 of the testimony, that he and Mr. CALDWELL were very friendly, or at least on friendly terms. When asked a question in reference to his feelings toward Mr. CALDWELL he says, speaking of Mr. CALDWELL, "He was very friendly to me." Afterward he said that they were on good terms, and then he was asked the question, "Is Mr. CALDWELL a gentleman in his intercourse?" and Mr. Anthony replies, "Sometimes he is, and then sometimes he is not." He says, further, that he was on sufficiently

friendly terms to visit Mr. CALDWELL and to correspond with him, but that he went to Topeka in the interest of a man by the name of Walker, for the purpose of opposing Mr. CALDWELL, and that Mr. CALDWELL offered him $5,000 for his support. He swears that he would have taken the $5,000, but that Mr. CALDWELL wanted him to wait for a few days for the money, until after the election, and he was afraid to trust Mr. CALDWELL that long, but if he had paid him the money at once he would have taken it. That is the testimony of this gentleman.

I desire to call the attention of the Senate to some testimony in reference to this Mr. Anthony. On page 318 will be found the testimony of a man by the name of Foote, of Leavenworth. Every man on both sides, both Mr. CALDWELL's friends and Mr. CALDWELL's enemies, stated to us that Mr. Foote was a gentleman. I presume the chairman of the Committee on Privileges and Elections would not doubt it for a moment. His bearing, aspect, his conduct, his character, and everything about him forbade the idea that he would, from prejudice or any other cause, make any statement which was not entirely correct. After speaking of the election and of the great enthusiasm there was in Leavenworth, and among the people generally at the election of Mr. CALDWELL, Mr. Foote was asked, "What have been the relations between Colonel Anthony and Mr. CALDWELL and the immediate friends of Mr. CALDWELL in railroad enterprises; friendly or otherwise?" He answers:

Answer. They have been unfriendly.
Question. How was that manifested?
Answer. It has been manifested by writings and sayings; by published articles in his newspaper, the *Times*, and various other ways.
Question. I will ask you directly if it is not the fact, and notorious in the city and county of Leavenworth, and throughout the State, or at least in Leavenworth, that Colonel Anthony has been exceedingly hostile to Mr. CALDWELL, and to Mr. Smith especially, for six or seven years?
Answer. It is.
Question. Has it continued down until now?
Answer. Yes, sir; it has continued with the utmost virulence.

That is the language of Mr. Foote in reference to the feeling and conduct of Mr. Anthony toward Mr. Smith and toward Mr. CALDWELL.

On page 325 will be found the evidence of Mr. Brace, a gentleman from Leavenworth, whom these gentlemen do not try to impeach in any way whatever; a man who is said by everybody to be a good man; all expressing the same view in reference to him. He testifies as follows:

Question. What is the character of Mr. Anthony as to being a turbulent man—a getter-up of strife in the community?
Answer. Well, sir, so far as I know the man, that is his character. He is a turbulent man and a man of strife in our community.
Question. What are his relations, if you know, with Mr. CALDWELL and with Mr. Smith, and what were they at the time of this election?
Answer. Very hostile, as I had reason to suppose.
Question. Had they been for a considerable time before that?
Answer. Yes, sir.
Question. Have they been since?
Answer. Yes, sir.
Question. Are they so now?
Answer. I so understand them to be.

There is the testimony of Mr. Foote, an excellent gentleman, and the testimony of Mr. Brace, in reference to the character of this noble man, Anthony, the mayor of Leavenworth City.

On page 329 you will find the testimony of Rev. Mr. Reaser, a witness who showed himself not only to be a gentleman but a man of learning, an educated man, who stands high in that country, and who is a neighbor of both Mr. Anthony and Mr. CALDWELL. He comes upon the stand and testifies as follows:

Question. Where do you reside?
Answer. In Leavenworth.
Question. How long have you resided there?
Answer. Since 1859.
Question. Do you know Mr. CALDWELL?
Answer. I do.
Question. Were you in Leavenworth during the fall of 1870 and the winter of 1871?
Answer. Yes, sir.
Question. Did you hear Major Foote's testimony?
Answer. I did.
Question. Did you hear that part of his testimony as to bringing out Mr. CALDWELL as a candidate, and the circumstances attending it; and, if so, can you corroborate the statement he made?
Answer. I understood it the same way, sir.
Question. Do you corroborate the statement he made?
Answer. Yes, sir.
Question. As to the notorious hostility of Mr. Anthony to Mr. CALDWELL and Mr. Smith, can you corroborate the testimony of Major Foote?
Answer. I can, sir, with some modifications.
Question. Please state what they are.
Answer. I understood that Colonel Anthony was very bitterly opposed to Mr. CALDWELL as a candidate for the Senate. Colonel Anthony told me at one time after the election, that now it was over he should cease his opposition; afterward, from some cause, however, it seems to have been resumed again. As to his relations with Mr. Smith I am not advised; I do not know.

That is the modification. He says that Mr. Anthony told him afterward that he would stop his hostility, but for some reason unaccounted for by this man he says he has resumed it again. There is the testimony of a clergyman, an educated gentleman, and two men of the highest standing in the city of Leavenworth, as to the character of Mr. Anthony, and as to his hostility to Mr. CALDWELL and Mr. Len. Smith.

Mr. Anthony testifies, as you will find, on page 219:

In this conversation with Mr. Anderson, at Leavenworth, he stated in substance that he tried to get the money at the bank, and they refused to let him have it, and he brought the check back; and Len. got mad and tore it up, and a new check was drawn, and Carney indorsed it; and he then took it and brought the money back, and took it into a room; and he said that Sol. Miller, from Doniphan County, came in and put the package in his pocket and took it off; and it was for the Doniphan delegation.

It is on that statement of Mr. Anthony that the Senator from Indiana founds his assertion in his argument that $7,000 were paid to the seven members from Doniphan County. He asserts that to be a fact shown by testimony, and argues that it is true, and that these men were bought, and yet it is all based on the statement of this man, Anthony, that Anderson told him so. Now, let us see whether Anderson did or did not. On page 73, Mr. Anderson testifies:

Question. This $7,000 was paid to you on the check of Len. T. Smith?
Answer. The check was given by Len. T. Smith to Governor Carney. They asked me, knowing me to be a director in a bank, if I could cash it. I told them I would take it and do it as an accommodation, and get the money, and I did give the money to Mr. Carney.
Question. What was that money to be used for?
Answer. I have no idea.
Question. How did it come to be drawn on the check of Len. T. Smith?
Answer. That I do not know.
Question. What connection had Len. T. Smith with Governor Carney in business matters?
Answer. Well, I supposed them to be connected in some way; interested in the Missouri Valley Railroad, I believe, and other matters.
Question. Did you have no suspicion or information at the time that this money was to be used in connection with the election?
Answer. I have no knowledge.
Question. Had you no opinion about it?
Answer. No, sir; I did not care about it.
Question. You drew the money and handed it to Mr. Carney?
Answer. Yes, sir.

Mr. Anthony swears that Sol. Miller got it for the Doniphan County delegation; and yet Mr. Anderson swears that he drew the money and paid it to Mr. Carney, being the $7,000 that Len. Smith paid to Thomas Carney at Topeka, without the knowledge, consent, or understanding of Mr. CALDWELL. Mr. CALDWELL never knew of it and never heard of it until it was stated here before the committee.

But let us see what Mr. Solomon Miller says about it. This testimony, given by Colonel Anthony, in which Colonel Anthony swore that Mr. Anderson told him that the $7,000 were obtained, and that Sol. Miller got it for the Doniphan County delegation, was read to Mr. Miller. Now, here is his testimony, (page 387:)

Question. Mr. Miller, I will ask you if that occurred.
Answer. No, sir.
Question. Or anything like it?
Answer. No, sir.
Question. Mr. Miller, were you there during the whole investigation?
Answer. I was there during the whole investigation.
Question. What do you know, if anything, of the use of money by any person, or the promise of money by any person——
Answer. I know nothing at all.
Question. Wait a moment. Or the promise of office or anything else in consideration of votes for any candidate at Topeka at that election?
Answer. That is the same question. I know nothing at all about it.

We have then the testimony of Sol. Miller and the testimony of Mr. Anderson, both swearing positively that the statement of Mr. Anthony is not correct. Here you have two witnesses swearing against his statement in reference to this money; and yet he is to be believed and the two witnesses are to be discarded!

Now we come to the testimony of Mr. Burke, which the Senator from Indiana relied upon very much. Mr. Burke had given notes to Mr. CALDWELL—owed him money for a press. Mr. CALDWELL sued Mr. Burke. The press was sold; Mr. CALDWELL bought it in. Mr. Burke, burning and smarting under this action of Mr. CALDWELL, and being himself in the employ of Mr. Anthony, comes forward to sustain the testimony of Mr. Anthony in reference to this declaration. Then they rely upon the testimony of Mr. Snead, which you will find on page 232, where he says:

Answer. Mr. Hopkins asked me what I wanted. I told him that I did not want anything; that perhaps I would have to vote for Mr. CALDWELL, but I would support Mr. Clarke as long as he was in the field. Said he, "There is no chance; we are going to put CALDWELL through; we have got the money, and just say what you want in the way of office, or in the way of money, one, two, three, four, five, six, in money; but be moderate as you can."

Meaning one, two, three, four, five, or six thousand dollars. Now, this testimony is just left in this way. On page 394 you will find the testimony of Mr. Hopkins, who was a member of the legislature and a very intelligent man, as all the committee will admit. He was asked:

What conversation, if any, did you have with Mr. Snead with reference to paying money for his vote?
Answer. No conversation in relation to paying money.

Then Mr. Snead's testimony was read to him, and he was asked:

Did you at any time during the canvass, or at any other time, make such a statement as that to Mr. Snead?
Answer. No, sir; I did not.
Question. Or anything like it?
Answer. No, sir.

Mr. Hopkins swears positively that he had no such conversation with Mr. Snead, or anything like it, and there the testimony stands between those two men. Now, are you to convict where testimony stands in that way? Which man are you to believe? Did Mr. Hopkins have any authority to offer money? Certainly not; he so swears. Did he offer any? He swears he did not. Did he make any promises? He swears he did not. Did he have any conversation of that character? He swears he did not. And yet our friends on the other side would say, forsooth, that Mr. CALDWELL must be convicted

because some malicious man says that somebody else told him if he would vote for CALDWELL he could profit by it, and the man referred to says that he neither said it, nor did he have any authority to make any such offer.

But I must pass from that, because the time is drawing close when I must conclude. I know I am wearying the Senate in requiring them to listen to this testimony; but I do not believe that I should fulfill my duty as a member of the committee, dissenting from the report of the majority, unless I took occasion to examine this testimony thoroughly; and when I say "thoroughly," I mean on every material point as affecting the Senator who is charged with this offense.

I now desire for a few moments, if the Senators will give me their attention, to examine the testimony of Governor Carney, who, as I have stated, is held up here as a man of excellent character. I have naught to say as far as that is concerned, but will let his own acts speak for him. The Senator from Indiana said he was once governor of Kansas. So he was. The Senator from Indiana also said that he came near being elected Senator once. Perhaps he did. The Senator also says that he is a man who stood high in Kansas. So he may have done. The devil was once an angel in heaven, but for misconduct he was hurled over the embattlements thereof, and since then has been chained among those eternally damned. That a man was high once is no reason why he shall stand high always, unless his conduct still keeps him upon an elevated plane. I propose to refer to Governor Carney's own conduct in this case, and I wish to call the attention of the Senate to the peculiar fact that my friend, the Senator from Indiana, holds Carney up as being an honorable man, as being a gentleman, and yet he denounces Mr. CALDWELL as not being an honorable man. Why? Because Mr. Carney, with black-mail burning in his pocket, at the time he came here, testified against Mr. CALDWELL, and that makes him an honorable man, but depreciates the character of the other! That is the course of this argument. This honorable man, Carney, wrote a letter a year ago to Sidney Clarke, stating that fourteen members, whom he could name, were bought, that he would swear to it, and urged an investigation; and Sidney Clarke came here with that letter and undertook to black-mail Mr. CALDWELL for the same amount that Carney black-mailed him for. This is the honorable man, the gentleman, the man of character who is to condemn and damn forever the reputation of a Senator, and destroy, perhaps, even the reputation of his family.

I propose to examine some of the sayings of our friend Governor Carney. I propose to read from Governor Carney's own statement and see whether he is an honorable man. Let me read from page 189 of the testimony, which was read by my friend, the Senator from Wisconsin, [Mr. CARPENTER,] the other day, showing what a kind, virtuous, and mild-mannered man Mr. Carney is. Why, fellow-Senators, if you had been in the committee-room and had seen the smile upon his countenance, you would at once have agreed that

> He was the mildest-mannered man
> That ever scuttled ship or cut a throat.

And his evidence will show the fact. He says:

> There are things that transpire in life between man and man that should be regarded as sacred, and that, no matter whether in friendship or in enmity, should not be revealed. I am sorry to say that things of a similar character occurred between Senator CALDWELL, Mr. Smith, and myself; and I avoided going to Topeka before the legislative committee for the express purpose of not being called upon to reveal some such things; and I am sorry to say now that they have been revealed; that both the Senator and Mr. Smith have revealed things that it was agreed between us and God should remain strictly between us.

O honor! O sacred confidence! how secure are you in the possession of this honorable man! He is sorry to say that things have been revealed before this committee by Mr. Smith and Mr. CALDWELL that were to be kept secret in their own bosoms. One year ago he penned a letter to Sidney Clarke, describing this whole thing, demanding an investigation, and saying he would come before the committee and swear to things enough to oust this man; and yet, saint-like, and a martyr to necessity, he professes to be sorry that they have been revealed by Mr. CALDWELL and by Mr. Smith!

Let us see how they came to be revealed, inasmuch as he professes to regret that such is the case. On page 240 will be found a letter, dated Saint Louis, April 9, 1872. I will ask the clerk to read the portion that I have marked.

The chief clerk read as follows:

> I know of my own knowledge of his paying and authorizing large sums of money to be paid for votes, and Mr. CALDWELL knows that I know it, and he knows that I can name other gentlemen who know it, and yet none of those men were before the examination committee at Topeka. Some of them were out of the State during the examination at Topeka, and those that were not, it did not seem to me that any effort was made to procure their attendance. It certainly was so in my case. I was at Leavenworth a week during the examination, and the committee knew it, and did not send for me until it was known I had left for this city.
>
> Now, under this state of facts—and they *are* facts—I should not be surprised if the evidence sent from the committee at Topeka was small and uncertain as to the guilt of CALDWELL, especially when you and I know that he had friends there who were vigilant and active to cover up and hide every possible thing that tended to show anything against Mr. CALDWELL.
>
> I sincerely hope, both for the credit of Kansas and the United States Senate, that the matter will not be passed over without giving Mr. CALDWELL a chance to prove his innocence, if he even dares to make such a plea. I hope the Senate will authorize the committee to send for persons and papers, and they need not send for many to be satisfied that Mr. CALDWELL holds his seat to-day solely by the free use of money, and money alone. I do not know that this state [of] things is desired to be known by the Senate at this particular time, now that we are on the eve of another presidential election, and I for one deeply deplore such exposures, especially the necessity for them, but it seems to me the time has come when an example should be made for the general good of the country.
>
> I will not dwell longer on this theme; the facts connected with it are too sickening.
>
> Wishing you a pleasant visit and safe return, I am, very truly, yours,
>
> THOS. CARNEY.

Mr. LOGAN. Now, Mr. President, this man who is so loath to reveal secrets swears before the Committee on Privileges and Elections that he never would have revealed this statement—no, sir, never; it would have been sealed up forever in that generous breast—if it had not been revealed by Mr. Smith before the committee only a day or two before. Afterward his own letter is produced, written over a year ago, before the committee had ever asked a question about it, in which he states:

> I know of my own knowledge of his (CALDWELL's) paying and authorizing large sums of money to be paid for votes, and Mr. CALDWELL knows that I know it.

There is his statement over a year ago given to Clarke, and Clarke brings the letter here to the Senate and presents it to Senators in order that this investigation should be prosecuted. All I have to say about the virtuous Carney is this: he either told a positive point-blank lie in his letter, or he swore one, as I shall prove; and if he would write a lie he would swear one. I should like the committee to tell me how they could discover in which he lied, whether in his letter or in his oath. In his letter he says he knows of his own personal knowledge of votes being bought, and CALDWELL knows that he knows it. Now I will show you what he swears. I beg Senators to remember the language of his letter, that he knows of his own personal knowledge of votes being bought, and CALDWELL knows that he knows it, which letter was produced in testimony here and made a part of this record. On page 196 he testifies as follows:

> By the CHAIRMAN:
>
> Question. What do you know of any payment to any member of the legislature? Do you know anything about it? State any circumstances that you know about as to the payment, or promise to pay anything, or anything that throws light upon that question.
>
> Answer. Well, all I know is what a man would found upon belief, and hearing men talk, and by actions, and so on, that followed.

This is his statement before the committee; yet in his letter he writes that he knows of his own personal knowledge of CALDWELL paying and authorizing large sums of money to be paid for votes, and then at this investigation he swears that all he knows is "what a man would found upon belief, and hearing men talk, and by actions, and so on, *that followed;*" in other words, rumors. How are you going to reconcile his letter with this part of his testimony? Did he write the truth? If he did, he swore a lie. Did he swear the truth? If he did, he wrote a lie. I am aware of what he swears Mr. CALDWELL told him, but it does not explain this discrepancy.

Now, let us examine his reasons for thinking money was used in this election; for although in his letter he says positively he knows of his own personal knowledge it was used, yet in his testimony he says he thinks it was used, and I call attention to the fact that he says he has the "strongest reasons for thinking that money was used." You will find his statement on the same page of the testimony in answer to a question by the chairman:

> Well, some of the strongest reasons I have, of course, for thinking that money was used were, first, the fact that Mr. CALDWELL had no status before the legislature; he had no status in Kansas as a politician when the legislature met; that when he went to Topeka there was scarcely anybody for him, or that recognized him to be even a respectable candidate, and the further fact that Mr. CALDWELL has repeatedly declared that his election cost him a large sum of money.

He says, first, that Mr. CALDWELL had no status before the legislature. I shall show before I conclude that he was entirely mistaken in that; Mr. CALDWELL had a higher status in Kansas than Mr. Carney, so far as respectability, honor, and integrity are concerned.

But let me first examine this letter a little further. In it this man says he hopes, "for the credit of Kansas and the United States Senate, that the matter will not be passed over without giving Mr. CALDWELL a chance to prove his innocence, if he even dares to make such a plea." If Mr. CALDWELL dares to make such a plea, he hopes the Senate will give him an opportunity to do so; and yet he would not reveal anything that was within his bosom until it was revealed by others! Finally, he concludes by saying:

> An example should be made for the general good of the country.
>
> I will not dwell longer on this theme; the facts connected with it are too sickening.

What facts are too sickening? Is it the fact that he had $15,000 of the money that he had robbed Mr. CALDWELL of? He says the facts are too sickening. What facts? When he comes to be examined, he does not know a thing of his own personal knowledge except in respect to the money that he received. Is that the fact that is too sickening? If not, what is it?

Now, Mr. President, what are we to infer from Mr. Carney's testimony and conduct? That he is an honest man? Are we to believe that he is so virtuous and honest as he claims to be? I will give you my version of it. Mr. Carney had black-mailed Len. Smith, the friend of Mr. CALDWELL, and Mr. CALDWELL, to the amount of $15,000, and he gave that letter to Mr. Clarke that Mr. Clarke might be enabled to black-mail him also, as he tried to do, to the amount of $15,000. The truth is there was a conspiracy organized between these two men and a few outside shysters to rob Mr. CALDWELL because he had money. It was only a part of the scheme that was being carried out when Clarke came to Washington City with this filthy letter in his pocket, that he might obtain money from Mr. CALDWELL in order to stop an investigation, as has been shown he attempted to do. That

was the object and the only object of that letter. It was for the purpose of black-mailing and robbing Mr. CALDWELL still further; for when Carney comes to testify, he does not know anything of his own personal knowledge of what occurred at the time. He writes this letter, stating that he knows of facts within his own knowledge, that it might be shown to members and friends of CALDWELL, hoping they might advise him to pay money to get rid of it. I know who it was shown to and the suggestions that accompanied it. It was a black-mailing operation, and no man can understand the whole thing without believing that to be the fact, and it destroys all the effect of what he afterward testifies CALDWELL told him.

He further testifies that Len. Smith gave him a check drawn in his own name, but he says that that money ($7,000) was drawn and he never received it, but he went with Mr. Anderson to his (Carney's) bed-room; that there Anderson laid the money on a table, and after a while came laughing to him and said somebody had stolen the money. Now, the truth is—for we had the check before us, and it is made part of this testimony—the check was drawn by Len. T. Smith, in the name of Thomas Carney. Mr. Anderson, being one of the managers of the bank, went after banking-hours and drew the money. Mr. Anderson swears positively that he brought the money back and delivered it to Mr. Carney, and that Mr. Carney took the money. Len. Smith swears the money was drawn for the purpose of paying Mr. Carney $7,000, which Mr. Carney had black-mailed him for after he got to Topeka; and yet Carney swears he never saw it. Carney swears that it was laid on a table in his bed-room; (it is strange that it should go to his bed-room;) and then Anthony comes in and says that Anderson told him that Sol. Miller got it, but Sol. Miller says he never got it, and never knew anything about it. Len. Smith swears to the contrary, and Anderson swears to the contrary, and all three of them contradict this man in this main feature of his testimony. The evidence shows that his hungry passion for money was not satisfied with the amount that he had just black-mailed this man for, but that then, right on the verge of the election, he must black-mail him for $7,000 more, which Mr. CALDWELL never heard of until it developed itself in the testimony. As was stated there, Mr. CALDWELL never knew anything about it; never heard of it. This man Carney, a day or two before the election, commenced threatening that he would be a candidate again, made the threat to one of Mr. CALDWELL's friends, and that friend slips round and tells Len. Smith. It was as perfect a put-up job as ever was on earth to frighten this man Smith out of money, and they did it; and yet it is charged to Mr. CALDWELL that he was engaged in this transaction, when he knew nothing about it.

This man, with all his virtue, makes use of these tricks and then comes here and makes his statements in order to oust a Senator from his seat. He undertakes to reconcile his statement in his letter with his oath, and says it was merely in the freedom of writing that he said fourteen members had been bribed, and that CALDWELL told him so and so in regard to Legate. He virtually admits that they were lies, but says they were written merely in the freedom of writing. Well, sir, if a man is so free with his pen that he will place upon paper a charge against his fellow-man, that he bought or bribed members, that he used money in every way, and that he sickens at the very idea, and then when he comes to swear about it says he made these statements merely in the freedom of writing, I can only say that it must be a very great stretch of freedom.

He goes on and says that he heard Len. Smith say that he had told CALDWELL that he, Smith, had involved CALDWELL in about $40,000, and that CALDWELL must stand by him; that he must not get alarmed; that he must get a status in the legislature; that it must be done by money in this way. You will find this testimony on pages 200 and 201. Mr. CALDWELL, in his statement upon honor, says most positively that no such conversation ever occurred. Mr. Len. T. Smith, under a solemn oath, swears that no such conversation ever occurred, and that nothing like it ever occurred between him and Mr. Carney.

Mr. Carney says that Len. T. Smith told him that the Kansas Pacific Railroad Company had paid him $10,000 for his use in the election. Len. T. Smith comes forward and swears that it is a falsehood made out of the whole cloth; that he never made use of that language or anything like it. Carney says that Mr. Williams, of Johnson County, said that Smith agreed to pay him to vote for CALDWELL. Mr. Williams denies it, says no such thing ever occurred; Mr. CALDWELL denies it, and Mr. Smith denies it. Therefore we have the testimony of three against one.

Mr. Carney says that after the election Smith told him that he had to raise some money to pay some members who were coming to the banquet at Leavenworth after the election was over. Mr. Len. T. Smith swears, on page 275, that no such conversation ever occurred; that he never made any such statement whatever. Carney further says that George Smith told him that he had agreed to take up a note of Butler's for $850. I mentioned that matter yesterday. George Smith says that it is not true; says that he never said so; that he never had the note; and Butler also swears that it was not true.

Then in every material fact stated by this man Carney, except in regard to the amount paid him, witnesses of undoubted veracity have disproved his statements *in toto*.

Now I desire to read from a speech that was made by this man, Mr. Carney, at Leavenworth, after Mr. CALDWELL was elected United States Senator. This speech was made at a banquet over which Mr. Carney presided, I believe.

Gentlemen of the legislature, ladies and gentlemen: The pleasant duty has been imposed upon me by the citizens of Leavenworth of welcoming you to the hospitalities of this city and to this festive hall. In the name, then, and in behalf of the citizens of Leavenworth, without regard to party, I give you a cordial welcome.

You have been invited here to-night that we may express to you personally our joy, our gratitude, and our heart-felt acknowledgments for the high honor you have conferred upon one of our fellow-citizens. We feel that we should make to you, and, through you, to the people of this State, our public acknowledgments for the distinguished favor conferred. We feel also that we are called upon to assure you that we shall not selfishly use your generous gift. We realize that the Senator-elect belongs to Kansas, and that he owes equal duties to all the people of the State without regard to locality, and we mean to so counsel and assist him in every way we can while he holds the exalted position of representing Kansas in the Senate of the United States. We desire to show the people of Kansas that Leavenworth is not local, is not selfish, and will not use your generous confidence to the detriment of any portion of this young, growing, vigorous Commonwealth.

He goes on with his eulogy of the Senator. After that speech made at a banquet given to Mr. CALDWELL, so full of generous expressions toward him and toward the legislature, the next thing we hear of him he is writing a letter to Mr. Clarke in order to black-mail this man or have him turned out of the Senate. And this is the man we are told must be believed, must be honored, and must be accredited, to the disgrace and detriment of other men.

Now, in reference to the status of Mr. CALDWELL, Carney swears he had no status with the legislature. On that point I wish to call your attention to a petition that was signed by the leading men of Leavenworth, (found on pages 315 and 316 of the testimony,) asking Mr. CALDWELL to become a candidate for the United States Senate. There was no such petitioning to Governor Carney, no one asking any other man to become a candidate for this position; but here is a petition of all the leading citizens of Leavenworth asking Mr. CALDWELL to be a candidate for the Senate of the United States. The petition expresses confidence in him as a business man, and an honest, faithful man. One of the best men in that town testified before our committee that at the election prior to that, he, with others, had solicited Mr. CALDWELL to run for Congress, and that Mr. CALDWELL declined. And yet Mr. Carney says Mr. CALDWELL had no status in Kansas, had no popularity there, was not known there. He had lived there for years, had done the transporting of freight for the Government of the United States for years through that country, and was known by nearly every one. He was a railroad man, building railroads through the State and developing its resources at the same time that this man Anthony was leading a mob to tear up his railroad, which he did do. He was known by the people of that country, and had been for years; and yet we are told he had no status—a statement upon which my friend from Indiana dwelt with considerable emphasis.

Mr. President, I wish some man would tell me what is meant by status in a community, unless it is position and influence. Must a man, in order to obtain a status, be a brawling, loud-mouthed politician? Must he hang around corners and talk politics every day? Is that what gives a man a status politically? I do not suppose the Senator from Kansas claims to have a status in this country equal to that of the Senator from Indiana, who is recognized as an able statesman. We cannot all be Websters; in fact, there has been but one Webster in this country, and it is not probable that we shall have more than one at a time like him.

What is meant by this expression? Does the Senator from Indiana mean that no man should be elected to the Senate of the United States unless he stands full six feet in his stockings, and can talk about all kinds of things of a political character, can abuse somebody, charge somebody with an offense, and plead that all virtue is centered in himself? Is that the status a man must have? Has it come to this, that a merchant cannot come to the Senate, that a lawyer cannot come to the Senate, that a physician cannot come to the Senate, that a teacher in the schools cannot come to the Senate, that a professor cannot come to the Senate, because he has no status politically? Why, sir, sometimes men develop very suddenly into great men. Will the Senator from Indiana tell me the political status of George Washington before the Revolution? Will he tell me the political status of U. S. Grant before the rebellion? I should like him to give us the political status of a great many men who hold seats in the Senate to-day. The people saw their genius, perhaps, or at least formed their own estimate of it, and put them where it could be developed. If you could elect no man to office who had not a political status, you would make a monopoly of office, you would give it to nobody except the men who go brawling around the streets in order to get a political notoriety. We want business men in the Senate, professional men, statesmen, men who understand all kinds of business in this country, that they may represent the people correctly and rightly. It makes no difference whether a man was ever heard of as a politician or statesman. If he comes here and makes a statesman, it is no disparagement to him that he never was heard of politically before, but rather the more to his credit.

If no man was permitted to be President except one who had a political status in this country, the Presidency would be confined to a very few men; there would be a sort of monopoly in it. Perhaps it may be that some people would like to have a monopoly of the Senate. Now just let us agree that one man has as much right here as another, no matter what he is or who he is, so that he is a decent and honest man, if the people through their legislature choose to elect him. They must fix his status; it is not for us to fix it. And yet, forsooth, because Senator CALDWELL was engaged in business, was a successful business man, more so than almost any man in Kansas,

therefore he is not entitled to be a Senator! Why? Because he had not taken up his time for years before in politics, but had devoted himself to business matters. I hope such an argument as this will be treated exactly as it deserves; certainly it is a strange argument to be used in a case where you are trying a man, where his reputation, his all, is at stake.

Mr. President, while on this question of status I wish to call the attention of the Senate for a moment to a speech made by a friend of Mr. Sidney Clarke in the legislature that elected Mr. CALDWELL. Mr. Clarke and Mr. Carney thought that Mr. CALDWELL had no status in the legislature, but when the name of Mr. Clarke was withdrawn, and Mr. CALDWELL was about to be voted for, Mr. S. M. Strickler, the particular friend of Mr. Clarke, made a speech, from which I read the concluding paragraph:

The duty then devolved upon the friends of Mr. Clarke of making a choice between Mr. CALDWELL and others who were voted for yesterday. That choice was quickly and resolutely made. They recognized in Mr. CALDWELL a gentleman of character and capacity, whose culture, energy, and integrity as a man, and whose sincerity as a republican, eminently fitted him for the high and honorable position of United States Senator. They therefore resolved to give him their united and cordial support.

This is the statement of a friend of one of Mr. CALDWELL'S opponents, yet he speaks of Mr. CALDWELL as a gentleman of culture and capacity, as a man of energy and integrity, and therefore they made him their choice in preference to other men who were before them as candidates.

The Senator from Indiana dwelt the other day upon a resolution that had been introduced in the house of representatives of Kansas by a man named Fenlon. It is true, as he said, that a resolution was introduced requiring every member to be sworn. Now, what is the history of that as shown by the testimony? I feel too much wearied to read the testimony to the Senate, but I remember it distinctly and I will state it correctly.

Mr. Fenlon was elected from Leavenworth County, where Mr. CALDWELL resides. There were but nineteen democrats in that legislature, and Mr. Fenlon was one of their leading men. Although a democrat, he was a friend of Mr. CALDWELL, and states in his testimony, as the reason why he voted for Mr. CALDWELL, that it was impossible to elect a democrat, and his constituents were unanimously in favor of Mr. CALDWELL. Why did he introduce this resolution? Mr. Fenlon states that he occupied a room adjacent to Mr. Carney's room, (where all this devilment was being done, according to Spriggs and Carney,) and testifies that he was there mixing with these men, talking with them all the time; but he saw no money used, knew of none being used, knew nothing about it. But he said men outside had started a rumor that money was being used, and he introduced this resolution, not because he believed it, but because the rumors outside were such that he wanted an opportunity given to the members of the legislature to vindicate themselves. That was what Mr. Fenlon did it for, and Mr. Fenlon's testimony shows that about two-thirds of the members stood up and took the oath, and those who did not take it were not the friends of Mr. CALDWELL, but most of them scattered their votes on other candidates. One of the very members who refused, stubbornly, to take the oath, was on the stand, and swore that he was the enemy of Mr. CALDWELL, and voted against him. These are the facts in reference to that. The resolution was not introduced because corruption existed, but because there had been talk about it, and Mr. Fenlon, being a friend of Mr. CALDWELL, wanted the legislature to purge themselves before they voted.

Mr. CONKLING. Will the Senator be good enough to state again, so that I can understand, how many of those who took this oath voted for Mr. CALDWELL?

Mr. LOGAN. I cannot state how many, but I am able to say that a large majority, nearly two-thirds of the members of the legislature, took the oath, and that most of the men who did not take it were those who scattered their votes.

Mr. CONKLING. And did not vote for Mr. CALDWELL?

Mr. LOGAN. I do not say they all did not, but they were the ones who scattered on different men. The majority of those who voted for Mr. CALDWELL stood up and took the oath. Mr. Fenlon was a democrat, and he gives the reason for offering the resolution, he being a friend of Mr. CALDWELL, and he was here as a witness before this committee. He said they could not elect a democrat, and he voted for Mr. CALDWELL because he was elected by a constituency who were unanimously for Mr. CALDWELL, and he did what he could for him, and he proposed the resolution to have this oath taken. On his examination he said that rumors were rife that money was being used, as rumors always are about elections at that place, and he introduced the resolution, that members might purge themselves before they voted, and not because he believed the rumors to be true. I ought to say further, that the declination to take the oath on the part of those who did not take it, was not on the ground of their corruption, but on the ground that the legislature had no right to require any such oath; and in point of law I think they were correct. Their objection was not made because they were bribed, but because they had already taken an oath to support the Constitution as members of the legislature, and they would not take any special oath in connection with a matter of this kind.

The idea that such a thing as this should be urged to prove that a man was elected by bribery strikes me as being very strange. But, sir, there is nothing strange in these days. Everything that will bear against this man is resorted to. Witnesses of all kinds are brought here to testify against him, and to blacken his character. I am sure I find no fault with members who take the other side of this question, inasmuch as they believe they are right, and are as honest and candid in their belief as I am in mine, and they are entitled to use all legitimate and proper arguments to sustain their views. But I think some of their arguments are calculated to bear severely and improperly upon the individual who is arraigned before the Senate, and I think it very unfortunate at least that such arguments should be used in this connection.

Mr. President, I do not desire to detain the Senate much longer. In fact I am so weak, from a cold that has settled on my lungs, that when I begin to talk I soon get exhausted, and perhaps if I were to continue longer I should be boring the Senate. In examining this testimony, I could take a whole day in unraveling the facts contained in the testimony, and I could show you beyond all doubt that there never was such a mass of stuff thrown together in a case before this Senate or any tribunal, for the purpose of destroying the reputation of a man. I know it is common to take testimony that comes out before our committees, and throw it before the country in the most prominent way in the newspapers and fix the opinion of the people, without ever giving to them the defense. I have no idea that the people of the country will ever see the defense of Mr. CALDWELL; I have no idea it will ever be given to them; and that is one reason why the Senate should stand between this man and the torrent that is pouring down against him, and protect him if it is right and just to do so.

Before I leave the testimony there is one thing further to which I will refer, to show the *animus* of one of these witnesses. I allude to Mr. Anthony. The reason why Mr. Anthony was so spiteful at the time Mr. CALDWELL was elected was this: He got up a meeting in Leavenworth City, where Mr. CALDWELL lives, a few nights before the election, in order to get resolutions passed repudiating Mr. CALDWELL; but Mr. CALDWELL'S friends went into the hall, and, being in a majority, voted him down, elected a chairman, and passed resolutions indorsing Mr. CALDWELL, and recommending his election as United States Senator. At the same time they passed a resolution in regard to Mr. Anthony, which is as follows:

Resolved, That D. R. Anthony is not an exponent of our feelings, nor representative of our interests, and we respectfully ask the legislature not to consider him as such, and we now beg leave to inform the legislature that all reports of so-called "enthusiastic meetings" in Leavenworth in opposition to Mr. CALDWELL are bogus and false.

I merely call your attention to that to show that Mr. Anthony was thwarted in his designs, and went to the legislature with a bad feeling toward Mr. CALDWELL and his friends, for the reason that he thought he ought to govern and control the feelings of the people of the city of Leavenworth, and that only shows a part of the malice he has toward Mr. CALDWELL.

Mr. President, what is this question? It is simply this, did Mr. CALDWELL procure his election by bribery? If he procured it by bribery, he must have bribed somebody, or at least he must have had a knowledge of some man being bribed. Do the Senators, judging from the testimony in this case, believe that Mr. CALDWELL bribed any member of that legislature? If they do, they believe it upon testimony that would not convict a man of the slightest misdemeanor in any county town in the United States. You could not take this conflicting testimony, of such a character as it is, before any judge and jury, and convict for keeping an open tippling-house on the Sabbath-day under the statutes of some of the States. There is no jury that would not say that the conflict was so great that the case was, at least, doubtful as to what was done at the time charged, and that would acquit. If any member of the legislature was bribed, I want some one to tell me who he was. They have all sworn that they were not. Mr. Carney and Mr. Anthony both swear that Mr. CALDWELL told them that he had bribed a man by the name of Bayers. It is very strange that they both center upon one man, who cannot be found anywhere, and who has not been heard of for nearly two years, and no one knows whether he is living or dead. They put it on some absent man. Neither of them states that Mr. CALDWELL ever told him of any solitary man who can be found, or who to-day has any existence, that was bribed. Both center upon a man who is unknown, who cannot be discovered, who cannot be found; and this testimony is contradicted by the other witnesses who have been sworn in reference to it.

Mr. CONKLING. I should like to ask the Senator whether the case shows anything upon this point: When Mr. Bayers was mentioned by these witnesses, did they know that he could not be produced—that he was absent?

Mr. LOGAN. I do not know that they knew it. I have only the general rumor and the statement of the witnesses that "we cannot find him," and that "no one has been able to find him." They must have known it; as he has been unheard of so long, they could but be cognizant of the fact.

Mr. CONKLING. Is there anything in the testimony which shows that he had notoriously gone before that?

Mr. LOGAN. The testimony shows that no one knows where the man is, whether he has an existence or not, and this has been known for a great length of time. The testimony shows this fact.

Mr. MORTON. Will the Senator allow me a moment?

Mr. LOGAN. For what purpose?

Mr. MORTON. On that point. But I will not press my request if the Senator is not willing to yield.

Mr. LOGAN. I am as generous as a man can be in yielding the floor. I always yield; but I have not got through my statement in reference to this man yet.

Mr. MORTON. The Senator very kindly tolerated the question of the Senator from New York, because it was in harmony with his speech. I simply desired to make a remark in regard to that man Bayers. I will pass it over, however.

Mr. LOGAN. Well, now, Mr. President, I do not think that is generous. I merely asked the Senator for what purpose he wished me to yield. I then yielded to him to say what he pleased. I said I would be generous. Since I took the floor yesterday at one o'clock I have at no time, for any purpose, refused to yield to any Senator. I do not know of any one who more willingly yields the floor than I usually do.

But on that point I will say that, although Mr. Carney had written in that letter that there were members bribed, and although he made the statement that he knew it, and that CALDWELL knew it, and could name them, when he comes to name them, he does not know, of his own knowledge, a solitary one; and the only thing he ever heard of was that he says CALDWELL, in looking over a memorandum-book, told him that he had paid Mr. Bayers. Mr. Bayers was gone, and had been gone ever since the election. He cannot be found. When Mr. Anthony swore that CALDWELL told him he had bribed men, we asked him what man, and he replied, "Mr. Bayers." It reminds me a good deal of a man who, to put it in a mild form, had degradation enough in his heart to swear against a dead man, and a better man than ever he was; I mean old Thaddeus Stevens, one of the noblest Romans of them all. He was dead and cold and silent in his grave, when a man here undertook to swear against him, when he dared not do it against any living man. So it is with these men. They find something to say about a man that is gone, and no one knows whether he is living or dead. They cannot find any living man to put their fingers on; they cannot name any man who has any existence that Mr. CALDWELL stated that he had ever paid money to. Is not that so? This is a very convenient mode. I think, if I were making up a story, and did not want to be contradicted, I would likely select a dead man to lay it on, or some man who could not be found. "Dead men tell no tales!" Men that are gone far off are usually not heard from very soon. It is very convenient, when you have written a letter, stating that which you cannot stand by and cannot swear to, to name some man who is far off, or who is dead, as the one that Mr. CALDWELL told you something about.

Mr. STEWART. With the Senator's permission, I should like to ask him a question.

Mr. LOGAN. Certainly.

Mr. STEWART. Is there any testimony on the point of bribery, except that of Mr. Carney and Mr. Anthony, that Mr. CALDWELL said to them that he had bribed Bayers; and is not that merely hearsay?

Mr. LOGAN. That is the only testimony there is except that contradicting it. I say that there is not a scintilla of testimony which is not borne down by different witnesses, and a majority of them too, including Mr. CALDWELL himself, so as to show it unworthy of belief, except the statements in reference to Mr. Bayers. Mr. Carney says Mr. CALDWELL told him that he had paid Mr. Bayers $2,500, and Mr. Anthony, following Mr. Carney in the same track precisely, swears that CALDWELL told him the same thing; Mr. CALDWELL says he never told either of them any such thing, and all the testimony goes to show that it was not true. Mr. Bayers has not been heard from; he is gone and cannot be found. After all the parade made by Mr. Carney in regard to the number of men that he could name who received money, the only one he mentioned was Mr. Bayers, and he only mentioned that as coming from CALDWELL. There is no testimony as to bribery of any other man except that which is denied by the testimony of the men themselves.

Mr. STEWART. Is there any testimony, whether denied or not, of any person who knew of the fact himself, except what he heard somebody say?

Mr. LOGAN. No, sir; there is no testimony here anywhere, from any solitary man, that Mr. CALDWELL ever offered a man a dollar or ever agreed to pay a dollar, except hearsay statements, such as the statement of that man Spriggs—who I showed was unworthy of belief—who said CALDWELL told him in his room the Tuesday before the election that if he found any man who wanted money to refer him to Len. Smith or himself. I say unless testimony that has been broken down and is not worthy of belief is to be relied on, there is not a particle of evidence that shows any such thing, and there is no testimony which shows that Mr. CALDWELL ever offered a man a dollar. Hence, I say there is no reliable proof sustaining the charge of bribing a member of the legislature. It is mere inference and nothing else. I say, therefore, the testimony here relied upon, contradicted as it is, unworthy as it is in every respect, would not convict a man for selling whisky on the Sabbath-day before a jury in any State under any instructions from a court that understood the law of the country.

On this point a question arises of a legal character: Was the payment of the money to Mr. Carney a bribe? Was that payment of such a character as to be considered as corrupting the legislature to such an extent as to vitiate the election? Let us see how that is. What is the testimony? Mr. Carney swears (and I call the attention of the Senator from Indiana and the Senator from Mississippi to the fact) that he was not a candidate for the United States Senate. He swears that he did not intend to be a candidate for that position. He also swears that he told Mr. Len. Smith that he did not intend to be a candidate under any circumstances. Do I not state the evidence correctly? Is not that the fact? If I am disputed I will turn to his testimony and read it. But after swearing that, he says this to Mr. Smith:

> I have spent a good deal of money heretofore in canvasses; I have involved myself very largely; I cannot go into this thing in any way whatever unless I should be remunerated for it.

My friend from Indiana says he was hired not to be a candidate, and thinks that is buying votes. Hiring a man not to run is buying votes! Why does he say so? Because, as he says, if there were only three or four candidates you might buy off all the candidates, and then you would have a monopoly of the election. I was very sorry to hear my friend from Indiana use that argmuent, because it goes on the assumption that nobody but a candidate can be elected. I thought the legislature might elect whom they pleased. I thought they might accidentally fall on one of their own number and elect him; but, according to the argument of the Senator from Indiana, if you buy the candidates there is nobody else in the way, and the legislature must elect you. They cannot vote for anybody else. I did not know before that that was the law. I am perfectly astounded to hear it now. I do not believe in any such doctrine; but I know so little, and other men know so much, that I do not like to dispute with them. Yet it is a new feature, at least to me. I do not think there is any legislature in this country where the members feel themselves compelled to elect any particular individual. They may have their choice, may elect him, but they are not compelled to elect any one. Therefore such an argument is perfectly worthless, in my judgment, and ought not to be used.

But Mr. Carney said to Mr. Smith that for $15,000 he would not be in the way of Mr. CALDWELL, and would give his services to asisst his election. Let us see what that means. Is that corruption? Is that bribery? The Senator from Indiana says it was bribery. He says that through Carney CALDWELL bribed Carney's friends in the legislature. Now, let me put a case to test whether that is so. Suppose a man is a candidate for the Senate and he says to a friend, "Here, you have some friends in the legislature; I wish you would go up there and work with your friends and try to get them to vote for me." The answer is, "I will do so if you will give me a thousand dollars as payment for my services." That is done; but the man who is to get the money does not go himself but sends a friend, and that friend goes there and uses his influence with his friends on account of this other man to procure his election. Will you say that the members who vote for that candidate are bought with that money given to a third man, but never received by them? Can any one say any such thing? If these men in Kansas were bribed, Mr. Carney must have used some of the $15,000 to buy their votes, but he swears that he did not use a dollar in that way. Will any man show me that one single dollar of that $15,000 paid to Mr. Carney was ever used with any individual in the legislature to purchase or influence his vote? Nowhere in the testimony does it appear that a solitary man was influenced on account of the money paid to Mr. Carney. If the members of the legislature were not influenced by that money, they were not bribed by that money. I say, then, that money was not a bribe to any members of the legislature. We are talking about them and about what the evidence proves as to them, and I assert that it does not show that any man in that legislature was influenced by that money. But the Senator from Indiana says, because Governor Carney went to that legislature and used his influence in favor of Mr. CALDWELL, therefore his friends were all bribed by Mr. CALDWELL through Governor Carney. That is a new process of bribery.

I will put another case, to illustrate more clearly the absurdity of this proposition. There is no difference between paying a man money for his vote and promising to give him an office for his vote. I think every one will agree that in contemplation of law one is just as much a bribe as the other. True, one stands out in a little bolder relief than the other; one shocks the moral sense, perhaps, a little more than the other; but, legally speaking, they are both alike. Now, suppose the President of the United States, being a candidate for re-election, should appoint as minister to England a man who was a candidate for the Presidency, in order to get him out of the way, and he should go out of the way by taking that office, and the President in power be re-elected. Would my friend from Indiana say that the election is vitiated? Will he say that it is void for that reason? Suppose the President, under the same circumstances, should appoint a man Chief Justice of the United States to get him out of his way as a candidate for the Presidency, will he say that it is a corrupt act, that it is a fraud by reason of which the election is void, because this man has been bought with an office? Suppose the President should turn out a Postmaster-General in order to satisfy a candidate for the Presidency, and, as soon as he was turned out, that other candidate should withdraw from the field, would my friend from Indiana say that the re-election of the President was void? I do not say any such thing as this has ever been done, but suppose such things should be done, would they make the election void, would they render the election nugatory? Surely no man will say so for a moment, and no man would believe it for a moment, yet the reasoning of the Senator would go to that extent, and would adopt that as a rule.

I do not mean by this, and I do not want the Senate to understand me as justifying or recommending any such thing; but I am speaking of the matter in a legal aspect. I am speaking of the effect and force of certain acts, so far as the law is concerned. To bribe is to procure a man to do a certain thing for a sum of money, or for some

other consideration. You cannot bribe a man unless you agree with him that a certain thing shall be done on your part which compensates him for that which he does on his part. In this case, to whom was the bribe given? It must have been to a member of the legislature or there was no bribery. Suppose no member of the Kansas legislature had ever heard any rumor that money was being used; had never had a proposition of any kind or character made to him, but that every outsider, every shyster, had his pocket full of money, will the Senator from Indiana tell me that the election will be void on account of the corruption of the legislature in that case? It is they that must be corrupted, not outsiders. If you are to make the action of the legislature void, you must prove that the legislature was corrupted, not those outside of it. You are not dealing with the acts of Mr. CALDWELL particularly; you are dealing with the acts of the legislature. The question is whether their acts are void, or are not void. In order to make their acts void, the illegal thing must be done, to them or by them, and not to and by outsiders. That is the rule.

Now let me go a little further with the argument of my friend from Indiana. He says that the bribing of one member of the legislature, although I assert that the proof does not show that any man was bribed, vitiates the election. Sir, that is not the rule here. That is the rule under the English statutes, but it is not the rule in our country, and no man will maintain it, and it cannot be maintained for a moment. I will show in a few words, as my friend from New York [Mr. CONKLING] did yesterday, the absurdity of the proposition. Suppose we make this rule apply to elections in this country, say the election of members of Congress and the President, and let us see where it will carry us. A man may be elected to Congress in his district by ten thousand majority, and if some scoundrel comes up and swears that he paid $100 to a man to vote for the successful candidate, that villain can destroy his election and turn him out of Congress according to the theory of my friend from Indiana. Suppose a man is elected to the Senate. On this theory I can take $5,000 and unseat any member of the Senate if you adopt this rule; and how will I do it? According to this theory, no matter what a Senator's majority may have been, all that would be needful would be for some enemy of his, at the time of the election, to go and offer a bribe to some member of the legislature and thereby secure his defeat. In this way you put all the elections in this country into the hands of scoundrels by the theory which the Senator advocates. If I am elected to the Senate to-day by one hundred majority by the legislature of my State, to-morrow some villain may come and swear before a committee that I offered him $2,500 for his vote, or that I empowered him to offer some other man in the legislature $2,500 to vote for LOGAN, and that he agreed to do it, and out I go. Why, sir, on this doctrine $5,000 will unseat any man. I can go out among the shysters upon the streets here to-day and blacken the reputation of any man in the Senate for less money than that, and you all know it. The very doctrine advocated here to-day against Mr. CALDWELL would destroy the reputation of any man on this floor, and would put the reputation of every man here into the hands, not of gentlemen, but of scoundrels and villains.

Now let us go a little further with this doctrine and suppose it to be applied to a presidential election. A President is elected by a large majority, and one of his electors in the State of Illinois is offered a bribe of $5,000 to cast his vote contrary to the way the people who elected him expected him to vote, and he accepts the bribe. That President has a majority of a hundred electoral votes; but when the votes are counted in the two Houses the evidence shows that one elector has been bribed. That, according to the theory of my friend from Indiana, would vitiate the presidential election if you carry the principle out and apply it to all elections in this country.

Why, sir, the doctrine is monstrous. It is the doctrine of the destructionists, that would destroy the foundation of our institutions. Instead of purging the Senate of bad men, that doctrine would purge the Senate of good men as readily as it would of bad men.

O, but, he says, these men have sworn that they heard somebody say that somebody else told other persons that somebody had been offered so much money. Now, I appeal to the knowledge of Senators here, do you believe that there are not Senators in this chamber, as honest men as God ever breathed the breath of life into, whose votes cannot be tampered with by all the money that ever was coined, and yet do you not know there are shysters outside and around these halls who pretend every day that they can control their votes in reference to questions pending here? Is there a Senator so ignorant as not to know that there are men in this town who pretend every day that they can control the vote of almost every Senator in this chamber, or of almost any member of Congress? Suppose one of them makes some man believe that who wants an important bill passed, and makes him pay him a large sum of money because he alleges that he controls certain votes, and writes it down, "I will give you so many votes;" he has found, perhaps, in conversation with somebody, how those members are going to vote, and he says, "I will give you so many votes," naming them—he might name the Senator from Indiana, he might name myself, he might name this whole committee, it makes no difference whom he names—and that man's bill is passed. He believes to the day of his death that he paid that money for those votes. Why? He does not go to those who gave the votes, but he paid the money to this man on the representation that he would control the votes, and the man has made him believe that he did control them. According to the theory of my friend from Indiana, if you were to call here that man from some far-off State, not acquainted with things here in Washington, and bring him before an investigating committee and swear him, and ask him, "Did you ever pay money to get a bill through Congress?" he would answer, "Yes, sir." When asked, "How much?" he would say, "Perhaps $10,000." Then he would be asked, "To whom did you pay it?" and he would answer, "For the votes of so and so." "Did you pay it to them?" "O, no." "Well, to whom?" "To such a man." That man would be gone, and you could not get him, and yet the members' reputations would be blackened and stained, and remain so forever. The country would be made to believe that those men had been bribed, when they had never heard of such a thing in their lives. Upon the theory of my friend from Indiana, every man may be ruined in that way, if hearsay testimony is to be taken to despoil a man's reputation before a committee of ours. I am sorry our committees allow such testimony as they do, because the reputation of any man may be ruined irretrievably in that way. It is a thing that certainly should be very well guarded, at least, so that men may be protected. I do not mean protected in wrong, but that their reputation should not suffer unless they be guilty of some offense.

I insist, then, that you cannot declare this election void and unseat Mr. CALDWELL on the grounds here alleged.

My friend from Indiana said yesterday, and the papers state this morning, that I have changed my opinion. He told us that the committee favored the view that the charge alleged, if proven, would render the election void. I agree that the inclination of the mind of the committee was in that direction at the time the question was considered, and yet there was doubt in the mind of nearly every one. The committee, however, made the report which has been presented by the majority. Every man investigated for himself. The inclination of my mind at the time was in that direction if the testimony was sufficient; but, when I came to examine the question, I found that there was but one precedent in the Congress of the United States; and on that occasion the Committee on the Judiciary took ground against the views of the majority report here made. Mr. Butler, the chairman of that committee, denounced the idea that the election was void, and said that the charge went in a different direction. When I found that to be the only precedent, after further examination I came to the conclusion that the law was against this resolution, and that it could only rest on the statutes of England, by which we are not governed.

But as I said, sir, in order that this man may be caught on one hook or another, a resolution of expulsion is now offered. That is a good deal like fishing for buffalo. You make what you call grub-hooks, and have them reach out in every direction so as to catch him on every side. These men seem to be thirsty for blood, and hence there is one resolution from the committee declaring him not elected, and another resolution comes in this morning, so that if he cannot be destroyed upon one resolution he must upon the other. Now, let us apply the testimony to the second resolution. The first one certainly cannot be maintained as a legal proposition. Then let us examine the second one, that of my friend from Mississippi.

What kind of testimony is required in order to give the Senate authority to expel a member? Why do you expel a man? You have the physical power, I admit, to expel any man in the Senate to-day. A Senator may get up and offer his resolution to expel me, without giving any cause, and if the constitutional majority of two-thirds of the Senate vote for it, they have the physical power to do it; but I say legally they have no right to do it; yet they may do it, and I cannot help myself, because there is no appeal from this tribunal. This is the tribunal of last resort, and I have no remedy whatever. Hence I may be, or any other man may be, kicked out of the Senate by mere force of numbers, without any reason. I admit the power of the Senate, but let us see upon what that power should rest.

First, you must have jurisdiction of the subject-matter; then you must have jurisdiction of the person, and, besides, you must have jurisdiction of the offense, before you can legally and properly expel a member. Now, have you jurisdiction of the offense, if you conceive that there was an offense? Was it committed by a Senator? No, sir. You expel a Senator for a crime committed by a Senator, not for an offense committed by a man who was merely a citizen, and not a Senator. Hence I deny the jurisdiction of the Senate so far as that question is concerned. But, admitting the jurisdiction for the sake of the argument, then apply the testimony, and upon what do you expel? Do you expel a man without evidence that he is guilty? Of what can you say that Mr. CALDWELL is guilty? Do you say that he is guilty of corruption? If so, whom did he corrupt? He must have corrupted some member of the legislature, not an outsider. Did he do it? The evidence proves no such thing. All it does show is, that a parcel of shysters and scoundrels got around him, and he, as the report says, not knowing much of political machinery, was robbed by these men, and they made him their victim; and now twice he is to be made a victim, if he is to-day condemned by the Senate: first by a set of shysters, and secondly by the Senate. This report indorses the act of those men, and holds them up in the estimation of this body as great men and noble men, and repudiates him who has been their victim.

Now, sir, I want to put another case to my friend from Indiana. He argues that paying money to Mr. Carney as an attorney or agent, or whatever you choose to call him, to electioneer for Mr. CALDWELL, was corrupt. Are not men at home paid sometimes to electioneer?

You pay bands of music, for what? To keep the crowd in a good humor, to arouse patriotic emotions, that they may be prepared to listen to your talk to them. It is done to influence the people. You pay men to make stump speeches, for what? Why do you pay them? That they may influence the voters; and does that bribe the voters? Attorneys in Washington City are paid to come before a committee of Congress and argue a question pending there. They are paid money for doing that. Does that bribe the committee? According to the argument of my friend from Indiana, in such a case, the committee would be bribed because some man argued a case before them for which he received a fee, and the bribery would be to them because they were influenced by his argument.

Let me give you an instance of what occurred right here in Washington at the very last session of Congress. We passed a bill at the preceding session giving about $120,000, I believe, to a man by the name of Bestor, of Illinois, on account of money that he had lost in the building of a naval vessel during the war. On the very night the bill passed the Senate Mr. Bestor died. The bill went to the House of Representatives and remained there for some time. At the last session of Congress it was taken up in that House and passed. Before it was passed, Mr. Bestor's widow, a very old and feeble lady, came to Senator Trumbull and myself, and to the members of the House from Illinois, and asked our assistance with the committee of the House. We, believing it to be a just bill, did all we could in the case. The bill passed the House. That old lady had not got outside of this town before a couple of shysters in this city had a bill against her for $10,000, as I understand, for their influence with Congress in passing that bill, and I do not suppose that either of them ever spoke to a member of Congress on the subject; I have no idea that they did. It was nothing but a black-mailing operation. And that is the way things are done here every day, but, according to the theory of my friend from Indiana, Congress would have been bribed in that case through these two shysters, who tried to rob that old woman of $10,000 on account of her bill having passed. That is the kind of influence that bribes members, and that we are required to repudiate and destroy this man on account of.

Now, Mr. President, I have said enough about this question, probably a great deal more than was necessary for me to say. I may have wearied the Senate in what I have been saying. I have believed, however, that I was performing my duty. I have done so to the best of my ability. I only say to the Senate in conclusion, let us when trying a brother Senator treat that Senator's statements with some consideration at least.

Because charges are made against a Senator, should we think that all virtue is centered in us, and all that destroys manhood centered in the accused? Let us judge one another as we would be judged; let us judge another with the same feelings of generosity and kindness and the same charity with which we would be judged ourselves.

My friend from Indiana said the other day that this was not a case of sympathy. I admit that to be true. It is not a case of sympathy. It is a case of law and of fact; but it is a case like any other where a man is tried for an offense, and he stands before his peers charged, and is to be either acquitted or found guilty by his peers on the evidence and the law. If this man is guilty, judging him in a generous way, tempering our judgment with such mercy as the law permits, let him go forth before the people branded as a scoundrel and a villain; but if the testimony does not warrant us in that, let us temper our verdict with such charity and such mercy as we would ask our fellow-men to temper a verdict against us. As God tempers the wind to the shorn lamb, so let us temper our judgments toward our fellow-men. Let us not be guided in a remorseless way to the destruction of character or person. When a Senator is at the bar of justice, being tried for an offense, let him, at least, be tried upon the same rules and let him have the same principles applied to him that you would apply to a murderer. If you give a murderer the benefit of that which is doubtful, in God's name give a man, when his all is at stake, the same benefit of a doubt. If you would deal charitably with a man before a jury, when he is being tried for his life, deal the same way with a man when he is being tried for all that is near and dear to him. A man's reputation and character, that he has made by his energy and faithfulness for, perhaps, forty years of struggle in this world, are as dear to him as his life.

It is said that Senators are made of stern material; that tears never fall from their eyes; that their brows never frown because of the effect of any appeal on their sympathies; that they stand like rocks, like stocks and stones—immovable; that they cannot be moved through their generous impulses toward their fellow-men. Sir, that is not according to human nature; it is not according to the better instincts of man.

I simply ask that no prejudice shall arise against this man, whom I believe not guilty in law and fact; that he shall be dealt with not with unkindness, but with tenderness, with charity and mercy. The report itself says that he was more sinned against than sinning. Men smile, as though charity and mercy did not belong in the breast of a Senator. God forbid that the charity, generosity, and mercy that should belong to human nature should be driven from the bosom of a Senator any more than from the bosom of any one else. There is where it should dwell, that the laws made here, to govern the people, may have a generous vein in them; that they may be soft and mild in their application. If there is no heart or human feeling or tender chord to be touched in the Senate-chamber, our laws will be harsh, and we will become tyrants and put our heels upon the necks of the people.

Sir, I am reminded of what was said by a German poet when speaking of time and the creation of man:

When the Ruler of the universe conceived the great thought that He would make man, the three ministers who constantly wait at His throne—Truth, Justice, and Mercy—addressed Him thus:

Truth said, "O, God, make not man; he will pollute Thy sanctuary."

Justice said, "O, God, make not man; he will trample Thy laws under foot.'

But Mercy, upon her bended knees, with tears streaming from her eyes, said, "O, God, make man, and, as Thou castest him from Thy plastic hand on earth, I will take him beneath the hollow of my hand, and bear him through the trials and vicissitudes of this life, and when the final day shall come I will return him to Thee as Thou didst give him to me, to be judged as the child of Mercy."

Then, let our judgment here be the same toward our fellow-men that we would have our fellow-men pronounce against us, that we may not be judged harshly at the final day.

Mr. ALCORN. Mr. President, I do not intend to detain the Senate long. I rise for the purpose of taking the bearings of this case, in order that we may come back to the question before us. The speech of the honorable Senator who has just taken his seat winds up with a sort of

"Hark! from the tombs a doleful sound,
Mine ears attend the cry."
Reminding me that life is short,
And that we all must die,
By and by.

It would seem to me, from the Senator's argument, if I stood outside of the committee, that this report ought to be referred back to the committee, for the reason that a committee ought always to agree upon the facts of a case when they present it to the Senate. I thought that the committee *had* agreed upon the facts of the case presented in this report. I was led to believe that there was no question as to the facts; and if the Senator from Indiana, [Mr. MORTON,] with his facile pen and his arguments, led my judgment and the judgment of the honorable Senator from Illinois to coincide with him for a time, even up to the appearance of that report in the Senate, it may afford some excuse why the argument of that Senator may hold my judgment just a little longer.

I stood perhaps at first alone in the committee as one holding the opinion that the resolution ought to be one of expulsion. Believing that the Senate had jurisdiction either way, I yielded that opinion in order that the committee might harmonize upon the report that was presented to this body. That report came here without any written protest. The facts were stated by the report, fully reviewing the testimony, and there was no one at the time the report was made here who dissented from the facts. The only dissent made was made as to the conclusions of the report.

The honorable Senator from Illinois asks whether the Senate will not believe Mr. CALDWELL upon oath. He has no right to ask me that question, when he stands here as the advocate of Mr. CALDWELL. If Mr. CALDWELL had submitted his statement upon oath and had submitted himself to be cross-examined, then the Senator might ask me whether I stood ready to believe Mr. CALDWELL on his oath; but when Mr. CALDWELL shrank from the ordeal, when he refused to submit himself to cross-examination, but studiously held back and refused to speak until the last witness on the part of the prosecution had spoken, the Senator has no right to come here and ask me whether I will believe Mr. CALDWELL on oath.

The Senator asks the question, where is Mr. Bayers? Go, sir, and ask Mr. CALDWELL where Bayers is. The Senate sought to find his hiding-place. Let the Senator ask Mr. CALDWELL, who had Mr. Bayers in his employ, who was his confidential friend, who had been associated with him in business, and who, as the testimony goes to indicate, gave him a bribe for his vote. Ask Mr. CALDWELL where Mr. Bayers is, and why it was that he did not testify before the committee.

Mr. CALDWELL. I ask the Senator from Mississippi if he intends to intimate that I know where Mr. Bayers is?

Mr. ALCORN. No, sir, I said no such thing. The Senator from Mississippi knows what he says, and he speaks with the responsibility attaching to a Senator upon this floor. I refer the Senator from Illinois to the Senator who holds a seat from Kansas as to the whereabouts of Mr. Bayers. I do not know that the Senator knows where he is. I have not said that he knew where he was. I have said that the committee knew not where he was. I leave the Senate to its own inferences.

It is said that the testimony is mere hearsay, and that in the pages of this volume there can be found no proof that there was any corruption used in the legislature of Kansas. I assert, in the language of the report, that the testimony is conclusive to the contrary. I go further and say that there stand a cloud of witnesses going to show that the legislature of Kansas was corrupt to a degree that finds no parallel in any case of which I have ever read or of which I have ever heard. It has given out a cloud of witnesses who have blackened each and every page of that testimony with the evidence that corruption prevailed in that legislature; that a saturnalia of corruption predominated, insulting to the people of the State of Kansas and insulting to the Senate when brought before this body.

But, sir, I rose, as I said a little while ago, not to review the facts of this case. I may at some subsequent period of this debate take up the facts, and go through with some of the points, the incontrovertible points in this case.

The honorable Senator from Illinois says that the committee is persecuting the Senator from Kansas. Far be it from me to stand in the attitude of a prosecutor, much less that of a persecutor. A duty was devolved upon me as a member of this committee. That duty I sought to discharge. That duty I did discharge, and I discharged it with all tenderness toward the gentleman whose reputation is unfortunately involved in this investigation; and I will say that if the Senate upon the hearing of this case, upon the reading of this testimony, can acquit him, I, voting in the opposite direction, will, nevertheless, congratulate him, and myself, that men more wise than myself, learned above anything I claim to be, upon full investigation, have acquitted him before the country, and I shall be glad of the fact.

I yield to my heart upon all questions where there is a reasonable doubt arising from the evidence; but if the evidence is of such a character as to exclude all reasonable doubt, it excludes the idea that the heart is to be consulted. Then it is a question where the judgment alone claims to be heard. When you show me a reasonable doubt arising from the evidence, I stand ready to yield that doubt at all times in favor of the gentleman whose reputation is involved in this controversy.

The honorable Senator from Illinois intimated that the press was joined with this committee in this persecution of the Senator from Kansas. Mr. President, there is no malice without a motive. What motive can there be to myself and the honorable Senator from Indiana to exclude the Senator from Kansas from his seat on this floor? What motive can there be with the press of the country to exclude the gentleman from his place here? Is there a motive that can be traced to any one, or supposed to exist in any one, that would seek to exclude the Senator from his place on this floor? Why, sir, every motive, every consideration that exists, or that can be imagined, goes to show that each and every man stands anxious to ascertain in such a case the point where duty demands he shall go no further, but to grant the honorable Senator an honorable acquittal. I listened to this case patiently, day after day, week after week, trusting that in the end I might be able to find a reason sufficient to justify me in entertaining a doubt with regard to the character of this transaction. I repeat that it was not until every doubt was removed from my mind that I came to the conclusion to which I have come.

But I said I came to the conclusion in order to harmonize the committee. I did; and now I have a complaint to make, good-naturedly it is true; for I hold that the position assumed by the Senator from Illinois is a manly one. He comes frankly and states the fact that he has changed his opinion, and I justify him, even to the last moment of this discussion, in any change of opinion that the argument or the further examination of the testimony may go to show to be just and right. But I submit to the Senator that if he will examine this testimony with a little more care still, and lay aside those tender emotions which exist in the bosom of that Senator to a very large degree, if he will strip this thing of feeling and come to his judgment, I believe, holding in high respect the judgment of that Senator, that he will change again, and that the Senate will witness that change before the conclusion of this question, for I hold that the evidence is indisputable.

But, as I said, I rose to present the issue in this case. This moving, working up and down and all over the question, first with regard to the facts and then the jurisdiction, and then in and out again, so disturbs my thinking that I am not well able to decide, one-half the time, what the case is or what the question is, or how the Senate is arguing it. I propose, if the Senate will allow me, to present the issue in a form in which it shall not be misunderstood.

Mr. CALDWELL's defense presents two points of issue with the report of the committee—one of fact and the other of jurisdiction. The latter goes to the establishment of a parliamentary precedent, and, reaching through the future indefinitely, ought to be determined unencumbered by any incidental questions of the moment. To render the discussion less discursive, while at the same time taking up its parts in the order of their succession, I propose that the Senate shall decide in the first place, and separately, on the great question of right raised with such boldness in a defense that obtains special weight because of the authority with which it comes.

The case of Humphrey Marshall is cited by Mr. CALDWELL in support of his views on the question of jurisdiction. That precedent may be dismissed briefly by objection to its relevance. The decision rendered there on the right of the Senate to act on a charge like that, arising out of a private transaction, has no bearing whatever on a question of the right of the Senate to act on a charge like this, arising out of a senatorial election.

The action of the Senate in the case of Asher Robbins, unlike that in the case of Humphrey Marshall, embraces incidental points of analogy to the issue of jurisdiction raised by Mr. CALDWELL. So also of other precedents that have been cited in the course of this discussion. But while the decision in none of those cases was one of direct finding on the jurisdiction of the Senate in questions of bribery in senatorial elections, neither was the decision in any one of those cases made otherwise than in the teeth of a more or less considerable vote of dissent. And in measuring the value of these cases—analogies rather than precedents—we must recollect still further that they have come down to us from a period at which political opinion was strained in its constitutional renderings by the pressure which bore ultimately toward the destruction of all Federal authority. The cases cited constituting in no sense of the terms direct or conclusive precedents, constituting in truth, little more than analogies of very questionable authority on even the points they decide, the Senate may, therefore, go forward now to the question of jurisdiction in the present case unencumbered by the action or thinking of the past.

The declamation of the defense is no doubt very ingenious. To an ordinary jury, to perhaps even an ordinary court, it might have been addressed with some effect; but addressed to this body of skillful lawyers and experienced men, I do not think it demands special consideration.

The defense claims that we are powerless to act on such cases as that before us in the form pointed out by the resolution under discussion, because of our want of authority in the statutes. The jurisdiction of this body is assuredly not to be measured by that of ordinary courts. Is our power to find guilty in trials of impeachment null and void because of the absence of an enactment defining the class of offenses which constitute subjects of impeachment? Is our power to punish members for disorderly behavior inoperative because no law has been passed to define disorderly behavior? Is our power to "expel a member" impotent because the Houses of Congress have not seen proper to obtain the consent of another department of the Government to a definition of the circumstances under which either House shall see proper to exercise that right for the preservation of its own dignity? In all these instances the Senate is necessarily a law unto itself.

The Constitution has conferred on the Senate the power of legislation subject to external concurrences. But besides powers in common, it has conferred on it special powers, powers in whose exercise it knows no counsels, no co-operation, save its own. The judicial functions of the Senate being final, being exclusive, shall it be said that they have been assigned to us in mockery without the necessary powers? Shall it be said that powers conveyed exclusively and broadly can be exercised but under the authority and limitation of external consents? In trial of impeachments, in expulsion of members, in judging of "the elections, returns, and qualifications" of members, this body will surely never agree that it is incapable of exercising its special functions because of the absence of those external concurrences that constitute statutory law. Even though a Senate of to-day were to surrender its prerogative to the passage of laws affecting its exercise of these special powers, any succeeding Senate, with a more correct appreciation of its own dignity, would be perfectly justified in ruling pleas based on these laws inadmissible.

The rights of the States have not on this floor a defender more jealous of their sanctity than I am. But to preserve them all the more surely, I must see to it that they be not again hurled into aggression upon the rights of the Federal authority.

The refusal of this chamber to receive a Senator sent here by a State is certainly no affront to even the highest claims of her sovereignty. In their relations with the Union, the States can surely not claim higher rights than those which apply between independent nations. And Von Martens tells us, in concurrence with other authorities on international law, that "Every sovereign may dictate the conditions on which he will receive embassadors, and fix the manner of their reception." Now, the Federal sovereignty having laid down, with the consent of the parties affected thereby, the conditions on which it will receive into its counsels representatives of the State sovereignties, these sovereignties can surely find no ground of offense in a rightful enforcement of those conditions.

The election of Senators, be it recollected, is totally distinct from what are known as the reserved rights of the States. Created by the Constitution, that power began with it, and must be exercised in accordance with its provisions. Now, these go to show very broadly that the creation of Senators by the States is not the exercise of a right absolute. Determining the time, place, and manner of the election of Senators is, it is true, conceded to the State; but the concession is made subject to a reservation to the United States of a superior right—a right to go behind the action of the State as to the time and manner. The creation of Senators being subject, in the first place, to the direction of the United States, and, in the next place, to the ratification of the Senate, it is in a certain degree made by the Constitution a *concurrent* power.

The right of the United States to override the State in the essential points of these senatorial elections—their time and manner—is not the only point from which they are seen to rest on concurrence. The action of the State may be set aside absolutely, and in a fashion that would have been a gross affront to the sovereignty of the State, if it were not demanded as an essential propriety of things, under the express right given to the Senate to expel any of its members. And surely, in presence of this grant of summary and arbitrary power, squeamishness is out of place in hesitating to accept from the Constitution the minor power to go behind a formulary of State action under the assignment of the Senate as "the judge of the elections, returns, and qualifications of its own members."

The judiciary has, of course, no right to go behind the text of law. But the legislature in electing a Senator occupies a very different relation to the Senate from that which it occupies to a judge in the passage of a law. In the latter case it exercises an exclusive right; in the former case the right which it exercises is concurrent. Shall this latter, a right of revision, of repudiation, be measured in its exercise by analogies from a function confined to mere interpretation? To do so were to confound all distinctions in the nature of things.

The governor and legislative officers of a State are not custodians

of the rights and dignity of this Senate. "It would," Rawle remarks judiciously, "be inconsistent with the nature of such a body to deny it the power to protect itself from injury and insult." And, in reference to the extreme right of the Senate to set aside the will of the State when even honestly and unquestionably expressed in the election of a Senator, Story says, justly:

It appears, then, that this implied power of punishing what are termed contempts and infringements of the privileges of the House is in reality the useful institution of a summary jurisdiction for the punishment of offenses substantially committed *against the people.*

Now, the obtainment of a *quasi* right to a seat in this body by money is an act of contempt. To bribe the electors in an election for Senator is an "injury and insult" to the Senate, an offense "committed against the people." And that class of wrong may, therefore, be held to be met in the Constitution by two distinct forms of remedy—one that of the summary power of expulsion, the other that of the right to judge of "elections, returns, and qualifications." For the reason that extreme powers ought to be held in reserve and exercised with reluctance, a body so sedate as this will not resort to the power of expulsion while it can discharge its duty to itself and the people under a milder form. And for the further reason that the case before us comes up in a form which brings it directly under the operation of the powers of the Senate as the judge of elections of its members, I shall now glance briefly at the scope of those powers.

The rights of the Senate over admission to its membership are conveyed under three forms of inquiry. The investigation into "qualifications," and that into "returns," are specific duties; the inquiry into "*elections*" is a general duty, of which the others are two specifications. Now, while the straining of the old doctrine of State sovereignty has asserted that the inquiry into "qualifications" is limited by the terms of the Constitution, it has made the right of inquiry into the "returns" practically null and void. But the general right of judging of elections has always been maintained in form by the routine which made the admission of Senators subject to the consent of the Senate. And with this power remaining, let me now ask, what is its proper scope? A distinct term in the conveyance of the authority under review, it implies necessarily something other than the terms of its context—"qualifications" and "returns." In judging of "elections" outside questions of the "returns" and of the "qualifications" of the person returned, what function can be supposed to belong to us if we be incompetent to carry that right of judgment into questions of bribery? And if bribery be proved to the satisfaction of the Senate, does not the plea that the Senate has no power to purge itself from that act of contempt, to punish that offense against the people, within the purview of its special powers in the case, and without the consent of external concurrences, amount to something like a repetition of contempt?

As further argument appears to me to be unnecessary in meeting a defense so utterly untenable, I propose, in order to narrow down the discussion, and to separate a great question of precedent from individual feeling, the following resolution:

Resolved, That the Senate, acting as the judge of "the elections, returns, and qualifications of its own members," has the power under the Constitution to reject Senators-elect whose election shall have been proven to the satisfaction of the Senate to have been tainted by bribery, fraud, or intimidations.

I ask that this resolution be laid on the table, and at the proper time I may call it up. I present it for the purpose of making the issue here, that we may have it discussed, and when we have discussed and disposed of that issue, then we can go to the question of fact.

Mr. BUCKINGHAM. Mr. President, I have a few words to say on this question. I think the subject under consideration is one of great importance, because it is to affect the character of a Senator or the reputation of the Senate, either of which presents a question of deep interest. It appears to me that there have been many points suggested in this discussion which do not affect the real question, and that objections have been raised to the proceedings here which have no influence on the question at issue. I cannot discuss this subject logically; but I beg leave to present, as briefly as I can, a few reasons for the conclusion to which I have arrived in the present position of this question.

What are the facts, or what is the statement? It appears that Mr. CALDWELL and Mr. Carney were candidates before the legislature of Kansas for a seat in this body; that after the election Mr. CALDWELL received the certificate of election, and now occupies a seat here. In May last a committee was appointed to investigate his election, and that committee have made their report, and we are called upon to act upon that report. They say that Mr. CALDWELL was not duly and legally elected, and introduce a resolution to that effect. They say in their report that the arrangement which Mr. CALDWELL made with Mr. Carney to secure his election was corrupt, against public policy, demoralizing in its character; that it contributes to destroy the purity and freedom of elections, and is not to be tolerated as a means of procuring a seat in this body. Upon this statement, sustained as the committee believe it is by proof, they report this resolution. If sustained, I think they erred in not reporting a resolution for expulsion.

It is claimed that Mr. CALDWELL has violated no statute law, and that we cannot try him for an offense not defined by statute. I do not think we should be restrained by the technicalities of penal statutes as demanded by the argument of Mr. CALDWELL. If the inquiry related to the violation of a written law, the question could not be properly before us, but would be before a judicial tribunal.

We are to judge of the election, returns, and qualifications of Mr. CALDWELL. No statute can determine what properties are necessary to qualify or disqualify a man for a seat in the Senate. That is left to the judgment of this body. If they think that fraud and bribery disqualify a man, and they find upon testimony that a man is guilty of fraud and bribery, then, according to the position which should be first taken, they should find that he is not fitted or qualified to be a member of the Senate.

What does qualification imply? It means something more than age, something more than a term of residence. Qualification means fitness, and a State cannot, as has been claimed, send a man to represent it in this body, and hold him here, if the Senate should decide that either in mental or moral qualities he is unfit to be a member. If a State should send an insane man to represent it, it would be the duty of the Senate to say that he was not properly qualified, and refuse to admit him, or, if he had been admitted, to expel him. There might be a question as to the fact whether the man was insane, or not; but if that was proven beyond a doubt, there could be no question in relation to our duty.

But it is claimed that we cannot take cognizance of acts of Mr. CALDWELL which transpired previous to his election to the Senate. Suppose a candidate for a seat in this body should enter a convention assembled for the purpose of electing a Senator, and with a bludgeon maim or disable some members of that convention so that it would be necessary to remove them, and they were not able to vote on the question, and suppose in consequence of that very act that man should secure an election; would he be justly entitled to a seat? It appears to me not; and yet it would be an act committed prior to the election. But would he be duly and legally qualified? I think not, and I certainly can see little difference in the result between the use of the bludgeon to disable and the use of money to bribe.

It is claimed that this investigation has been instigated by malice. That is very possible; but that is not the question before us. The fact is that a committee have been ordered to make this investigation, and they have made their report. It is said there is no legal proof to sustain the charge against Mr. CALDWELL or to sustain the report of the committee; that the testimony is hearsay testimony. Then reject it; that is all.

It is claimed also that a great deal of this testimony is testimony which speaks of what another has done; that bribery has been charged, but Mr. CALDWELL has not been connected by testimony with that bribery. Very well; reject it all. If you cannot connect Mr. CALDWELL with the bribe, you have no right to pass a resolution either to expel him or to vacate his seat.

What is necessary in order to make bribery a disqualification? I know not the legal bearing of these questions, but it does appear to me that the bribery of a member of the legislature without the consent or the connivance of the person elected should not make an election void when it has been secured by the requisite number of unbribed votes; and it also appears to me that when the person elected has been guilty of bribery, of bribery only in a single instance, of a single voter, his election should be held as void, even if he had the requisite number of votes exclusive of the person bribed. I may be mistaken in regard to this; but these are the views that I entertain.

But suppose that you reject all the testimony which the Senator from Illinois declares has no bearing upon this subject; the testimony of men who come forward and swear that Mr. CALDWELL did bribe certain members of the legislature, when those members come forward and swear that they were not bribed by him; suppose you reject it all as though it had no bearing upon the question before us, then what? We come to this single fact, that though CALDWELL has not bribed Bayers, nor Legate, nor other members of the legislature, yet it is acknowledged by him, admitted by all, that while Carney was a candidate for the Senate, (although, according to the argument of the honorable Senator from Illinois, he swears he was not, and the honorable Senator gives full credit to the testimony of Carney upon that point, while he rejects his testimony upon every other,) it is admitted by Mr. CALDWELL himself that he paid $15,000 to have Mr. Carney withdraw from the canvass, and to exert his influence over his friends to secure the election of Mr. CALDWELL.

Now, with this state of facts, my mind rushes at once and without hesitation to the conclusion that the means which he used to procure his election were corrupt and against public policy, and I can come to no other conclusion.

Mr. CALDWELL claims that this was a private transaction between citizens, neither of whom occupied an official position; that it is not declared illegal by statute, and therefore he is not to be judged guilty of an offense. But this transaction, however private and outside of official position, was to affect the public; it was to affect national legislation and high official appointments; it was to form a component part of this Senate, which, in connection with the House of Representatives, marks out a policy which may promote general prosperity or bring general disaster to the people. I submit that such a private and unofficial transaction as this, even if undefined and unprohibited by statute, should make an election void or lead to expulsion; and I cannot but find that Mr. CALDWELL has secured his seat in this Senate by means which contributed directly to destroy the freedom of election, so that he has no right to it. Suppose a man should murder a member of a legislative body for the purpose of getting him

out of the way and thereby secure his election, should we fold our hands so that he must remain and take part in directing the policy and in molding the institutions of our country because the act was committed prior to his election? I think not.

Mr. President, I cannot rid my mind of the conviction that the payment of money to Carney was as much a wrong as the payment of money for votes. It was using money for the direct purpose of removing an obstacle which was rightfully and properly in the path of CALDWELL, and he had no more right nor was there any more propriety in his paying money to remove an obstacle that lay in the mind and will of Carney, than there would have been in paying money to change the purpose of a man who intended to defeat him by his vote.

I shall give my vote for the resolution with great personal pain, regretting that a sense of public duty urges me to an act that will also inflict pain upon one with whom I have had no other than pleasant personal and official intercourse.

I verily believe that if by the action of the Senate you declare that Mr. CALDWELL was properly elected, and, in spite of the means used in that election, is duly qualified for the position which he occupies—if you do not condemn the arrangement into which he entered with Carney, by which he secured his election—you will write purity and honesty upon every election, no matter how fraudulent the means which may be used to secure it, and will strike a blow at the honor and dignity and integrity of the American Senate which will rob us of the respect and confidence of a wise, intelligent, and patriotic people.

The PRESIDENT *pro tempore*. Is the Senate ready for the question?

Mr. SCOTT. I understand that the Senator from Indiana [Mr. MORTON] desires to speak upon this question, and is not in physical condition to do so to-day. I also desire myself to say a few words upon it. We have now sat to the usual hour of adjournment. If there is executive business to transact, I will move that the Senate proceed to the consideration of executive business.

Mr. RAMSEY. There is executive business.

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

The motion was agreed to.

COMMITTEE ON THE REVISION OF THE LAWS.

Mr. CONKLING. I ask leave to offer the following resolution:

Resolved, That the Committee on the Revision of the Laws have leave to sit during the vacation.

The resolution was considered by unanimous consent and agreed to.

EXECUTIVE SESSION.

The Senate proceeded to the consideration of executive business.

After twenty-five minutes spent in executive session the doors were re-opened; and the Senate (at four o'clock and twenty-five minutes p. m.) adjourned.

IN THE SENATE.

FRIDAY, *March* 14, 1873.

The Vice-President resumed the chair.

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

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

KANSAS SENATORIAL ELECTION.

The VICE-PRESIDENT presented the memorial of R. McBratney, asking that the papers touching the senatorial election in Kansas be taken from the table and referred to the Committee on Privileges and Elections; which was ordered to lie on the table.

SUBSIDIES TO STEAMSHIP LINES.

Mr. CHANDLER. I offer the following resolution, and ask for its present consideration:

Resolved, That the Committee on Commerce be authorized and directed to sit during the recess, and to investigate and report upon the subject of subsidies to steamship lines, and what lines, if any, should be subsidized; also, upon the propriety of paying bounties to ship-builders; and that in the discharge of this duty it may visit Baltimore, Philadelphia, New York, and Boston, and have power to take testimony and send for persons and papers, and employ a stenographer; and that the expenses attending this investigation shall be paid from the contingent fund of the Senate, upon vouchers approved by the chairman of the Committee on Commerce.

Mr. CASSERLY. I am inclined to think that that resolution is one of too much importance to be considered to-day. If there is to be any examination as to the building of ships in this country, the committee ought to visit the Pacific coast, where there is the finest body of pine timber probably in the known world to-day. I ask the Senator from Michigan to consent that the resolution may lie over until to-morrow, so that the general purport of it may be better considered.

Mr. CHANDLER. I have no objection, if the Senator desires it, to insert "California." A sub-committee might be sent to California to take testimony on this subject, and I should have no objection to such an addition to the resolution. I will state to the Senate that the subsidies pressed upon this body and the other House during the last session amounted to over $60,000,000; and it is important, if we are to act on that subject, that we should have the testimony before the body.

Mr. HOWE. Let the resolution be reported again.

The chief clerk read the resolution.

Mr. DAVIS. I think the resolution ought to be printed.

Mr. CASSERLY. My motion was that the resolution lie over until to-morrow and be printed.

Mr. CHANDLER. Certainly.

The VICE-PRESIDENT. A single objection carries it over.

Mr. CHANDLER. I give notice that I shall call it up to-morrow morning.

The VICE-PRESIDENT. If there be no objection, the resolution will be ordered to be printed.

EX-SENATOR PATTERSON, OF NEW HAMPSHIRE.

Mr. ANTHONY. I offer the following resolution, and ask that it be laid on the table and printed:

Whereas at the last session of the Senate a resolution was reported, from the select committee on evidence affecting certain members of the Senate, "That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate;" and whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

Resolved, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

Resolved further, That Mr. Patterson have leave to make a statement, which shall be entered upon the journal of the Senate and published in the CONGRESSIONAL RECORD.

The VICE-PRESIDENT. The resolution will lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. HOWE. Yesterday I asked leave of the Senate to present a petition, which I hold in my hand, and which I ask leave, once more, to present to the Senate. It is the petition of John Alsop, who says he is the great-grandson and co-heir of Thomas Jenkins, deceased, and, as such, is interested in the French spoliation claims, so called. I ask leave to present this petition, and to have it referred to the Committee on Foreign Relations. I ought to say in the outset, what doubtless is not already forgotten, that yesterday, upon a call of the yeas and nays, the Senate refused to receive this very petition. It was said then that the Senate had at some former period decided that petitions looking to legislation could not be received at a session of the Senate called for executive purposes. It is well known to the Senate that I lay claim to none of the learning which belongs to the body. I assumed that such a decision had been made, because it was so said. It was said on the authority of my friend from Maine, [Mr. HAMLIN,] who is not now in his seat. But since that allegation was made, with the help of others I have made some effort to find the decision. I have not succeeded. On the contrary, I have not looked at the journal of a single called executive session where petitions have not been received.

I hold in my hand the journal of the called session of 1871. I find, on the 24th of May of that year—

Mr. ANTHONY presented the petition of Flanagan, Bradley, Clarke & Co., and others, whose claims were presented for adjudication before the mixed commission, under the convention of the 25th April, 1866, &c.

And that petition was received and referred to the Committee on Foreign Relations.

Two years before that, in 1869, "Mr. HAMLIN presented the memorial of Adolph Kuehn, praying the difference of pay between first sergeant and second lieutenant," for a certain period of time; and that petition was received and referred to the Committee on Military Affairs.

In 1867, a petition was presented to the Senate by Mr. Cole, of California, which was received on the 5th of April, 1867, and referred to the Committee on Military Affairs.

In 1865, "Mr. Nye presented resolutions of the legislature of Nevada, in favor of the establishment of railway communication between the navigable waters of the Pacific and the mining districts of Nevada; which were read, laid upon the table, and ordered to be printed."

In 1863, "Mr. Lane, of Kansas, presented a petition from Gilbert Vrooman." The petition was received and referred to the Court of Claims.

On the 18th of March, 1861, at a called executive session, when the Senator from Maine [Mr. HAMLIN] was Vice-President of the United States, he "laid before the Senate a letter of the governor of the State of Indiana, communicating a copy of a joint resolution passed by the legislature of that State on the 11th instant, requesting Congress to call a convention of the States to take into consideration the propriety of amending the Constitution so that its meaning may be definitely understood in all sections of the Union." That was read, and it was "ordered that it lie on the table and be printed."

On the 15th of March, 1849, "Mr. Atchison presented a memorial" from certain parties; which was referred to the Committee on Indian Affairs.

On the 19th of March, 1845, Mr. Dallas, who was then Vice-President, "presented a joint resolution of the legislative council of the Territory of Wisconsin, asking that provision may be made for taking a census of the inhabitants of that Territory." He also presented memorials from the legislative council of that Territory on several subjects, and "the resolutions and memorials were ordered to lie on the table."

In 1829, (as far back as that,) "the Vice-President laid before the Senate a memorial of Messrs. Gales & Seaton soliciting a subscrip-

tion in behalf of the United States to a proposed compilation of executive and legislative documents connected with the history of Congress anterior to the year 1815. The memorial was read."

If precedents could establish anything, it seems to me these precedents must have settled the propriety of receiving petitions.

Mr. SHERMAN. It was done by unanimous consent, without objection. By that kind of logic I can show that there are no rules in the Senate at all, because every rule of the Senate has been violated by unanimous consent. Unless the point was made, I insist that a precedent was not established by the Senate, because every rule has been violated. There is no rule on the whole list but what has been waived over and over again by unanimous consent; but that does not establish what the rule is.

Mr. HOWE. I am obliged to the Senator from Ohio for the suggestion. I have to say in reply, first, that there is no rule, no one asserts that there is a rule, which forbids the reception of these petitions; and I should have supposed, but for the suggestion of the Senator from Ohio, that when I show, year after year for a long series of years, that petitions have been received, have been offered by one Senator after another, and received by one Senate after another, and without objection in any single instance, it would afford a fair presumption for concluding that the practice was not objectionable, and that whenever the objection was made it was made without reason, and not with reason.

Mr. President, when a body of men like those who usually occupy these seats undertake to be sensible, and merely sensible, they are very likely to succeed; but when we undertake to be learned, we are not so dead sure of a triumph. Why, sir, one of the first utterances of that parliamentarian who now occupies the chair, who has been as long acquainted with the usages of this body as any one who now occupies a seat upon the floor, was that "petitions and resolutions are still in order as morning business in the morning hour," and petitions were presented and were received. I take it, that is pretty tolerable evidence that the reception of petitions, as such, is not objectionable unless you think of it and resolve to feel unhappy about it. Nay, Mr. President, although the fact does not appear and should not appear from the reading of the journal, yet when you turn to the CONGRESSIONAL RECORD, which as a transcript of what takes place in the Senate is as likely to be accurate as the journal which is kept by the Secretary of the Senate—when you turn to the CONGRESSIONAL RECORD you find that this very petition was offered yesterday, was received without objection, was referred without objection to a committee; that other petitions were offered by myself, were received without objection; that then the honorable Senator from New York who sits behind me [Mr. FENTON] asked to present a petition, and thereupon the Senator from Ohio [Mr. SHERMAN] intervened with the remark that the reception of petitions had been objected to on a former day, and that he thought it objectionable. Thereupon the Chair not only ruled out the petition offered by the Senator from New York, but I believe he ruled that the petitions which I had offered were not in order, and that the petitions which had been received and had been without objection referred to a committee should not be received; at all events they were not received. Afterward there was a debate and a vote of the Senate, and somehow or other the petitions were recalled from the committee and put back in my hands. All this I cite as evidence that there really is no sort of objection to receiving petitions here in an executive session.

It was said yesterday that it was a step tending to legislation. Well, Mr. President, considering that we are paid by the year, although paid a very inadequate sum I admit, which is a surprising thing when we remember that we pay ourselves, [laughter]—considering that we are paid by the year, what if we should take a step tending to legislation? Is not this on the whole rather a favorable opportunity for doing it? Ought you not to be encouraged by the reflection that you cannot take a step which hurts, because you cannot mature anything until the House of Representatives comes here and seconds your iniquity?

Mr. CARPENTER. Will my colleague allow me to ask him a question?

Mr. HOWE. Yes, sir.

Mr. CARPENTER. Upon that theory, would it not be a great deal better to have the Houses sit separately—to have the Senate sit, for instance, in May, June, and July, and the House in August, September, and October, thus avoiding all the confusion that arises from running backward and forward, and let one House do all their business, and then another come here and do theirs? Would that fulfill the purpose of the Congress of the United States with two Houses?

Mr. HOWE. O, no; not at all.

Mr. CARPENTER. Still, it would "tend to legislation."

Mr. HOWE. I think it is better to have the House here. I think we can do business better and faster when the two Houses are here; but if you should happen, when the House is not here, to take a step toward wise legislation, I do not think the country would whine; and if you should take a step toward bad legislation when the House is not here, I do not think the country would whine, because it cannot become legislation until the House comes here.

Why, sir, the honorable Senator from Michigan [Mr. CHANDLER] has just offered a resolution here, which was read, and you have ordered it to be printed. Will the Senator from Ohio pretend that that is not a step toward legislation? Will any one pretend that it is not? When went there by a day of an executive session of the Senate that there was not something done which tended to legislation? The Senator from Ohio knows, and you know, Mr. President, and many others now on this floor remember, that in 1861 there was an executive session of the Senate called, like this, and which held these seats for weeks, I think for something like six weeks, and there was scarcely a day of all those weeks on which there was not more or less work done which tended to legislation.

Now, Mr. President, in conclusion I must say I have an honest hope that the Senate will conclude that the mistake it made was yesterday, and not that all the previous action of all previous Senates has been a mistake; and I am in hopes that this Senate will, upon reflection, conclude to do what all other Senates have consented to do—allow petitions to be received at your desk and go to the committees if you have them, and, if not, lie on the table until you have committees proper to receive them. At all events, I renew the request once more.

Mr. CARPENTER. I do not understand that there is any particular emergency about either of the petitions presented by my honorable colleague. One asks that legislation may be had which I understand has already been had. That would answer that. I understood the Senator from Minnesota, [Mr. RAMSEY,] the chairman of the Committee on Post-Offices and Post-Roads, yesterday to say that the prayer of one petition had already been embodied in the legislation of the last session. I believe the other petition relates to the French spoliation claims. If either of them demands the immediate attention of the Senate without the presence of the House, it is undoubtedly the one referring to the spoliation bill, which has not been pending above about a century in both Houses of Congress.

But the real question is, not whether the Senate could do such a thing, but whether the Senate alone, at an extra session, should enter upon business which belongs to the Congress of the United States. The Senate, of course, could receive petitions; the Senate could perhaps pass bills; but the question is, whether it would be proper to do it. The ruling that was made yesterday, as I understood it then and understand it now, is following the precedents that have been determined by the Senate where the objection was made.

Mr. HOWE. I was going to ask my colleague if he had seen the precedents himself.

Mr. CARPENTER. No; I have not. As there are several hundred volumes of journals of the Senate and House, I have not had time to examine them since yesterday fully; but it was stated in the Senate yesterday that, in one or two cases where the matter had been called directly to the attention of the Senate by an objection, petitions had been excluded.

Mr. HOWE. So I understood.

Mr. CARPENTER. I assume that to be the fact. Now, then, the only question is, whether at this session of the Senate alone, not a session of Congress, we had better (because that is what it comes to) enter upon legislation which can only be perfected by Congress, and not by the Senate. There are many things which the Senate is competent to do at this session, and about which, of course, petitions would be perfectly proper, and of course would be received; but it is conceded that, at the present session, nothing can be accomplished in regard to these matters; and the question is whether, when the objection is made to receiving these, the Senate had better receive them. If so, I do not see where the Senate is to stop. The Senate had better receive bills—that tends to legislation; had better consider them; had better pass them. I do not know but that there is a constitutional objection to that; I am not certain on that point. Whether a session of the Senate alone could pass bills which would be regarded as passed by one House of Congress is, to my mind, open to examination, to say the least of it. But if we could do one we could the other, and if we ought to do one we ought to do the other, which my colleague himself concedes would be improper, and not a very profitable way of doing business.

Mr. SHERMAN. Mr. President, my friend from Wisconsin [Mr. HOWE] seeks to establish a precedent. I submit to him whether on the whole, if we are to do that, it is not better for us to establish the precedent that the Senate shall not undertake to do what it cannot do. The Senate is always disposed to exercise all the power it possesses, and sometimes we go a little beyond the line. Now, when the point is distinctly made, I submit to the Senator whether it is not better for the Senate to be content with what it has the right to do, rather than to undertake to do what it has not the right to do. The Senate has no power at this session to do anything of a legislative character. All legislative power is conferred upon Congress, and both Houses must be in session at the same time or legislation cannot be done; and then the Constitution provides that neither House can adjourn more than a specified number of days without the consent of the other. If this petition is in the nature of legislative business, it is the business of Congress, not the business of the Senate alone.

The Senate for certain purposes is a distinct political body, performing other duties besides those of legislation. The Senate shares with the President in the executive power. In certain cases it shares in the judicial power; in certain other cases it shares in the legislative power, but when it shares in the legislative power it must be as a part of the Congress assembled, and the two Houses of Congress must both be in session.

It is true, Mr. President, that this is not a very material matter, and I only alluded to it yesterday because I thought that on the whole we had better not present petitions and have them referred at

this session. Why refer petitions now? They cannot be acted upon at this session if they are of a legislative character, and the committees to which they are referred fall with the session, and new committees may be appointed at the next session of the Senate. No progress, therefore, is made; so that the attempt to hold out the idea that we are considering petitions is a deception, for we have no right to consider them.

Therefore, since the point of order is made, I submit to the Senate whether we ought not now to settle forever the question that this body has no power, when separated from the House of Representatives, when not in Congress assembled, to do anything of a legislative character. The various propositions which have been made here since this session commenced are all right. We have the power to pass upon the election and qualifications of our members, upon their right to hold seats here. Each House is by the Constitution the judge of that question, and we may act upon it. We are not in Congress assembled, but we may pass on executive business. We may continue our committees; we may direct our committees during the vacation to perform certain duties. We may do that under the rules of the Senate, because the Constitution authorizes each House to prescribe rules for its own government. Hence we may, under our rules, continue our committees in action during the vacation. Therefore, the resolution offered by the honorable Senator from Michigan this morning is perfectly within our power. We may continue all our committees during the vacation, because it is a power expressly given to us by our rules, and those rules are authorized by the Constitution of the United States.

But, sir, the same Constitution declares that all legislative power, everything that affects legislation, which makes laws, shall be done in Congress assembled. These petitions are not addressed to the Senate; they are addressed "to the Senate and House of Representatives in Congress assembled." Why, therefore, receive petitions not addressed to us? If a petition is addressed to me as a member of the Senate, or even in a semi-official capacity, I cannot present it under the rules and usages of the Senate. It is sometimes done without objection; but whenever the objection is made and it appears that a communication sent to the table is addressed to me as a member of the Senate, and not to the body, it is excluded by the well-established custom of the Senate. These petitions are not addressed to the Senate; they are addressed to Congress, seeking for legislation.

While this is not a very important matter, I do think that when the question is made, when the point of order is raised, the true way is, if you please, to file the papers with the Clerk and let them be presented at the next session; and I find that this very course was adopted at one time ten years ago when Vice-President HAMLIN was in the chair. I will read a short extract from the *Globe* to show that this precise course was adopted. Petitions were filed—not referred, but filed and kept until the next session. This was in the called session of March, 1861:

PETITIONS.

Mr. POWELL. I present a petition of various citizens of Superior, Wisconsin, praying for the adoption of the Crittenden compromise.

Mr. FESSENDEN. That can hardly be presented, I apprehend, at this session. We cannot do any legislative business, and I think it improper to present petitions for matters of legislation.

Mr. POWELL. Why not?

Mr. FESSENDEN. Congress is not in session.

Mr. POWELL. I am aware of that. I merely wish to present the petition and let it lie on the table.

Mr. FESSENDEN. My question was as to the propriety of presenting it at all. It is a precedent. It calls for legislation. I raise the question upon the propriety of it. It is nothing in reference to the petition itself, but simply because I doubt whether there is any propriety in receiving it.

Mr. POWELL. I can see no impropriety in that. The petition is addressed to the Senate, and is respectful in its terms.

The VICE-PRESIDENT. Does the Senator from Maine raise the question?

Mr. FESSENDEN. Yes, sir.

The VICE-PRESIDENT. The impression of the Chair is, that such communications have been received at previous sessions, simply for the purpose of placing them on the files of the Senate, and not for the action of the Senate.

Mr. FESSENDEN. Very well, sir; I take no appeal.

The VICE-PRESIDENT. This communication, therefore, will be placed on the files of the Senate.

That was the course which was then pursued.

Mr. HOWE. What is the date of that?

Mr. SHERMAN. March 13, 1861. And that is all that is said about it. If that course is desired to be pursued now, I should be willing to follow that precedent; but when the point is made, and petitions addressed to Congress in its legislative capacity are presented to us, I think we ought, whenever the objection is taken, to simply refuse to receive them; or, if we receive them, simply place them on our files for reference at the next session of Congress. It is a great consumption of time if we spend the morning hour here in receiving petitions. The debate on this very petition has cost us already fifteen or twenty minutes to-day. There is no use in it, no object in it. Any Senator may, if we establish the precedent the Senator from Wisconsin desires, present petitions which will probably lead to debate and controversy, and this session, which is called for executive business in regard to matters in which we share the executive authority of the Government, will be converted into a *quasi* legislative session at the will of any Senator.

I hope, therefore, my friend from Wisconsin will not feel offended, will not feel that we are violating the constitutional right of petition, when we simply say that now we will not receive a document that is addressed to Congress assembled.

Mr. ANTHONY. The precedents in this case are clearly upon both sides. It seems to me that the precedent which has been quoted by the Senator from Ohio is the proper one, that we should receive the petitions, not refer them nor act upon them, but place them upon the files of the Senate. A great deal is due to the right of petition.

Mr. SHERMAN. I have no objection to that, personally.

Mr. ANTHONY. If the precedents are not uniform, I think we had better take the most liberal construction of the rule. Yesterday I supposed that the precedents were the other way, although I was surprised to find it so stated, for my recollection corresponded with what has been read by the Senator from Wisconsin and the Senator from Ohio; but it was stated all around the chamber that the precedents were all against the reception of petitions, and certainly it is desirable that we should stand by our precedents. But since they are on both sides, I think the best plan is that suggested by the Senator from Ohio, to receive petitions and place them on the files of the Senate.

Mr. HOWE. I agree with my colleague that the petitions I have urged upon the attention of the Senate are not of any vital importance. If they are not received at all, I do not know of any great interest in the country that is likely to languish. The point I was trying to show was, that you could receive them without striking a deadly blow at any great interest of this country.

The Senator from Rhode Island has just remarked that the precedents seem to be on both sides. No, Mr. President; I do not so understand it. So far as we have any precedents, they are on one side—on the side of receiving petitions. The Senator from Ohio mentions a case where a petition was received and was not referred. I have cited a great many cases where they were received and referred.

Mr. SHERMAN. All our rules are violated by common consent, but those cases are not precedents. A precedent is set only where objection is made, and a ruling is had as to the right of the case. Every rule is violated by unanimous consent, as a matter of daily occurrence.

Mr. HOWE. But where from the foundations of the Government until yesterday you do a thing right along without an objection, it rather argues to my mind that you have not any rule against it. That is the deduction I was trying to draw, and to enforce on the attention of the Senate—that there was no rule against it, or that all Senators and all Senates would not have acted in violation of it, as they have, if you have such a rule. Now, I have not any sort of objection to the laying of these petitions on the table. I care but very little what disposition the Senate makes of these particular pieces of paper.

The Senator from Ohio, however, makes an argument, upon economical considerations, that if we once establish the rule of receiving petitions, it may lead to the expenditure of a great deal of time. In reply, I show him that from the foundation of the Government you have received petitions, and in all that time you have not wasted so much time in the receipt of petitions as has been expended yesterday and to-day to exclude them, and to exclude these particular petitions from the Senate. So I think, on the score of economy, you had better go along as your fathers have gone, rather than undertake to blaze out new paths in the wilderness of legislation.

The VICE-PRESIDENT. Does the Senator from Wisconsin offer this petition?

Mr. HOWE. Yes, sir; I offer the petition. I send it to the Chair.

Mr. SHERMAN. I move that it be received and placed on the files of the Senate without a reference.

The VICE-PRESIDENT. The Senator from Ohio moves that the petition be received and placed on the files of the Senate.

Mr. FENTON. Is a motion necessary to that end?

The VICE-PRESIDENT. The Chair is informed that yesterday the Senate decided not to receive petitions at this session. Of course the Chair must be governed by the decision of the Senate on a direct vote, whatever may have been the action of the Senate in years past.

Mr. SHERMAN. I am willing to withdraw the objection, or let it stand, whichever is the best course. My honorable friend from New York seemed to object to my motion.

Mr. FENTON. No.

Mr. SHERMAN. I am willing to receive the paper, and file it and take care of it until the next session.

Mr. CARPENTER. For the mere purpose of ascertaining for my own information whether the presentation of such petitions be proper or improper, I object to receiving the petition, and ask a ruling of the Chair.

The VICE-PRESIDENT. The Senator from Wisconsin objects to the reception of the petition.

Mr. FENTON. What is the decision of the Chair, Mr. President?

The VICE-PRESIDENT. According to the action of the Senate yesterday, the petition cannot be received. The Chair must be governed by the direct vote of the Senate in that matter.

Mr. HOWE. Well, Mr. President, I suppose, then, the Chair will sustain the objection and rule the petition not in order. Will not the Chair consent to submit the question to the Senate once more, in view of the fact that the Senator from Ohio, who was yesterday opposed to the reception of petitions, is to-day in favor of it?

Mr. SHERMAN. Not at all. I am opposed to the reception of petitions, but at the same time I am willing to get rid of them in the quickest possible way. What is the use of receiving them? I shall vote just as I did yesterday if the question comes up.

Mr. HOWE. I see I was misled by the Senator. I supposed, when he moved to receive it, that he was in favor of receiving it. I beg his

pardon for the mistake into which I fell. [Laughter.] I am every moment exposing my ignorance of parliamentary ways. [Laughter.] I ask the Chair now, however, to be good enough, as there may be some other Senator who is in favor of receiving petitions who was opposed to it yesterday, to submit the question to the Senate. I do not like to take an appeal.

The VICE-PRESIDENT. Certainly, the Chair has no objection to submitting the question to the Senate, and the Chair submits it. The question is, shall the petition presented by the Senator from Wisconsin [Mr. HOWE] be received by the Senate?

Mr. HOWE. Let us have the yeas and nays once more.

The yeas and nays were ordered; and, being taken, resulted—yeas 24, nays 32; as follows:

YEAS—Messrs. Alcorn, Allison, Ames, Bayard, Bogy, Casserly, Cooper, Davis, Dennis, Fenton, Gordon, Hamilton of Texas, Howe, Kelly, Merrimon, Morrill of Vermont, Morton, Ransom, Saulsbury, Schurz, Spencer, Sprague, Thurman, and Windom—24.

NAYS—Messrs. Boreman, Buckingham, Carpenter, Conkling, Conover, Dorsey, Ferry of Connecticut, Ferry of Michigan, Flanagan, Frelinghuysen, Goldthwaite, Hamilton of Maryland, Hitchcock, Ingalls, Jones, Lewis, Logan, McCreery, Mitchell, Morrill of Maine, Norwood, Oglesby, Patterson, Pratt, Ramsey, Sargent, Scott, Sherman, Stewart, Tipton, Wadleigh, and Wright—32.

ABSENT—Messrs. Anthony, Brownlow, Caldwell, Cameron, Chandler, Clayton, Cragin, Edmunds, Gilbert, Hamlin, Johnston, Robertson, Stevenson, Stockton, Sumner, and West—16.

So the Senate refused to receive the petition.

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. SCOTT. Mr. President, without indulging in any preliminary remarks, such as might be suggested by the gravity and importance of this occasion, I will at once approach the question which is presented by the report of the Committee on Privileges and Elections; and we find that question not only suggested, but actually presented, by the report, with its accompanying resolution. Let me call attention to it by quoting from the report:

It has been a subject of discussion in the committee whether the offenses of which they believe Mr. CALDWELL to have been guilty should be punished by expulsion or go to the validity of his election, and a majority are of the opinion that they go to the validity of his election, and had the effect to make it void. Wherefore the committee recommend to the Senate the adoption of the following resolution.

It will be observed that the finding of the committee is based, not upon what they have found the members of the Kansas legislature to have been guilty of, but upon what they find Mr. CALDWELL to have been guilty of. Lest that point escape attention, let me again call attention to their own language:

It has been a subject of discussion in the committee whether the offenses of *which they believe* Mr. CALDWELL *to have been guilty* should be punished by expulsion or go to the validity of his election.

In this connection, and before I proceed further, let me call attention to the finding of the committee upon the questions of fact as to the legislature itself, for it will, perhaps, be necessary to consider this question in both its aspects, namely, as to the effect which the action of the legislators may have upon Mr. CALDWELL'S election, and as to the effect which his own acts may have upon his right to hold his seat here. There is one specific transaction, to which the committee refer, with Governor Carney, and I quote their language to give the conclusion at which they arrived as to it:

It was an attempt to buy the votes of members of the legislature, not by bribing them directly, but through the manipulations of another. The purchase-money was not to go to them, but to Mr. Carney, who was to sell and deliver them without their knowledge. That Mr. CALDWELL did procure the votes of members of the legislature, friends of Mr. Carney, ignorant of the fact that Mr. Carney was making merchandise of his political character and influence, and of their friendship for him, for which he was to receive a large sum of money, the evidence leaves no reasonable doubt.

The finding of the committee is that, so far as the friends of Mr. Carney are concerned, who voted for Mr. CALDWELL, they voted without knowledge of the transaction between him and Mr. Carney, and without being influenced by the money which Mr. Carney received. Passing from that transaction to the whole testimony, they make this summary:

But, taking the testimony altogether, the committee cannot doubt that money was paid to some members of the legislature for their votes, and money promised to others which was not paid, and offered to others who did not accept it.

It will thus be observed that, so far as Carney's friends are concerned, the committee find that they were not corrupted. It will further be observed that they do not find that Mr. CALDWELL was not elected by an unbribed majority; or, to state it otherwise, they do not find that the majority by whose votes he was elected were all bribed; and, with these findings, because of the offense of which they find Mr. CALDWELL guilty, of having used money for the purpose of procuring his election, they declare the act of the legislature of Kansas void.

Mr. President, this presents the really important question which we are to consider. It is argued that this is the law, and that we derive it from the source from which we derive the greater portion of our law, Great Britain.

I cannot bring my mind to the conclusion that the finding of the committee is cause for setting aside this election, and I shall proceed briefly to give the grounds upon which I dissent from that conclusion.

It is argued, and I believe correctly, that if this were the case of an election of a member of the House of Commons, the finding that one elector was bribed by the member claiming his seat would avoid the election. It would go further; it would not only avoid the election as a punishment of the electors, according to the theory of the English law, but under their statute it would disqualify the man elected from being re-elected.

Now, sir, is that English law applicable to our American institutions? Is the reason which applies to a popular election in England and which punishes both the constituency and the member elected, because one member of that constituency was bribed, applicable to the case of an election by a State? Can you punish a State as you can in England punish a constituency, because one member of the whole population of that State, intrusted for the time with a public trust, has violated it? It presents the most important question, I think, that the Senate has ever been called upon to decide; and according as we decide it, one way or the other, we shall preserve the checks and balances of the Constitution, or may introduce a precedent which may bring with it strife, anarchy, and blood.

That I may not misquote or misconstrue the position this question has assumed, let me turn to the argument of the chairman of the committee, made with all the force which his character and the strength of his conviction could give his presentation of the case. After quoting the resolution the committee had reported, he says:

The ground upon which bribery and intimidation invalidate an election is that they impair "the freedom of elections." Rogers, in his Treatise on the Law and Practice of Elections, speaking of the action of the House of Commons, says:

"Bribery essentially affecting the freedom of election, they took cognizance of and punished both the electors and the elected offending."

Bribery by a candidate, though in one instance only, and though a majority of unbribed votes remain in his favor, will avoid the particular election and disqualify him for being re-elected to fill such vacancy.

Now, Mr. President, the question presents itself, is that doctrine applicable in a government made up of independent States? To avoid all controversy or criticism, I drop the term "sovereign States;" but is it applicable to a government whose legislative assemblies are representatives on the one side of the people in their respective districts, and, on the other, of these independent commonwealths? Our Government is so dissimilar from that of England, although England is the source from which we derive many of our institutions, that many of the comparisons between them fail. With a limited monarchy, a House of Lords hereditary, and a House of Commons elected by a small portion of the English people, the analogy fails in many respects when you come to look at a President, who represents the whole people, the nation; at a Senate, which represents States; and at a House, which represents all the people in their respective districts; and it is because this analogy fails that I argue this paliamentary law of England is not applicable to an election, especially by a State; and, I think, if I have the strength, or if I recall the thought, I can show the rule has never been held to be applicable even to our popular elections; for it has never yet been held in the other House that a single case of bribery by a member took away the right of the whole constituency to their representative. Let me refer to one of the most reliable of the authorities upon parliamentary law to show that the very question I make here has been started in his mind, and has been presented in his treatise. I read from Cushing's Law and Practice of Legislative Assemblies, page 70:

In England, before the enactment of any of the statutes on the subject, bribery was not only a high misdemeanor at common law, punishable by indictment or information, but, when practiced at elections of members of Parliament, was also a breach of parliamentary privilege, and punishable accordingly; and it is an offense of so heinous a character and so utterly subversive of the freedom of election, that, when proved to have been practiced, though in one instance only, and though a majority of unbribed-voters remain, the election will be absolutely void.

That is the doctrine contended for in this report and by the chairman of the committee. The author proceeds:

This severity is justified on the ground that, in a country where bribery is so common as to form the subject of investigation in a large proportion of election cases, it is absolutely essential to the preservation of the freedom of election.

Whether the same effect would be held to follow in this country may admit of some question, or, perhaps, depend upon the degree of guilt attached in the several States to the offense of bribery. This offense, though much less common here than in England, is nevertheless considered as so subversive of the freedom of election, and so disgraceful to the parties concerned, that it is made an express ground of disqualification in the constitutions of several of the States.

It will be observed that, after quoting the parliamentary law of England, the question is started whether it is applicable to popular elections in our States. The author is not considering the question of an election by a representative body, but the elections in the States, and he concludes thus:

The right of a legislative assembly, in those States where a conviction is necessary to disqualify, to set aside an election for bribery, where the majority is not thereby affected, before a conviction at law has taken place, seems to be clear—

That is, under the constitutional and statutory provisions of the State—

for, in the first place, the trial of a controverted election is a judicial proceeding; second, annulling an election for bribery, in the case supposed, is analogous to expulsion, which is the peculiar and appropriate punishment for bribery by the common law of Parliament.

There is the reason of the whole English law: "is analogous to expulsion, which is the peculiar and appropriate punishment for bribery by the common law of Parliament."

Thus you get at the intendment, the purpose of the English law of

Parliament. It is punishment—punishment of the constituency, punishment of the member who has been guilty of bribery. Now, I submit that when you go to the foundation of that parliamentary law of England, and seek to apply it to an independent commonwealth, the reason of your law fails. The people of the States are themselves the guardians of the purity of their own legislative assemblies; and if it were necessary to pursue the argument for the purpose of showing where this doctrine would lead, I might suppose a case: It is admitted that the moment you approach the legislative assemblies of the States you cannot inquire into the title by which one of the members holds his seat; that is a question committed by the State constitutions exclusively to them. You could have this case, and it might be made as apparent as noonday that one member of that legislature had been bribed in casting his vote for a Senator, and that five who sat beside him held their seats by bribing the electors who sent them there, and we, sitting as the high court to purify all the people, would be compelled under this English law to turn out the man because one elector had been bribed, but we could not turn him out, although it were as clear as noonday that five others beside him had corrupted the fountain of power and held their seats by bribery.

Mr. President, the people are the fountain of power, and the lesson we must teach in this case is this—and it is high time it was being taught here and elsewhere—that the people themselves are responsible for bribery and corruption in legislative assemblies. We are not to sit here as a high court of appeal, blackening forever the characters of members of the State legislatures without a hearing, saying that they were bribed. We must say to the people, "If you will not exercise that power which is inherent in you, and exercise it at every stage where it may be exercised, from the primary meeting up to the highest election, you are the sufferers, and you have the remedy for the evil in your hands." I may speak further of this, for I find that I am already digressing somewhat from the line of argument which I proposed to follow.

Does this rule apply to an election by a State, by a political entity, upon which there cannot be inflicted the punishment that was inflicted upon constituency and member by the English parliamentary law?

I consider now the peculiar constitution of this body—the rules which govern it in its relations to the States. I need not recall the history of the constitution of this body; I need not recall to the minds of Senators the fact that the rights of the States as States were sought to be protected in this body against the encroachments of the Federal Government; but I do call attention for a few moments, although the detail may be, perhaps, uninteresting, to the constitutional provisions, all of which point to the sanctity of the representation of States. Article one, section three, of the Constitution, reads as follows:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

I refrain from any comment upon these separate provisions until I group all which I think bear upon this subject. In the same section, after providing for the manner in which the seats of Senators were to be drawn in the first organization of the Government, this provision occurs:

> And if vacancies 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.

Then follow the qualifications of the members of the Senate:

> No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Then follows the provision authorizing the States to fix "the times, places, and manner of holding elections for Senators and Representatives," but providing that "Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators." Then comes the provision—

> Each House shall be the judge of the election, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business.

Again we have the provision:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Thus we have all these provisions with reference to the choice of Senators; to their appointment by the governor; to their qualifications; to the time, places, and manner of choosing them; to the power of the body to judge of their election, returns, and qualifications; to the power of expulsion, requiring two-thirds; and, last of all, comes that provision which shows how carefully guarded the rights of the States were in this instrument, because the only exception made from all the classes of subjects within the jurisdiction of the General Government as to the power of amendment is, that no amendment shall be adopted which shall deprive a State of its Senators without unanimous consent. It is the only one subject excepted expressly from the power of amendment, showing that the right of a State to have its Senators here, elected by its legislature, cannot be taken from it unless it be by the consent not only of that State but of all the States.

Now, sir, with these provisions before us, let us ask ourselves, can you apply to the State legislature the rules which the House of Commons applies to its constituency and its members, and declare that if one member, representing perhaps twenty thousand people of the whole four and a half millions in the State of New York, shall betray his trust, the act of that unworthy member shall deprive more than four millions of their right to representation in this body? Which is the safer rule, Mr. President, to hand that unworthy member over to be dealt with by his constituency, or to say that we will arrogate to ourselves a greater degree of purity than the legislative bodies which sent us here—than the fountains from which we come—and that we will undertake to determine the purity of our own source of political existence?

That this could never have been intended to apply to elections of members of the Senate, I think derives some re-enforcement from what I consider a significant fact. There have been contested seats in the Senate almost from the foundation of the Government; there have been contested seats in the other House; and the acts of Congress which you find upon your statute-books providing how the testimony is to be gotten in cases of contested elections, the acts of 1851 and 1869, apply alone to members of the House of Representatives. It is true that you may inquire into the qualifications of the electors; you may inquire whether a man has paid his taxes, whether he has resided the constitutional period in his district, or any of the other qualifications that are required by State law; but the moment you approach a legislative body, as I have already observed, that analogy fails; and if there be all the virtue in the world on one side of the legislature, and all horse-thieves on the other, if it were possible, you cannot inquire into the character of a single man among them. When you reach the legislature, you cannot inquire into the title of one of them to his seat or his right to vote in that legislature; that is settled by the legislature itself. So that all analogies fail the moment you come to apply the rules which are applied in contested elections in the popular branch, the House, to an election by a legislature.

If this door is to be opened, how far are we to go? If it be true that we may go to the legislature of Kansas, and inquire whether Bayers or any other member of it was corrupted for the purpose of electing Mr. CALDWELL, and, upon our judgment of whether that is the fact or not, set aside that election, what more is it than establishing the rule that we may set aside such an election for any reason that we deem to be corrupt or improper? Take the English bribery laws, and they unseat members there for treating, and I am sure that, high as the Senate of the United States must be considered to be in point of moral elevation, if it is to purify all the legislatures of the States, there are even men here who would not be willing to be unseated if it were shown that they had indulged their constituents in a glass or even a keg of lager. We may not carry our rule so far as the English Parliament. We may not bring here all the rules which they have considered necessary in a country where, according to the author from whom I read, fraud has been so prevalent that every parliamentary election is contested. We cannot do that. If we can, I pray you, where are we to stop?

If I may do it without offense, suppose I make use of a case as an illustration that we have had on this floor within the last three weeks.

The allegation is that if you find one man in a legislature who has been influenced by mercenary motives—I will put it even in that form—you must declare the election void. Well, sir, suppose there were an election for Senator to come off in the State of Indiana, or in the State of Illinois, or in the State of Ohio, next January. We discussed here for several days a bill involving a million and a half of dollars to these three States; that is all—simply "the filthy lucre" of a million and a half of dollars. The representatives of those States, upon grounds of justice, as they contended, asked the passage of the law to give it to them. The majority of the Senate upon proper motives refused it, said it was wrong, against public policy; I am not sure but that some of them went so far as to say it was dishonest. Questions less than that have convulsed States, and elections have turned upon them; and if this question were to go down and enter into the next canvass in the State of Illinois, or the State of Indiana, and the whole people of Illinois or Indiana were to say, "We will have the money; it is due to us, and we will instruct our Senators upon this money question," I submit if we are to be the judges of the motives of men, we, a bare majority, as under this resolution, may say that the legislature of Indiana was corrupted by its share of the million and a half, and the Senator shall never take his seat. How far are you to go? What is corrupt motive? How many men in a legislature are to combine together for the purpose of carrying this, that, or the other local interest, to elect their Senator and send him here to represent it? Why, sir, it opens the widest and the most dangerous field that has ever yet been opened in the experiments of American politics.

Let me call attention very briefly to a case which has been referred to in this argument—the case of Fletcher *vs.* Peck. It is a very familiar case to the profession. I do not propose to read it at length; but let me state briefly what it was. Two private suitors were in court, and their case drew in question the validity of an act of the legislature of Georgia. They did not ask the court to investigate whether it had been procured by corrupt motives; that was hardly necessary, for a subsequent legislature of Georgia itself, looking into the transaction with reference to the sale of the Cherokee lands in that State, were so well satisfied that the whole legislature was corrupted by the interest the members held in the subject upon which they legislated, that they so declared upon the records, and expunged the act from the statute-

book. Here was a clear case. The power which had created the law had declared that it was procured by corruption; and yet, in that case, involving private rights, the Supreme Court of the United States said they must take that act of the legislature as the law; that it was not seemly or decent in the judiciary to inquire whether the legislative department of any portion of the country was corrupted. The court refused to look into it, and sustained the title based upon that act, which was almost consigned to be burned by the common hangman under the indignation which its corruption excited in Georgia. The court, in delivering that opinion, do intimate that the State might, perhaps, where it had been defrauded, ask that such an act be set aside. They do not say that they would entertain the jurisdiction then; but that *dictum* is thrown out in the decision of the case.

Following even that intimation, look at what the legislature of Kansas have sent us here. They investigated this subject; they had the question before them of whether Mr. Pomeroy and Mr. CALDWELL had been elected by bribery. What do they do? Do they ask us to unseat them because they find that they were so elected? No, sir; they simply send us the testimony for our information; that is all. So, even if we were to take hold of the suggestion in this case and say that the legislature of Kansas has invited us to look into the subject, we are still left to the question, what is the legitimate consequence following the facts which are laid before us? Do they invalidate this election, or do they simply make the member whom they have sent amenable to our jurisdiction by expulsion? No, sir; they cannot invalidate this election. If they can, if you can go into the motives of the individual members of a legislative body, let me ask you, Mr. President, to look at the results which are to follow. I have already spoken in some slight degree of them, but suppose another case. Suppose that Mr. CALDWELL, while he holds his seat, were to die; suppose we were to expel him to-morrow, and the vacancy occasioned either by his death or his expulsion were to be filled by the governor of Kansas, under the Constitution, all that is necessary, if you invoke this power, is to bring some man here to say that the governor was influenced by corrupt motives in making the appointment. Here you have the power of the State concentrated in the hands of one man, and he is the only organ through which the State can act. Unless the vacancy is filled by him and through him, the State must remain unrepresented. If you set up this as the court of appeal to pass upon the motives of the persons by whose acts our seats are to be filled in this chamber, the Senate of the United States may effectually deny any State the right to representation whose Senator presents such appointment. The Constitution never intended any such thing.

Let me go further. If you may look into the motives of the members of legislative assemblies, we have constitutional amendments which are ratified by the votes of the legislatures of three-fourths of the States, and their votes are just as necessary in that case as the votes of a legislature are to elect a Senator; and if you may investigate the legislature of Georgia or Arkansas, or New York or Delaware, and say that A, B, and C were influenced by corrupt or mercenary motives, that somebody bribed them to vote for the constitutional amendments, what are those amendments worth?

You may ask me what tribunal is to try that. I say, Mr. President, that, if the rule under discussion is adopted, tribunals will be found to try all these questions. It is alleged that the constitutional provision making us the judges of elections will authorize us to go into this election. Well, sir, the constitutional provision which gives to the judges jurisdiction of all questions arising under the Constitution and laws of the United States will soon take there a question involving the validity of the fourteenth amendment to the Constitution; and if you declare that the Senate may inquire into the purity of motive of legislative bodies in the States, it will not be long until the judiciary will say that they, traditionally the purest department in all governments, will inquire into the motives of the legislature.

And yet further. Suppose there be a failure to elect a President by the people of the United States, and the election goes into the House of Representatives, where the vote is given by States, each State casting one vote; carry this doctrine, imported from British parliamentary law, into American law, and prove that one member of the delegation of New York was bribed, and in the absence of a provision for contesting the election of President of the United States, you have anarchy before you at once.

We represent the States; our action is but the aggregate action of all the States; and if this doctrine be true that the action of a State may be invalidated by the corrupt motive of one representative, why not set aside a treaty which has vitality given to it by the action of all the States, by simply showing that the Senator of one State was actuated by corrupt or improper motives? I see no answer to this; and if the one doctrine be true, the other is true as its logical consequence. But it is not true; for, once established, it would disturb the balances and checks provided by our fathers for the harmonious working of this complex system of government.

It is all resolved by the fundamental principle that all power is inherent in the people. To them you must look for the correction of these evils. And, sir, if the business men of this country, the farming community, the merchants and manufacturers, the industrious working classes of all occupations, who make up the majority of honest men in all communities, cannot have their attention drawn to the importance of their becoming politicians—politicians in the proper sense of the term; if by their inefficiency and neglect, these things go on, we have no other fate before us than to realize that republican government is a failure, and that the fancy of the poet will find its realization here:

> First freedom, and then glory; when that fails,
> Wealth, vice, corruption, barbarism at last.

I have argued that we cannot go into this question; but if we can, then what must we find? I say not that one man was corrupted, not that the member himself was guilty of bribery, for the purpose of setting aside his election; but you must find that the majority by which he was elected was corrupted; otherwise you open a door for corruption all over this land at which bad men will rejoice. Why, sir, if one vote in Kansas proven to be corrupt can set aside an election, Heaven knows that in the state of things which has been revealed there in the last year or two, there will a pæan of joy go up throughout the State every time you declare an election invalid, for it will bring a new victim for the harpies to prey upon, and they would come up here by the score after every election, for the purpose of proving one man to have been corrupted, in order to have another chance for the spoils of an election.

No, sir; we must hold them responsible, and teach them that the remedy is in their hands, and that, if they will not exercise it, they cannot come to us as a court of appeal for the purpose of purifying them.

Now, sir, I call attention (and it is all I propose to do on that subject) to what I have already read from the report, to show that, if a majority must be shown to be corrupt, then the report itself fails to find that result. It does find that Carney's friends were not corrupted, and it fails to find that there was a majority in the legislature corrupted. So that in no point of view can I see that the resolution attached to this report can be sustained upon any solid, well-matured, well-considered judgment of the law and history of parliamentary proceeding.

If correct in this, it brings us to the more painful question in this case. If English law is not applicable to elections by a State legislature, or if it be true that it is to a certain extent, and that if you find less than a majority to be corrupt, you may not declare the election to be invalid, what remedy have we? Is it so that we cannot rid ourselves of a man who by his acts would poison the fountain of political power? No, Mr. President; the clause of the Constitution which I have read, requiring two-thirds of this body, two-thirds of the representatives of the States, to concur before any State shall be deprived of one of its representatives, is the repository of the power which we can exercise, if there is ground to exercise it, and that brings us, as I have already said, to the painful question in this case.

I may be permitted to say that I approach this part of the subject with peculiarly painful feelings. Mr. CALDWELL is a native of the county in which I live; he is the son of an honored father. His father was honored among business men, honored among patriots in his life. When his country called him, he gave up his business, and, at the head of a company of my fellow-citizens, went into the Mexican war. He returned from it shattered and broken in health, and he now lies in a grave honored and respected by his fellow-citizens, because of the fragrant memories that surround his name. When his son came here I greeted him gladly, learning that he was a business man—one who by his industry and energy had exalted himself in the estimation of his fellow-citizens of Kansas. And, sir, permit me, in passing, to say that I cannot consent that the fact that he had not hitherto been known in politics is to be urged against him as a reason why we should conclude that he was guilty of bribery. Why, Mr. President, the time has been in some States, and I trust it may not be long until it shall be so in all, when the people came to the conclusion that because a man has been useful, honest, and honored and successful in his business, that is the best reason why he should go to the Senate. And, if political status in Kansas is properly represented by such political lazzaroni as have surrounded and victimized this man, and as have brought this case here, it is the best reason in the world why political status there should exclude a man from this body. Take Carney and Clarke as they stand upon this record. I do not know them, but I take them as they have portrayed themselves. Read the speech of Carney, the presiding officer at the meeting called by CALDWELL'S fellow-citizens after he was elected, congratulating them, the people, and the legislature who were there assembled, and wishing them great joy upon the election of his fellow-citizen, CALDWELL. Look at him here trumpeting his own shame to the world, agreeing that he is a political trader, seeking a political following, making himself a candidate for no other purpose than to make merchandise of his principles and friends, and grab gold for getting out of the road of a rival; and Clarke saying himself that in his interview with CALDWELL he declined to make an arrangement for the purpose of having his expenses paid, but that he should see Stevens, and any arrangement made with him would be satisfactory; and then look at him dogging the steps of CALDWELL around this Capitol, and never an interview ending without a reference to the $15,000 for expenses. Heaven save us, Mr. President, if politicians of that stamp are to exclude the business men of Kansas from the Senate of the United States!

But I have been led off by this. This is no reason why CALDWELL should be found guilty of bribery; and referring again to his history and to the associations that were connected with his name, I must say that, having found him here gentlemanly, correct, and honorable in his deportment, I approached this testimony with every predisposition in his favor. But, sir, duty must be done, and with Carney

agreeing that he made the bargain for $15,000, with Mr. CALDWELL himself agreeing that he paid the money, with the fact that all Carney's followers voted for CALDWELL, with the fact that there is a dispute about $7,000 more, and that dispute is whether Carney got it for himself or whether it was left where members of the legislature carried it off as a bribe, and the fact that this $7,000 came from Mr. Smith, who was the recognized agent of Mr. CALDWELL in making the negotiation with Carney—with these facts before me, discarding all the testimony that is hearsay and in conflict, discarding the testimony of all the doubtful men, discarding the testimony of men who had that turn of reputation which caused them to be approached for their votes with a bribe—throwing that all out of the question, while there is not enough here to invalidate the election, to set aside the act of the legislature of Kansas, under the law as I view it, am I painfully brought to the conclusion that Mr. CALDWELL'S business sagacity did not keep him out of the hands of men whom he should have avoided as lepers; and that, when he agreed to leave his business and go up to Topeka, he encountered the fate of the man who went down to Jericho; he fell among thieves. I wish I could say that he turned his back upon them. But, sir, my duty here will not permit me either to yield to that which the Senator from Illinois [Mr. LOGAN] referred to—the clamor which would demand an innocent victim—or to shield the dearest friend I have, if I think his act has a tendency to poison the fountain of our political life. With these feelings, and with this view of the testimony, not seeking to influence the action or the opinions of Senators who are now my fellow-judges and my fellow-jurors, I shall strive to approach the decision of the question with that stern sense of justice which will alike revolt from the sacrifice of a victim or the shielding of a friend.

Mr. MORRILL, of Vermont. Mr. President, this question seems to have taken so much of a legal turn that a layman may hardly feel it safe to make any comments upon it, and I should not submit any remarks at all but for the fact that my own views differ so widely from some of the eminent Senators who have discussed it that I feel it incumbent upon me to place on record the views which will govern my vote.

This is a case involving the largest amount of alleged corruption of any in the history of senatorial elections. The payment of some part of a considerable sum of money is openly confessed. It would be strange if such a case did not admit of a just, legal, and definite solution. The highest pleasure and duty of Senators will be to shield the innocent in spite of all clamor, and in spite of all unsupported charges; and it will be equally their solemn duty not to clear the guilty in spite of all personal friendships and in spite of all party attachments. I regret that such a task, through no fault of ours, has been imposed upon the Senate, but, being imposed, it must be met.

The party involved here seeks to avoid our jurisdiction by setting forth the fact that he made the contract for the payment of money when he was a private citizen and before his election. Pray, when would such a contract or such a bribe be made? The absurdity of making it after the election is sufficiently obvious. The money must be secured previous to the election or not at all. It appears to me that this plea of lack of jurisdiction on such grounds is too untenable to be worthy of further notice.

Again, our jurisdiction is sought to be avoided under the plausible argument of State rights, or the plea that a State legislature has the right, if it so pleases, to be corrupted without let or hinderance, and that a candidate for the Senate, being a citizen and of proper age, cannot so far disqualify himself by any conduct, however disreputable, that the certificate of election, under the broad seal of the State, will not secure and hold for him a seat as the peer of all other Senators. Reasonable claims for State rights are to be respected, but this is so clearly a claim for State wrong that I cannot think it should be confounded with any idea of State rights. In such a case the State may have been cruelly defrauded; the investigation of the proper committee may subsequently prove it; and yet, without the requisite action on the part of the Senate, there is no power left to the State for redress. The Senate alone must act as the guardian of the rights of the State.

There seems to be a very proper feeling of reluctance about destroying the reputation of a Senator by any action that may be taken here. I fully sympathize with this feeling, and rejoice that reputation is held to be something very precious; but I deny that any reputation can be destroyed in a body so just as the Senate, except by the conduct of the Senator himself; and is it not a little singular that it appears to be necessary, in order to sustain the reputation of Mr. CALDWELL, to charge with perjury so large a number of witnesses? Such men as Sidney Clarke, for years the Representative in Congress from Kansas; Thomas Carney, recently the governor of Kansas; and D. R. Anthony, mayor of Leavenworth, must see their reputations tumble and fall in order to build up on their ruins that of Mr. CALDWELL. This may be judicially fair; I do not know; but I shall not enter the debatable ground as to the credibility of witnesses.

There is only one point in the case which I care to consider. While there is abundant testimony tending to show that money was expended profusely in the Kansas senatorial election, by which, if true, the legislature was largely debauched, and while I am inclined to dispute the legitimacy and propriety of all such expenditures by candidates as immoral and unrepublican, yet the fact disclosed by a written contract, proven by witnesses, and avowed and defended by Mr. CALDWELL, by which he agreed to pay and did pay to Thomas Carney the sum of $15,000 in consideration that Carney should withdraw from being a candidate against him in 1871, is the chief fact upon which I feel it to be my duty to make some comments. The question is, will the Senate suffer this record to stand as a precedent which may be safely followed for all time to come by such as have the means and are not restrained by other virtues, or shall it be promptly stamped with the disapproval of the Senate as a corrupt bargain that makes the election which follows one which should neither be tolerated nor defended? 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.

Technically, the payment of the large sum of money to which I have referred may or may not amount to the crime of bribery, to be punished under statute law. Yet to me it wears the livery of bribery, and can those who think otherwise assign to it any element of greater purity? It was not, it is true, the direct price paid *per capita* for votes, but it was a lump sum paid to a contracting party for the same object, and calculated to be even more potential and successful in practice. It was to seduce and capture by wholesale rather than detail. The winner of the race need have little merit if his competitors should all, one after another, be held back by fifteen thousand dollar gifts or bribes. Such bribes can be made for no other purpose than to purchase the good-will and influence of a party supposed to be able and willing to transfer support equal in value to the money received. The party who accepted in this case such shameful gains, Mr. Carney, with a vulgar venality that would be discreditable among jockeys at a horse-race, perpetrated, with the direct aid of Mr. CALDWELL, a gross fraud upon those members of the legislature who were elected, or who might reasonably be counted upon as his supporters, or over whom he had any controlling influence, and who were kept in innocent ignorance of the way and manner in which they had been bought and sold. Their trusted leader, throwing away all the character won, if any had been won, in a life-time, barters them in the lump, without risk or recourse in case of any failure to deliver the entire batch, more or less! No; Mr. CALDWELL was too shrewd to take the entire risk, and $5,000, therefore, were made contingent upon his election. This operated as a bond upon Mr. Carney—pecuniary ligatures only being strong enough to hold him—and secured his active services in behalf of Mr. CALDWELL until the victory was won. Carney was not to be held responsible for the transfer of all of his friends, but, to the extent of the last five thousand dollars, for so many as would secure the result. If that was not secured, then he forfeited that much. There is no complaint that Carney did not exert all the influence he possessed to carry out the contract, so as to become entitled to the full amount agreed upon, whether it was a good bargain or not; and, in the end, after some vigorous dunning, he got it. It is not denied that Mr. Carney, in good faith at least to his employer and with eminent bad faith to his State, earned his money. It may not have been a difficult job to prove to the legislature that Mr. CALDWELL was a better man for Senator than Mr. Carney, and certainly this job of the intriguers appears to have been speedily accomplished. The whole extent of the influence exerted cannot be computed, nor is that at all important. The withdrawal of an energetic rival is calculated always to paralyze and break down all other opposition. In this case we only know that victory followed, and it appears to have followed in the wake of a pecuniary flood.

But it may be asked, was this fifteen thousand dollar payment a bribe, or anything wrong after all? I will not insult the Senate by saying to Senators, "Put yourselves in his place," and asking if any one of you could do such a thing. For while none would like to do it, some might still think it not so very wrong for somebody else to do. A definition is of little consequence where the facts of the case furnish a definition, but let us look for a moment at the definition of the word "bribe;" and one is set forth to be, "to pervert his judgment or corrupt his action by some gift or promise." If the money paid by Mr. CALDWELL was not to pervert the judgment of Mr. Carney, for what purpose was it paid? Before the money was paid, very clearly Mr. Carney and his friends in the legislature considered Mr. CALDWELL less fit for the place of Senator than himself—he may have been mistaken, and I think he was—but his judgment was perverted, changed in the twinkling of an eye, and the $15,000 not only wrought that miracle with Carney, but with his legislative friends and supporters. It is plain that Mr. Carney's judgment was perverted as well as that of those over whom he wielded any control. The action logically required and expected at his hands was corrupt. It was not that he should retire as a candidate from any convictions of personal propriety or political rectitude, or from a sense of honorable duty to the State of Kansas, but that he should retire as the purchased tool of Mr. CALDWELL—a tool with which to make tools of the legislature of Kansas.

When an election has been made under such circumstances, it is tainted at the fountain, and the least, the very least, the Senate of the United States can do, is to give the legislature of Kansas the power to revise its action in view of the facts which have been uncovered, and which at the time of the election were as much unknown to the legislature as to the Senate.

The Senate of the United States has often been claimed to be the first deliberative body in the world, but that claim could not long be maintained after it shall have been ascertained that it can most surely be reached by those having the longest and most unscrupulous purse. Wealth honestly acquired is not a crime, nor a disqualifica-

tion; it is often indicative of wisdom, integrity, and economy; but wealth honestly acquired must not be permitted to be used for a dishonest purpose—must not be permitted to buy its way into the Senate directly or indirectly, or by bribing legislative electors singly or in squads. Any person who gains an entrance into the Senate by the expenditure of large sums of money to buy off opposition, not only inflicts an incurable wound upon our form of government, but he cannot avoid the suspicion, whether it be just or unjust, that personal re-imbursement will be sought at the very first opportunity. Using money to get office is absolutely no worse than using office to get money. The party who does not shrink from the first cannot logically be expected to shrink from the last. The discovery of such facts destroys the usefulness of a Senator. It is impossible that it should be otherwise.

On this point I cannot forbear referring to some of the testimony. It may be all false, but it seems to be alluded to in a good many places.

On page 17, we find in the testimony of Sidney Clarke the following:

He indulged in a good deal of conversation, apologized for not effecting the settlement with Stevens, and said to me that the election had cost him $75,000 in money, and that he was very poor in ready money, and that some railroad companies had agreed to pay him, or to pay a portion of his expenses, and that, as they had failed to make good their agreement with him, he was watching an opportunity for them to get some measure before Congress, so that he could squeeze it out of them.

Again, I refer to the testimony of Thomas Carney, on page 194. The question asked of him was—

What did he say about the Kansas Pacific Railroad; how did they owe him money; what for?

Answer. He said that he felt that they owed him some money, and it would be to their interest to pay it, for they would get no legislation favorable to them until they did pay him, if he could prevent it.

I refer again to the testimony of the same witness, on page 203:

Question. Did he state at any time how much money he had sent for?

Answer. No; I do not remember that he did. I heard him on one occasion state that the Kansas Pacific Railroad Company had just paid him $10,000. I heard him state that.

By Mr. ANTHONY:

Question. Who stated that?

Answer. Mr. Smith stated to me that the Kansas Pacific Railroad Company had just paid him $10,000; that he had some currency now.

Now I refer to the testimony of Thomas J. Anderson, on page 77, showing that this railroad company did pay a considerable amount of money:

Question. Have you the means of determining how much money was used by the Kansas Pacific Railroad during the pendency of this election?

Answer. No, sir; I have not.

Question. Could it be ascertained?

Answer. I think not; not that I know of.

Question. How was the money paid; who was it drawn from?

Answer. I was in the habit of drawing; the attorney would draw, sometimes the agent, for the amount necessary, when we did not have the funds.

I refer again to the testimony of the same witness on page 85:

Question. How much money was expended?

Answer. In the interest of the Kansas Pacific Railroad?

Question. Yes, or for any purpose about the legislature.

Answer. I do not know.

Question. Can you give the committee any idea?

Answer. No, sir; I do not think I can.

Then I refer to the testimony of John P. Usher, late Secretary of the Interior, on page 447:

Question. What did Mr. Perry tell you?

Answer. He said (as well as I can remember) that, after CALDWELL'S election, he went up to Leavenworth to see him, and congratulated him on his election, and to his surprise CALDWELL told him that he wanted him to pay $30,000, which he (Mr. Perry) declined to pay. Mr. Perry said he was very much surprised at the demand, and so expressed himself to CALDWELL, intimating that as he had been successful, and had been elected United States Senator, that was honor enough, without making a demand of that sort of him, and he should not respond to it at all.

Question. Did Mr. Perry in that conversation say anything about seeing Colonel Dennis and Mr. Anderson in regard to any promises which Mr. CALDWELL claimed to have been made by these gentlemen for the Kansas Pacific Railroad?

Answer. Yes, he did.

Question. State what.

Answer. He said, as I understood him, that CALDWELL claimed that he was justified in making that demand, in consequence of some promise that he had had here from Mr. Perry's friends.

Question. Are you able to state any other part of that conversation which you have not already stated, judge?

Answer. He said that he did not believe it, and they would come up here and see whether it was so or not; he wanted to know. Accordingly they did come. Len. Smith and CALDWELL came, as I understand.

Question. Do you know what the result of the inquiry was?

Answer. He said that these gentlemen did not admit what CALDWELL said, but did not stand as square as he would have liked them; that he was not satisfied, but that there might have been something said, but at any rate he would not pay anything.

Question. Did Mr. Perry, in any part of this conversation, state to you the ground or the purpose upon which or for which CALDWELL made this demand?

Answer. I don't know as he did. I do not know as he said why, or whether he was out so much, or what he said about it. At any rate, he was importunate for the money, and came once or twice about it.

This Perry was president of the Kansas Pacific Railroad. If there is any color of truth in these multiplied statements of men whom the people of Kansas have largely trusted, and I do not know whether there is or not, then the promise of corruption is painfully conspicuous.

Mr. LOGAN. Will the Senator from Vermont allow me to make a suggestion to him there?

Mr. MORRILL, of Vermont. I have only a word or two more to say.

Mr. LOGAN. It is in connection with the testimony of Mr. Usher. I presume the Senator does not wish to intimate to the Senate that Mr. Usher was a witness before the committee of the Senate.

Mr. MORRILL, of Vermont. No, sir; this was testimony taken before the Kansas legislature. Mr. Usher testified there under oath.

Mr. LOGAN. Yes, he testified there that Mr. Perry had told him this; but Mr. Usher never had any conversation with Mr. CALDWELL. It was mere hearsay, and not sworn to at all.

Mr. MORRILL, of Vermont. The testimony was read in the committee.

Mr. MORTON. If the Senator will allow me, it was testified by Anderson himself that Dennis, the man named there by Perry, did draw the draft for $10,000, and that Anderson cashed it; and then Carney testifies that Smith told him that he got the money for election purposes.

Mr. LOGAN. I do not desire to get into a controversy about this matter.

Mr. MORRILL, of Vermont. I prefer to close what I have to say.

Mr. LOGAN. Allow me one moment. I am astonished to hear the statement of the Senator from Indiana. Mr. Anderson testifies that this $10,000 was used for paying taxes and for the purpose of giving dinners to members of the legislature to secure legislation for the railroad. There is no connection with this case whatever. That is the testimony of Mr. Anderson.

Mr. MORTON. If the Senator from Vermont will allow me, Mr. Anderson did not testify that. He said he did not know what was done with the money, but he understood it was to pay taxes in the county of the railroad. Upon further inquiry it turned out that this money was drawn on the 22d of January, just two days before the election. The penalty on the taxes had attached on the 10th of January if the taxes were not paid. There was no proof that the taxes were not paid. On further examination he said that the company was not at all embarrassed. It is a great company, and the presumption was that the taxes were paid. Then, in his testimony he gave two accounts of it. He said the reason he cashed the draft was because there was no money in the treasury of the company to cash it, and then, on a further examination, he said the reason he cashed the draft was because it was drawn upon the treasury at Saint Louis, far distant; but Smith says he got that money, and Anderson's testimony and Smith's testimony corroborate what Usher swears to in regard to what Perry told him, precisely.

Mr. LOGAN. I merely state this to be the fact, as I stated yesterday, that there is not a scintilla of evidence in all this book which shows that one dollar of that money was ever used, directly or indirectly, in connection with the election of Mr. CALDWELL. The only statement is that the railroad attorney, living somewhere else, drew a draft for $10,000 on Saint Louis, and Mr. Anderson says he thought it was drawn to pay the taxes of the railroad company. There is no explanation whatever in connection with it except that Mr. Anderson states that he spent the money there in wines and dinners, not in connection with this election at all, but for the purpose of obtaining railroad legislation. That is all there is about this $10,000, and I am astonished that any Senator should attempt to show that the $10,000 had anything to do with this election, for there is not one word of testimony showing that fact.

Mr. MORRILL, of Vermont. My only purpose in bringing forward these bits of testimony was to show that there was a considerable amount of concurrent testimony that Mr. CALDWELL did propose, whenever this railroad company desired further legislation, "to squeeze money out of them," and that they had been in the habit of contributing money for political purposes.

Mr. President, the practice in Great Britain in cases of bribery by members of Parliament has been to fine, imprison, or to unseat the guilty member, and even the places whence such members came have been disfranchised. To even pay the traveling expenses of voters is there accounted bribery, and punished as such. But I do not care whether the precedents of aristocratic governments make for or against the case we have under consideration, though I should deplore any decision that would provoke an unfavorable comparison with the American Senate as to the purity of the election of its members. The success of our system of government largely depends upon its absolute incorruptibility. There must be no suspicion that the will of the people has been perverted or circumvented by undue and unlawful appliances.

The Senate of the United States makes its own precedents and erects its own standard. This is its duty, and it cannot be shirked by jumping behind the screen of any foreign authority. The Senate has been constituted the sole judge of the election, returns, and qualifications of its members. We are to judge of elections, and may or may not accept of what a legislature calls an election. A Senator once admitted cannot be removed by a State legislature. Any wrongful act in the premises must be redressed by the Senate itself, or go unredressed; and the Senate is clothed with ample constitutional authority, not only to vindicate its own honor, but to protect the honor of the State which may have been wronged in any real or pretended election, returns, or qualifications. For sufficient reasons it may expel a member, and that touches our own sense of honor; and for sufficient reason may we not say that an election is invalid, that the returns are fraudulent, or that the qualifications are deficient? Must every election, however consummated, be treated as valid by the Senate? Their judgment is not to be delivered capriciously; there must be gravity in the offense, or in the facts which make an election void-

able, but we are bound by every sentiment of truth, by every impulse of honest patriotism, to see to it that the character of the Senate, as it stands in the best pages of our history, shall suffer no detriment at our hands, and that it shall not be made merchandise of by even the most enterprising capitalists of any State. Any other doctrine hands the Senate over, bound hand and foot, to the moneyed rascals of our country, if there be or should be any such.

It is no honor to any man to hold a purchased seat in the Senate, nor by any title less than that of the free and unpurchased choice of the people. A seat won by the expenditure of money brings lasting disgrace upon any State, and if winked at, tolerated, or excused when the subject, after an impartial investigation by a committee, and an agreement upon the facts, is fairly before us for our decision, it will seriously impair the usefulness of the Senate, and tend to make it a stench in the nostrils of the people. States are represented here, and not filthy lucre.

There is no dispute about the $15,000. It brands the forehead of this case. Mr. Carney admits he got it. Mr. CALDWELL admits he paid it. Every dollar of it was corrupt. It was worked and to work in the dark.

Some consideration is asked, and perhaps is due, to Mr. CALDWELL as a young man wholly without experience in political affairs. He was an entire stranger to me, and I bear cheerful testimony that since he has been one of our associates I have seen nothing in his bearing to criticise. I only regret antecedent facts which cannot be ignored. He made a deplorable misstep in the manner of gaining his entrance, which not only affects him, but also the Senate and his State. He comes from a young State which, from its birth, has been the arena of rude border conflicts. Partisan strife there has been fierce, and, I fear, somewhat unscrupulous. It is enough to say that Mr. CALDWELL does not appear to have been conscious of any wrong in the lavish use of money to secure his election. Being a man of wealth, it appears to have been understood by a good many of the people of Kansas that it was a very proper and nice thing for him to do, to pay liberally for their support. But I cannot believe that the majority of the people of that growing and gallant State are so demoralized as to be willing to treat the election of 1871 as good and valid and to be unquestioned forever. Mr. CALDWELL, it is likely, has made a grave mistake if he supposes his standard of politics and morality prevails everywhere, for I think I am safe in saying it will be repudiated by Kansas, and it never was, and never will be, accepted in the United States Senate. If this election is to be taken as an index of the general state of the political health of Kansas—and I do not believe it is—then it is time the sharp, extreme medicine of the Constitution was administered; and certainly it is time that Kansas should have an opportunity to put herself right before the world by a new senatorial election, without spot or blemish, and where, at least, it will not be followed by an attempted justification of a fifteen thousand dollar bribe.

Most business men have heard of forestalling the market, which means intercepting whatever may be on its way there. This operation, of course, if successful, enhances the price of whatever happens to be in the market. The public are fleeced, being obliged to take at any cost whatever they can get. But did any one ever hear that such conspiracies in trade were called honorable? If not honorable so far as a corner in grain or cattle is concerned, how can a corner be justified in candidates for the United States Senate? The value of a candidate might thus be temporarily raised, but it would be likely to fall with a crash when the corner was over. Mercantile honor blushes at such transactions, and can that of the Senate be supposed to be less fastidious?

A word or two more, and I shall have done. To assert that the Senate cannot declare an election invalid wherever the forms of an election have been preserved, or where some person has received a majority of all the votes cast, a quorum being present, though the election is spotted all over with corruption, is to deny all power of relief, and reduces the Senate from the rank of judges of elections to that of mere recording-clerks. To assert that the Senate cannot judge of any qualifications save those particularly mentioned in the Constitution—of age and citizenship—would force the admission and retention of lunatics and idiots. We admit members by a majority vote upon mere *prima-facie* evidence; and when we come more maturely to consider this evidence, upon finding it inadequate, can we not exclude the member by the same majority that gave him admission? When, upon a more serious examination of the case, a disqualification is found which would have been, had it been known and acted upon, a bar to the original admission, cannot such a member be let go in any other way than by expulsion and a two-thirds vote? This would seem to me like sticking in the bark, and on this theory the admission of members on *prima-facie* evidence becomes a snare and a delusion.

In a case like the present, where the disqualification would, I regret to believe, seem to justify expulsion, and which I shall feel compelled to vote for, if the case shall not be disposed of in the milder form proposed by the committee, I have no insuperable difficulty in asserting the power to unseat, or to declare that the party has not been duly and legally elected. Nor do I believe this power would ever be abused by the Senate or by any party in the Senate, or exerted except when clearly and indisputably demanded. If the Senate of the United States has not this power, then it is the most helpless of all legislative bodies in the world, and it should never again look beyond certificates of election, never again institute investigations, lest it should find something which it might just as well not have found.

The plain question for our decision is, can a Senator be duly and legally elected where money has been corruptly used to buy up and extinguish legitimate opposition? For myself, I shall feel bound to answer no.

Mr. SCHURZ obtained the floor.

Mr. LOGAN. With the permission of the Senator from Missouri, in asmuch as the speech of the Senator from Vermont has gone in the direction that Mr. Carney was hired not to be a candidate, I desire to call the attention of the Senate to the testimony of Mr. Carney. On page 190 you will find that Mr. Carney testifies as follows:

> In the first place, Mr. Smith asked me if I was going to be a candidate myself—

Speaking of the contract between Mr. Smith and himself which was afterward acceded to by Mr. CALDWELL—

> and I said no, that now I was not a candidate, and did not expect to be a candidate. I said, "It is a question I am surprised at your asking. You have been with me all summer, in Texas and New York, for four or five months," and the thing had been talked about day after day, perhaps fifty times, and I had said that under no circumstances would I be a candidate, and I had taken no part in the election.

Mr. MORRILL, of Vermont. I desire to call the attention of the Senator from Illinois to the written agreement, and to ask him if he supposes that oral testimony is going to do away with a written contract? Here is the written contract, dated January 13, 1871:

> I hereby agree that I will not, under any condition of circumstances, be a candidate for the United States Senate, in the year 1871, without the written consent of A. CALDWELL, and in case I do, to forfeit my word of honor, hereby pledged. I further agree and bind myself to forfeit the sum of fifteen thousand dollars, and authorize the publication of this agreement.
>
> THOS. CARNEY.
>
> TOPEKA, *January* 13, 1871.

I understand the rule of law to be that where there is a written contract, you cannot do away with it by oral testimony.

Mr. LOGAN. Nor go outside of it by oral testimony. That is exactly the point I desired the Senator from Vermont to state.

Mr. MORRILL, of Vermont. I do not state that. You may explain it, but you cannot do away with it.

Mr. LOGAN. Very well. The point that I wanted to make, and I desire the attention of the Senate in reference to it, is this: first, Mr. Carney swears he was not a candidate, did not intend to be a candidate, and under no circumstances whatever would he be a candidate. That is the first proposition that he swears to. Now, why did he make the written agreement? Because he then proceeded to black-mail Mr. CALDWELL and made the agreement. There is the point. The Senator says that Mr. Carney withdrew as a candidate for $15,000. Mr. Carney swears he did no such thing, for here is his testimony. Then the Senator says Mr. Carney agreed to use his influence, and he wants to bind us to the written agreement. The written agreement says nothing about influence. Hence I say he is in a dilemma, take which horn he may. First, the agreement precludes the idea of influence, and, secondly, his oath precludes the idea of the fact stated in the agreement. There is the precise condition in which you place him. That is what I wanted to show.

Mr. SCHURZ. Mr. President, every Senator who has spoken upon the subject before us has treated it as a matter of most painful interest; and quite naturally so, for nobody could approach it without reluctance. It is hardly possible that there should be the least personal or political bias in this debate, at least none unfavorable to the gentleman most nearly concerned. As far as I know, the conduct of the Senator from Kansas on this floor has been uniformly inoffensive and courteous. He has, I presume, no personal enemy here. We also know that in case he should be removed from his seat in the Senate, the legislature of Kansas is certain to put a successor into his place who will be of exactly the same party complexion, and there can, therefore, be no political loss or gain involved in a change as to party strength on this floor. If there ever was a case which might be treated upon its own merits, it is this.

We have to meet here, first, a question of law; secondly, a question of fact; and then, also, what I might call a question of policy as to the rigorous or lenient application of the law to the facts and the person.

In discussing the question of law, I invite the Senate to assume a state of facts as fully established. Suppose a person has taken his seat here, elected by a State legislature, presenting when he appeared among us regular credentials in the correctest form, and proving by the usual evidence that in his election every prescription of law had been fully complied with. Suppose, then, it is subsequently shown that the election of that person was effected and carried by gross bribery; suppose a clear case discloses itself of a purchase with money of a seat in the Senate of the United States. Then the question arises, has the Senate any power to protect itself by the exclusion of such a person?

An argument has been submitted by the Senator from Kansas, and as that argument goes further in its assumptions than any other, I will discuss it first.

He says the Senate cannot unseat that person by declaring the election invalid, because the Senate has not the constitutional power to go behind the regular certificate of election, signed by the governor and bearing the great seal of the State; and, secondly, he says that the Senate cannot expel such a person by a two-thirds vote, because

the act of bribery was committed before that person was a Senator, and the jurisdiction of the Senate cannot date back to an offense committed antecedent to the election; *ergo*, the Senate has absolutely no power at all in such a case. If I understood the argument submitted by the Senator from Kansas correctly, these were its salient points. What follows? The Senate must sit still, and with absolute quietness and submission suffer not only that person to take his seat, but, as the case may be, must suffer one after another of these seats to be filled by men who have acquired them by bribery, purchase, fraud, and not by honest election, for to each one of those cases the same reasoning will apply which is now applied to this. However outrageous their proceedings, however glaring their corrupt practices may have been, we must treat such political merchants as brother Senators; we must suffer them to exercise the same influence upon the legislation of this Republic which is exercised by others; and all this, no matter what may become of the honor of the highest legislative body of this Republic; no matter what may become of the confidence of the people in their law-makers, and therefore of their respect for the laws; no matter what may become of the purity and integrity of representative government and of republican institutions.

This, sir, is the argument submitted by the Senator from Kansas. It would seem to me as if the mere statement of the consequences which necessarily must flow from such an assumption would in itself be sufficient to show that in the very nature of things it cannot be correct; that the wise men who made the Constitution of this country cannot have left the highest law-giving body of the land in so pitiably helpless a condition. The mere supposition appears on its very face absurd.

Now, in inquiring into the power of the Senate to act upon such a case, I shall not consume any time in a discussion of the English precedents which have been quoted here, and this partly for the reason that I am not as learned, and have not made myself as familiar with their details as others; but mainly because I consider those precedents by no means conclusive, when we have before us a document which gives us all the law we need; and that is the Constitution of the United States.

The Constitution provides in the first place that the Senate, as well as the House of Representatives, shall have the discretionary power to expel a member by a two-thirds vote. That power is not limited to this or that offense, but it is vested in the discretion of each House of Congress, and it has already been demonstrated with irrefutable arguments that although an act of bribery by which a person lifted himself into one of these seats was indeed antecedent to his becoming a Senator, nevertheless that act of bribery, being the very stepping-stone upon which he rose into his legislative office, is so intimately connected with his becoming and being a Senator that the two things cannot be separated; that therefore this power to expel a member must necessarily apply. This is so clear, so self-evident, that not a word more is required.

But the Constitution of the United States provides also that "each House shall be the judge of the elections, returns, and qualifications of its own members;" and in discussing that clause, I shall give particular attention to the remarks submitted to us to-day by the Senator from Pennsylvania, [Mr. SCOTT.]

It strikes me that in this discussion one thing with regard to the meaning of the constitutional clause just quoted has been overlooked; and that is the very important fact that this clause of the Constitution applies to both Houses of Congress exactly alike; that its meaning for both Houses of Congress must be exactly the same; for it reads that "*Each* House shall be the judge of the elections, returns, and qualifications of its own members." No difference is made between the two.

What, then, can that clause of the Constitution mean? We have to judge of three different things: first, of the "qualifications;" and what they are the Constitution itself states; then of the returns, and what they are we all know; but we have also to judge of the *elections*—"elections" kept distinct from "qualifications," and from "returns." The qualifications may be complete; the returns may be in the most perfect order upon their face; and yet the Senate as well as the House of Representatives, both under the same clause of the Constitution, which must necessarily mean as to both Houses the same thing, have to apply their judgment also to the election of their respective members. What does it mean, I ask? Must it not mean that the judgment of each House shall not only go to the forms, but also to what I might call the essence of an election? Has not each House to judge whether that which pretends to be an election is in truth and reality an election or not? If the word "election" in that clause of the Constitution means anything, it must mean that; if it does not mean that, it means nothing. Now, does anybody question, has anybody ever doubted, that the House of Representatives has always held so under the constitutional clause which applies to both Houses alike? The House of Representatives has always exercised the power, under this clause, to judge whether a man had been really, and honestly, and legally elected by a majority of the legal votes cast. Has it ever been questioned that the House of Representatives had the power, under this clause, to declare an election illegal and void, if that election had been controlled by bribery and fraud? As far as I know, nobody in the world has ever questioned it; and you will notice that power was exercised by the House of Representatives by virtue of identically the same clause of the Constitution under which we, as Senators, are to exercise our judgment.

Mr. SCOTT. As the Senator is paying attention to the argument which I made, will he permit me at this moment to ask him a question?

Mr. SCHURZ. Certainly, sir.

Mr. SCOTT. That there may be more analogy in the exercise of that power by the House of Representatives, let me suppose this case occurring in an investigation there—that in ascertaining the right to vote of an elector who participated in the election of a member of the House he claims to have been naturalized, and voted as a naturalized citizen; and the allegation is made that his naturalization papers were procured by bribing one of three members of a court who granted them, would the committee of the House stop in their investigation and run off into the collateral question of the bribery of a court for the purpose of determining the qualifications of that elector?

Mr. SCHURZ. The question which the Senator puts to me is an exceedingly intricate one, and would involve the right of the House of Representatives to go behind the action of the court. I must confess that I do not see what bearing that question has upon the case now under consideration; but I see what the Senator is driving at; and I think in the course of my remarks I shall satisfy him at least as to my own opinion.

Mr. SCOTT. I will tell the Senator, to relieve him of all doubt, what I am driving at. The court is a co-ordinate department of the Government, especially a United States court, and its action is certainly as high, and entitled to as great credit, as the action of a legislature; and if you cannot go off upon the collateral question of the action of a court to set it aside by showing that one of its members was corrupted, I need not say to the Senator that the argument can be applied to this case.

Mr. SCHURZ. Well, suppose it cannot, but the case brought forward by the Senator from Pennsylvania applies to a co-ordinate branch of the Government, and not to a body bearing to either House of Congress the relation of a constituent.

Mr. SCOTT. It may be to a State court.

Mr. SCHURZ. The Senator may find an answer to his question by investigating how false naturalization papers, or naturalization papers obtained on false pretenses, have been dealt with. But here we have to deal merely with the relations between those who have been elected Senators and Representatives in Congress and their respective constituencies, and I shall submit some remarks upon that very point which will define my opinion, and I hope will prove satisfactory to the Senator from Pennsylvania.

Now, one thing has been accepted as a legal maxim from time immemorial, and that is, that fraud vitiates a contract, vitiates a bond, a judgment. Who will deny that fraud would vitiate also that which we might call a conditional relation between a constituency and a representative, and the legislative branch of the Government? But if each House is constitutionally the judge, not only of the qualifications and of the returns, but also of the essence of an election, must it not have power to judge whether an election is vitiated by fraud or not? The House of Representatives has always acted on that principle by virtue of the constitutional provision conferring upon the Senate and the House the same power in the same language.

Mr. BAYARD. I should like to ask the Senator a question there.

Mr. SCHURZ. Certainly.

Mr. BAYARD. The Senator spoke just now of fraud vitiating all contracts, or vitiating everything that it touched. I believe the proposition was as broad as that. Let me ask the Senator whether he considers that fraud would vitiate the final decree of a court of competent jurisdiction? Would fraud vitiate an act of assembly?

Mr. SCHURZ. The Senator knows as well as I do that maxims of that general character are sometimes waived for reasons of public convenience. It is a well-ascertained fact that if an act is passed by a legislative body, and the passage of that act has been effected by bribery, the courts of this country will not go behind such action by the legislative body. The reason for this is, that if they were permitted to do so, an infinite ramification of consequences might be effected; the whole system of our laws and of private rights might be thrown into inextricable confusion. But when a case of wrong can be redressed without involving such a ramification of consequences, without creating such a confusion of legal rights, that is to say, when a case stands there by itself, and can be undone without great public inconvenience, as the election of a Senator or Representative can be undone, the same reason and rule does not apply. I think, therefore, that the Senator's question does not touch the subject under discussion.

I was just stating that the House of Representatives has always acted upon the principle I mentioned by virtue of the very power conferred by the Constitution upon both Houses alike, in exactly the same language—language which, applied to both Houses, must necessarily have the same meaning, for if it had not, certainly those who framed the Constitution would have stated and made clear the difference. Then, I will ask, why not the Senate?

But it is objected that the position of a Senator is widely different from the position of a Representative; that a Senator represents a State; that the election of a Senator by a State legislature according to law is the conclusive act of a State sovereign in its sphere, and that, if duly certified, it cannot be questioned. It is claimed that there is a certain mysterious power attaching to the great seal of a State affixed to a certificate of election which is foreign to the certificate of election of a Representative. I need not say to the Senate that I am as firm an advocate and defender of constitutional State rights

and of local self-government as any member of this body; but I affirm that the Constitution does not give a State sovereign control over its Senators, but it does just the reverse. True, the Constitution provides "that the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years, and each Senator shall have one vote." In so far Senators may be regarded as the representatives of their respective States, and undoubtedly they are. But the Constitution does not regard the election of a Senator as in every respect a matter of discretion with the State. The Constitution does not permit a State to appoint a Senator just as it pleases. The Constitution gives Congress the power to regulate by law the manner in which Senators shall be elected, just as it gives Congress the power to regulate by law the manner in which Representatives shall be elected. The only difference is as to the place of election. Congress has made such laws, prescribing on what day of the session of a legislature the election of a Senator shall be proceeded with, how the votes shall be taken in both branches separately, how in joint convention, and so on.

Why does the Constitution put the election of Senators thus under the control of Congress just as it does the election of members of the House of Representatives? Because the Constitution does not regard a Senator as a mere diplomatic agent of the State, of one sovereignty near another sovereignty, appointed to take care of the interest of that State only, and remaining under the control of that State. By no means. The Constitution regards the Senate of the United States not as an assembly of State agents, but as a branch of the legislative department of the General Government. It regards a Senator here as being appointed to take part in legislation concerning the interests of all the States and of all the people, and, when once elected as a member of that legislative department, that Senator is during his constitutional term of office entirely, completely out of the control of his State, just as the member of the House of Representatives is out of the control of his district constituency.

The Constitution indeed provides that the number of Senators from each State shall be two, undoubtedly to preserve as much as possible a certain equality of the influence of the different States upon the legislation of the country. It indeed provides that Senators shall be elected by the State legislatures, looking upon the legislatures as more representative of the individuality of the States, and also possibly to secure to the highest law-giving body of this country a superior class of men. But in point of fact it is absolutely certain, and it cannot be denied, that, while the constituencies are different, the relation of a Senator, when once elected, to his constituency is in no essential point different from the relation of a member of the House of Representatives to his, and I defy denial of this fact. Neither the Senator nor the Representative can be recalled. The Representative and the Senator are equally out of the reach and the control of their respective constituents. With regard to the Senator, therefore, the sovereignty of the State becomes utterly inoperative as soon as the fact of his election is accomplished. When the Senator has once been elected, even before he is sworn into office at that desk, the State has no power to reconsider that election, nor to recall him.

And now, sir, when it is discovered that the election of a Senator has been effected by fraud or bribery, has a sovereign State the power to undo its own act to set itself right? Not at all. Not even the discovery made before the Senator has taken his seat would enable the legislature to reconsider its election. It can, in such a case, only memorialize the Senate of the United States, setting forth the facts, and then the Senate only can act in the case upon its own knowledge and judgment, for the Senator has passed entirely out of control of his State, and entirely within the control of the Senate. Thus, when the people of a State have been defrauded, say by the purchase of a senatorial election, they are, with all their sovereignty, bound hand and foot, and not the State, but only the Senate, can furnish the necessary relief.

Now if the Senate, by virtue of its constitutional powers, does declare a fraudulent election invalid, does that constitute what was called here an encroachment upon the rights of the State? Let us see. In what would such encroachment consist? Not in this, that the Senate in declaring such an election invalid arrogates a power to itself which belongs to the State, for no such power ever belonged to the State, and certainly you cannot encroach upon a power which does not exist. You might just as well say that I arrogate to myself your right to draw upon my deposit in a bank, or that I encroached upon your right to educate my children. Nor can that pretended encroachment consist in this, that the State is thereby deprived of its elected representative, for, in the case I have assumed, first, that representative is not legally elected; secondly, it must be presumed, in common sense and decency, that the State would rather desire to be relieved of a representative who has defrauded it, (and I include, in the term "representative," Senators also,) and that it would itself annul its own act if it had the power to do so, which it has not; and, thirdly, the State is not deprived of its representation nor of its choice, for upon the unseating of a member for such a cause a new election will be ordered in the State at once; the whole matter is turned over to the State legislature for its action, and it may elect the same person turned out by the Senate if it so sees fit.

The whole pretense, therefore, of an encroachment on the sovereign and rightful powers of the State vanishes into utter nothing. The State retains unimpaired the full scope of its constitutional powers and rights. The Senate, by annulling an election carried by fraud or bribery, only does by virtue of its constitutional powers what the State would be glad to do, but cannot; and when that is done the whole matter is turned over to the State once more in a new election, and the State after all is the final arbiter. The exercise of this power by the Senate does, therefore, not impair, but, looking at it without prejudice, you will find that it virtually protects the rights of the States.

I have now endeavored to show, in a way at least satisfactory to myself, if to nobody else, first, that the power to act as the judge of the election of its members means the same thing for both Houses of Congress; secondly, that it covers for both Houses of Congress alike the power to vacate a seat filled by an election carried by fraud or bribery; thirdly, that by the exercise of that power by the Senate, no constitutional rights of the States are impaired.

But, sir, we are reminded that the resolution now before us for our action has no precedent in the history of the Senate. I admit that; but Senators will be obliged to admit also that the disclosures here made have no precedent in the history of this body; and for the honor of the American people I will suppose that were there a precedent for the one there would be precedent for the other; that if such a case had ever been disclosed to the American Senate, then the American Senate would have found a remedy, and would not have hesitated to apply it.

But if there is no precedent in our past history, is it not time to make one? All precedents are once made for the first time, and I hope, if such a duty devolves upon us, we shall not shrink from it.

It is said, also, that the acceptance of the doctrine upon which this resolution is based would arm a bare majority with dangerous powers. Sir, there is certainly the possibility of an abuse of the power. I feel it keenly. There is no power on earth ever so carefully guarded but is liable to abuse. It is the nature of power. But I invite Senators to consider whether the danger on the other side is not more to be dreaded than the danger on this. What will be the consequence if, under circumstances such as are now surrounding us, we do reject that doctrine which gives us the power to declare a seat vacated upon the ground of bribery?

Look around you. It is not from Kansas alone, it is from different States, that rumors reach us of the election of Senators by bribery, undoubtedly groundless in some cases—utterly so, I hope; but, in other cases, bearing a very serious appearance. Do we not all know that after two senatorial elections within a few months, those who had presented themselves as senatorial candidates were arrested upon charges of bribery and are now under indictment? I am very far from desiring to prejudge any of those cases; but the testimony here before us discloses a tendency of a most alarming nature; which I am afraid is not confined to one State, not confined to one portion of the country.

Here I come to the question of fact. We have been advised by the Senator from Wisconsin [Mr. CARPENTER] to read this testimony, and then to form our own conclusions. I have followed that advice, or rather, I acted upon my own impulses in doing so before the advice was given. I have read this testimony, every line of it, as carefully and conscientiously as it was possible for me to do; and now, sir, what do I find here? I find a man unknown to the political world. After the learned definition of the phrase "political status," which was given us yesterday by the Senator from Illinois, [Mr. LOGAN,] I will not apply that term; I will simply say that he had not signalized himself by conspicuous public service, that he was unknown to political fame, that he had given no evidence of uncommon ability in a public career; that, in other words, he had not shown those qualities which usually are apt to draw upon a man the eyes of the people with reference to high political office. That may be nothing to the dishonor of the Senator from Kansas, for not all men have had the same opportunities. But it appears as a fact that he was mainly distinguished by one thing, and that was, an uncommon abundance of money. He appeared as a candidate for the Senatorship surrounded by a horde of those political managers, whose whole political wisdom consists in a knowledge of the low tricks of the trade, in the handling of the appliances of corruption. And behind that group there loomed up one of those great moneyed corporations which now so frequently thrust their hands into the legislation of this country, who have already acquired so dangerous a power, and are threatening to extend it in a still more dangerous degree. He first buys off one competing candidate for $15,000, cash down, who did engage to transfer to him his following in the legislature, as so many head of cattle. So surrounded he steps upon the scene. The cry goes forth that there is money in that election, much money, money for all who are willing to aid. The presence of the temptation stimulates at once every vicious appetite within its reach. One man who has a vote obtains money for casting it; another learns of it, and asks himself why he should cast his vote for nothing. The frequency of the practice blunts the individual conscience, and that legislature is transformed into a market where votes are bought and sold. It is thus, as I read this testimony, that Mr. CALDWELL was elected a Senator of the United States.

Now, sir, I find here not a mere isolated instance of the indiscretion of an overzealous friend, but I find here bribery systematically organized; I find here a bacchanalian feast and riot of corruption. And when you read the testimony your imagination will fairly recoil from the spectacle of baseness and depravity that presents itself.

Well, sir, from the testimony as I find it, one thing has become

clear to my mind; it is that this is not one of those cases of bribery in a single instance which we have heard spoken of as tainting an election, and, therefore, I do not discuss the question whether by a single case of bribery the election would be invalidated. But what has become clear to my mind is, that Mr. CALDWELL could never have been elected Senator of the United States but for the corrupt use of money all around him. In other words, it was the corrupt use of money, and nothing else, that effected and carried that election. Sir, I ask nobody to believe my mere statement and assertion; I invite every Senator to take this testimony into his own hands, to read it word for word and line after line, and if they do not come to the same conclusion let them not vote as I shall. If I were a juryman, acting under the oath of a juryman, called upon to give my verdict, my verdict would be as I have stated; and let me say to Senators who have discussed the question of the facts that that discussion has strengthened rather than weakened my conviction.

Sir, it is to be feared that cases like this are not entirely isolated, and I beg you to consider that they certainly will not stand alone if you permit a case like this to pass with impunity. Let me ask you, what can we do, what shall we do, under such circumstances? What is the duty of those who have arrived, from their study of the case, at the same convictions that I entertain, and I know there are many upon this floor? Shall we say that although the testimony convinces us that here a seat in the Senate has been purchased with money, yet that seat shall be held by the purchaser as if it had been acquired by an honest and fair election? Shall we declare, are you, Senators of the United States, prepared to declare, that when a man buys a seat upon this floor, buys the high quality of a Senator of the United States, and pays for it, it belongs to him as his property, and that, according to the fifth article of amendment to the Constitution, no private property shall be taken for public use without just compensation? Is that the light in which you look at a transaction like this? Shall we increase the temptation already working to so fearful a degree by assuring to the purchaser of a seat in the Senate of the United States full security of enjoyment? Have you considered the consequences of such indulgence? Let me ask your attention to one of them. To-day, Senators, we may still be able, when we know that a seat has been acquired by purchase, to vacate it by a majority vote; but if you encourage this practice by the promise of impunity, do you know how long it will be before so many of these seats are filled by purchasers, that the struggle will become utterly hopeless? This is not a mere dark fancy, not a mere offspring of a morbid imagination.

The country at this very moment is ringing with the cry of corruption. Is it without reason? Never before have the agencies been so powerful which seek to serve private interests by a corrupt use of money, and never before has the field of political life been so well prepared for their work. The same causes will always and everywhere bring forth similar effects. We have had a great civil war. That civil war, with its fluctuations of values and its tempting opportunities for the rapid acquisition of wealth, has left behind it a spirit of speculation and greed stimulated to most inordinate activity. There is prevalent a morbid desire to get rich and to indulge in extravagant enjoyments; and the more it grows the greater will grow also the unscrupulousness of men in the employment of means to attain that end. But more than that. More than ever before has the Government of the United States extended its functions beyond its legitimate sphere; more than ever has the public Treasury been pressed into the service of private interests. Do we not know it all? Do we not see and understand what is going on around us? I ask you, sir, what is it that attracts to this national capital the horde of speculators and monopolists and their agents who so assiduously lay siege to the judgment and also to the conscience of those who are to give the country its laws? What is it that fills the lobbies behind these green doors with an atmosphere of temptation so seductive that many a man has fallen a victim to it who was worthy of a better fate? What is it that has brought forth such melancholy, such deplorable exhibitions as the country witnessed last winter—exhibitions which we should have been but too glad to hide from the eyes of the world abroad? It is that policy which seeks to use the power of this great Republic for the advantage and benefit of private interests; it is that policy which takes money out of the pockets of the people to put it into the pockets of a favored few; it is that policy which, wherever it has prevailed, in every age and every country, has poisoned the very fountains of legislation. Do you think, sir, that the consequences now and here will be different from what they have been at other times and elsewhere? Are not your great railroad kings and monopolists boasting to-day that they own whole legislatures and State governments and courts to do their bidding? Have we not seen some of them stalking around in this very Capitol like the sovereign lords of creation? Are not some of them vaunting themselves now that they have made and can make profitable investments in members of Congress and in Senators of the United States? Have we not had occasion to admire the charming catholicity, the delicious cosmopolitan spirit with which these gentlemen distribute their favors, as was shown before the Credit Mobilier committee of the House, when Mr. Durant testified that when he gave money for an election, it was entirely indifferent to him whether the man was a democrat or a republican provided he was "a good man?" And now let them know that a man who has purchased his seat here, or for whom it has been purchased with money, will be secure in the enjoyment of the property so bought, and, I ask you, will not their enterprise be limited only by their desires, and will not the rapacity of their desires be limited only by their opportunities? As long as such evils are permitted to exercise their influence, they will spread with the power of contagion, and nothing but the most unflinching resistance can check the evil.

Such, Mr. President, is our condition. Everybody sees it; everybody feels it; everybody knows it is so; and if we do not, the people of the United States do. And we must not be surprised if now and then the voice of some organ of public opinion comes to us with a loud complaint of the pusillanimity of Congress in dealing with such things. The Senator from Wisconsin [Mr. CARPENTER] the other day spoke of it with a somewhat lofty contempt as the clamor of the mob. It may be such sometimes, but let us see what mob it is we have to deal with now. I will read a few newspaper extracts about the Credit Mobilier investigation of the House:

The House of Representatives—

This was written while the proceedings were still going on—

The House of Representatives is presenting just such an opportunity in its treatment of the Credit Mobilier question. It is acting as if it lacked the courage to follow the men who have thrown the first stone. The evidence against BROOKS and Ames is overwhelming. It is their own evidence. The only possible ground for excusing them is that what they have done is not bad for Congressmen to do. The case of all Congressmen who have held Credit Mobilier stock is also plain. The stock was an improper one to hold. It created an interest in defrauding the Government. To refuse to censure the holders of that stock is to say that the congressional standard of morals is not high enough to condemn it.

Now, gentlemen, do you know what paper published this article? Not the *New York Tribune*, or the *World*, but the *New York Times*.

Here is another, written after the Credit Mobilier proceedings had closed:

The action of the House of Representatives on Judge POLAND'S Credit Mobilier report, in substituting a vote of censure and condemnation for the resolution expelling Ames and BROOKS, and passing over the other inculpated members without notice, fell far short of the just expectations of the country. It was a clear case of moral cowardice, an unmanly shirking of responsibility. After rejecting a resolution which involved a denial of its right to expel Ames and BROOKS for the offense with which they were charged, after finding them guilty by a more than two-thirds vote, the House adopted a resolution which virtually declares that a member may offer or accept a bribe and yet not be disqualified from retaining his seat in Congress. *Absolute condemnation must be the verdict of the country on such a lamentable exhibition of moral pusillanimity.*

Who was the man who wrote that article? It appeared in *Harper's Weekly*, and I presume was written by our friend the Hon. George William Curtis.

Now, sir, such words are not those of papers which are in the habit of finding fault with the Administration and the majority. The party service rendered by these papers justifies us in supposing that such words were extorted from them by facts which they could and would neither deny nor gloss over; and certainly, when they speak of public sentiment, they will not make that public sentiment appear in a darker color than it really bears.

I do not quote this language as having the least possible direct or indirect bearing upon the merits of the question now before us, but I quote it to show you a fact which to us as to every citizen is of the highest possible public importance. That fact it is useless to disguise, and we had better fully understand and appreciate it; it is that the confidence of the American people in the integrity of their public men is fearfully shaken. That is the truth, and nobody who knows the country will deny it. Whatever you may think of the causes which have brought forth this result, whatever of the justice of this sentiment, one thing is certain: the fact itself is a public calamity; for, as has often been said in these days, and as can never be repeated too often, what is to become of the respect of the people for the laws if they lose their confidence in the law-makers? I say this not in order to cast a slur upon any one, but to admonish the Senate not to forfeit or jeopardize or weaken that confidence which it may still enjoy. But the Senate will weaken that confidence if, with such evidence before its eyes as confronts us here, it refuses to employ that power which it wields for the protection of its integrity; for the people would be justified in thinking that, if we permit seats here to be bought, we cannot, if we were willing, prevent legislation from being sold.

I would listen to the clamor of the mob just as little as any man on this floor; neither would I, in order to gain the confidence of the mob, descend to do a thing which my conviction of duty did not clearly command. I would face the mob without flinching to prevent a wrong. But I would not treat with contempt, I would treat with respect, that popular voice which calls upon me for nothing else but that I should fearlessly do my duty.

I am far from asking anybody who, upon a conscientious examination of the evidence before us, has not arrived at the same conclusions that have grown up in my mind, to vote as I shall vote; but to those who have formed the same convictions let me say, there is something higher at stake here than the fate of one individual, whom we might regard with sympathy and compassion; something higher also than the danger that might possibly grow from an abuse of power by the majority in vacating seats or annulling elections; and that something is the purity, nay, the very existence of the representative character of our institutions. You speak of partisan recklessness that might unscrupulously employ such a power for its own selfish ends. I know that danger as well as any one knows it; I fear it just as much as any one; I am certainly not inclined to underestimate it; but I entreat you to consider that, by assuring impunity to such offenses as we are here dealing with, by securing the full fruits of

their iniquity to those who purchase seats in this body, you will invite to the Senate of the United States an element which, in its very nature corrupt, will be the readiest, the most servile, the most dangerous tool in the hands of reckless partisanship. For you must know that those who feel themselves most vulnerable, those who have to shun the searching light of inquiry, will never have that courage of independence which defies attack, but are apt to be the first to earn, by the most abject and slavish service, refuge and security under the protecting wing of a powerful party. Secure the exclusion from our legislative halls of that class of men who, accustomed to the use of ignoble means, must, in the very nature of things, serve ignoble ends, and you will have secured a much better safeguard against the transgressions of a reckless partisan spirit than by confining our power within narrower limits than those by which the Constitution has circumscribed it.

I repeat, it is the purity, it is the very existence of the representative character of our institutions that is at stake; for when it is known that seats in this body can be bought and held by right of purchase, sellers and purchasers will multiply in the same measure as the wealth of this country grows to be plundered, as the interests vary to be subserved, as the rapacity of greed increases to be glutted, and the day will come when this body will represent the bloodsuckers and the oppressors of the people, and no longer the people themselves.

Sir, it is at last time that we should look the dangers which threaten this Republic in the face. This Republic has no monarchical traditions; it has no pretenders of historic right to disturb its repose or to plot its overthrow; it is not likely to succumb to the shock of force. But there have been republics before this, just as sound and healthy in their original constitution as ours, but which have died from the slower but no less fatal disease of corruption and demoralization, and of that decay of constitutional principles and that anarchy of power which always accompany corruption and demoralization. It is time for us to keep in mind that it takes more to make and to preserve a republic than the mere absence of a king, and that when a republic decays, its soul is apt to die first, while the outward form is still lasting to beguile and deceive the eyes of the unthinking. I hope and trust that we are still far from that point; but I think no candid observer will deny that there have been symptoms of a movement in that direction; and, I say it with gladness, there are also symptoms justifying the hope that the downward movement may soon be checked if the checking has not already commenced.

I ask you, what is our office under such circumstances? This is the Senate of the United States. No parliamentary body in the world, not even the House of Lords of Great Britain, possesses such exalted attributes, enjoys such a plenitude of power, is loaded with such vast responsibilities. No parliamentary assembly has in its past history been more adorned with genius and public virtue. Let no man say that of all parliamentary bodies in the world this is the only one—yes, the Senate of the United States, with all its exalted attributes, with all the plenitude of its power, with all its vast responsibilities, is the only one—that has no power to judge whether its members are honestly elected, and to declare an election illegal and void on the ground of bribery, fraud, and crime; that this is the only parliamentary assembly on earth which, doubting its own authority, is helplessly to surrender to the invasion of men who purchase with money their way to the highest legislative dignity of the greatest of republics, and, having bought their seats, will sell our laws. When the American people struggle against the power of corruption, their Senate at least should march in the front rank of the advancing column; their Senate at least should hold high its own standard of honor and purity, which is to restore the waning confidence of the masses in the integrity of the law-makers.

Sir, whatever personal disagreements, whatever partisan quarrels, may divide us, upon this, at least, all American Senators should be unanimous. For I entreat you not to forget—and no man who has read the history of the world with profit will or can forget—that when, in a republic circumstanced like this, the power of corruption has grown great, and threatens to become overwhelming, and a movement of the popular mind has sprung up to resist and check it, one of two results will follow: either that movement of healthy re-action will succeed, the social and political atmosphere will be purified, and all will go well;—or the movement will fail; a feeling of discouragement, and then of torpid indifference, will settle upon the popular mind; further effort will be deadened by hopelessness, and corruption will riot, not as it did before, but far worse than ever before; and nobody knows where it will end. I need not say to which of these two results the American Senate should use its powers to contribute.

I, for my part, shall vote for this resolution to declare the election of Mr. CALDWELL illegal and void. I shall vote for it, clearly convinced, as I am, from my careful reading of this testimony, that Mr. CALDWELL'S election was effected by the corrupt use of money. I shall so vote, firmly convinced that the Senate of the United States, under the Constitution, does possess the power to declare void an election so carried and effected. If this resolution should fail, and I hope and trust it will not, then I shall vote for the resolution offered by the Senator from Mississippi, [Mr. ALCORN,] to expel Mr. CALDWELL, firmly believing, as I do, that the corruption shown in this case touches his character as well as his election, and clearly unfits him for a seat in the Senate of the United States.

It was with profound regret that I heard the Senator from Illinois [Mr. LOGAN] say that there was here evident an ungenerous and even vindictive desire to persecute Mr. CALDWELL, and to sacrifice him as an innocent victim to popular clamor, something like a wide-spread conspiracy to ruin the reputation and the social and political future of that one man. I cannot refrain from repelling this as a most reckless imputation. The Senators whom I know to entertain, with regard to the merits of this case, views similar to my own, are certainly not among the least generous, the least conscientious, and the least honorable of this body. As to myself, I know my own motives. I feel that they need no vindication. Mr. CALDWELL has never offended me. I bear him the same kindly feelings that I bear to any fellow-man. Nothing is further from my nature than to harm any human being, without justice and necessity. Did I believe him innocent, I should not only refrain from everything that might do him harm, but I should be among the first to stand between him and the sacrifice; and even now I assure him it is with the profoundest pain that I see him in his deplorable situation. But, sir, no consideration of personal kindness and sympathy, no emotion of compassionate friendship, can I permit to seduce me, nor should it seduce anybody here, to sacrifice to one individual what is higher than he and higher than all of us—the dignity and the honor of the American Senate, the moral authority of the laws we make, the purity of our representative government, and the best interests of the American people. Whatever sacrifice we may be willing to offer, these things at least should not constitute the victim.

Mr. SARGENT. Mr. President, I do not rise for the purpose of discussing the evidence in the case of the Senator from Kansas, but to say a few words, if I properly may, in reply to the allusions made by the honorable Senator who has just taken his seat as to the action taken in another body with reference to persons accused of complicity in the Credit Mobilier. As I understand the treatment of that matter by the House, there was no avoidance whatever of responsibility and no cowardice. The first, and certainly one of the most important questions for that body to decide, was whether it had jurisdiction in the case. The events which were testified to occurred more than five years before the House was called upon for action. Two elections by the people had intervened; three, in fact, but two before that Congress. The Judiciary Committee had reported as their judgment, with but a single dissent, if I remember correctly, that the House had no jurisdiction under such circumstances; and we were brought face to face with the question, which would be presented in a criminal court where a man was brought before it accused of a grade of offense higher than its jurisdiction, whether it should entertain jurisdiction or not. In a case in a criminal court, if there was any circumstance affecting its jurisdiction, the point, of course, would be whether it should not first determine if it could try the question at all. The conclusion arrived at on that point, which governed the proceedings, was that there was no jurisdiction, and it was expressed in a resolution, which was proposed, that "grave doubts" upon that point existed. In fact, the resolution was not strictly true, for with the great majority of the body there were no doubts upon the point; there was no doubt that no jurisdiction existed.

I have a decided opinion that, if those events had been more recent, there would have been expulsion in the case of two of the persons who were named in those resolutions, the two who were subsequently censured; but, for the very reason that there was no jurisdiction to expel, the House refused to expel them. It is very true that there were resolutions of severe censure passed; but this was not, as has been sometimes assumed, in violation of the principle that there was no jurisdiction in the matter. It was an expression of opinion upon certain conduct; an expression of opinion like that which either House may make on any outrage committed by a foreign power; an expression of opinion which it might make against the continuance of the slave-trade or of slavery by any foreign power, against cruelties in India or in Cuba, not assuming jurisdiction over those nations to try, determine, or punish, but simply an expression of the body that such things were highly reprehensible; and in that spirit that censure was made.

With reference to other persons who were named, the testimony was not clear upon several points. It was not clear that the kind of stock in which they were dealing was explained to them. It was not clear that they understood the objects of the corporation in whose stock they invested, that any extraordinary profits were to arise from it, any unusual advantages, or that it was to interfere in any way with their duties as members of Congress. There was an almost universal commendation in the press at that time of Mr. Ames for his energy in building the Pacific Railroad when others had failed; when every other company or concern which attempted to push it forward had failed, and he had taken it up and was pushing it apparently to a successful conclusion; and there may have been a natural and laudable desire on the part of those gentlemen to participate in the glory of aiding in such an enterprise. However that may be, it did not appear that they ever were influenced in their conduct, or intended to do anything corrupt. I speak of the matter as it appeared from the testimony, and, as I believe, in the judgment of the House.

I should like to add one word further as to my individual opinion of those gentlemen. I had sat in Congress with them for year after year; I had seen them in their official relations; I had observed them in their personal conduct; and I say, and I believe I speak for a great many members of the House with reference to some of these

gentlemen, and some of them who are most distinguished, that our reliance in their honor, in their high character as men, in their integrity as legislators, was not shaken in the slightest degree by anything that appeared in that case.

Mr. MORTON. I believe some other members of the Senate desire to speak on this question. I move, therefore, that the Senate proceed to the consideration of executive business, and let this debate go over until to-morrow.

Mr. CARPENTER. Will the Senator withdraw that motion for a moment?

Mr. MORTON. Yes, sir.

ADJOURNMENT TO MONDAY.

Mr. CARPENTER. I move that when the Senate adjourns to-day it adjourn to meet on Monday next.

The motion was agreed to.

EXECUTIVE SESSION.

Mr. MORTON. I now renew the motion for an executive session.

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

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

IN THE SENATE.

MONDAY, *March* 17, 1873.

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

The journal of the proceedings of Friday last was read and approved.

MISSOURI SENATORIAL ELECTION.

The VICE-PRESIDENT. The Chair will lay before the Senate two memorials, signed by members of the legislature of Missouri, in regard to the recent election of Senator from that State, and also the majority and minority reports of the committee of the legislature of the State on the same subject. These memorials and papers will be referred to the Committee on Privileges and Elections, if there be no objection.

PROGRESS OF BUSINESS.

Mr. WRIGHT. I offer a resolution.

The resolution was read, as follows:

Resolved, That the Committee on the Revision of the Rules be instructed to inquire into the propriety of so amending the rules as to provide—

First. That debate shall be confined and be relevant to the subject-matter before the Senate.

Second. That the previous question may be demanded either by a majority vote, or in some modified form.

Third. For taking up bills in their regular order on the calendar; for their disposition in such order; prohibiting special orders, and requiring that bills not finally disposed of when thus called shall go to the foot of the calendar, unless otherwise directed.

Mr. THURMAN. When was that resolution offered?

Mr. WRIGHT. I have just offered the resolution. It is a resolution of inquiry to the Committee on Rules.

Mr. THURMAN. I object to its present consideration.

Mr. WRIGHT. I give notice that I shall call up the resolution to-morrow morning. I ask that it be printed.

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

ELECTION OF SENATOR CALDWELL.

Mr. SAULSBURY. I believe the unfinished business is the resolution reported by the Committee on Privileges and Elections. If I am correct, I desire, as I have to leave the Senate at an early hour, to submit a few remarks upon that resolution.

The VICE-PRESIDENT. If there be no further Senate resolutions, the unfinished business of Friday last is now before the Senate.

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. SAULSBURY. Mr. President, the report of the Committee on Privileges and Elections, in reference to the Kansas case, presents to the consideration of the Senate two questions, one a question of fact, and one in reference to the power of the Senate to deal with the question of fraud, when connected with the election of a member of this body. I do not propose, on the question of fact, to make any extended remarks, but simply to state the conclusions of my own mind in reference to the evidence submitted and accompanying the report of the committee. I think it cannot be questioned, by any one who looks carefully into that testimony, that there was great corruption, great fraud, practiced in the election of the Senator from Kansas. Without specifying the particular parties affected by the fraud, without pointing out particular members of the Kansas legislature who were corrupted, and whose votes were controlled by the use of money, I think it cannot be doubted—at least such is the conviction upon my own mind—that, but for the use of corrupting influences, the Senator from Kansas would never have held a seat in this body.

I shall not have the time, and do not now propose, to review the evidence submitted with the report of the committee, but simply to state the conclusion to which I have arrived from an examination of that evidence.

The report of the committee and the proofs in the case have been before us for more than two weeks, and every Senator has doubtless examined them for himself. I shall therefore content myself with announcing my own convictions in justification of the vote I shall give upon this subject.

Upon the other question, however, involving the power of the Senate to deal with a case of this kind, I desire succinctly to state some views.

Supposing that the fact of bribery or fraud has been established by the evidence before us, and that Mr. CALDWELL has been connected therewith, the next question presented for consideration is, in what manner can the Senate deal with his case?

On this point there is a conflict of opinion. None, I believe, doubt the power of the Senate to deal with the question of fraud in the election of a Senator when it touches the composition of the Senate; nor do I suppose that any will doubt the duty of the body to do so in vindication of its own character and dignity. In fact, looking no further than the preservation of the character of the Senate and the respect which it should claim and merit as the highest legislative body known to our system of government, it would be difficult to conceive how any Senator could hesitate to affirm the right and duty of the body to purge itself from the presence of those who had gained admission to this floor by such improper means. But when we look away from ourselves and consider the consequences to ensue, from filling this chamber with members by such means, to our free institutions, the duty becomes not only clear but imperative, demanding the prompt exercise of whatever powers have been conferred by the Constitution for that purpose. In view of the public interest which we are bound to protect, and the obligation imposed by our oaths of office to maintain our free institutions and to perpetuate the liberties they secure to the American people, we are left no alternative. The duty is upon us, and we may not escape it whenever the facts warrant the exercise of the power with which the Senate is clothed. It may be a painful duty, as it always will be to conscientious men; but it is none the less inexorable, and a failure to meet it would be a betrayal of a trust which nothing could palliate, justify, or excuse. This I take to be the conviction of every member of the Senate; and however much we may differ about the facts in this case or the proper mode of reaching it, there can be none in reference to the necessity and obligation to act if the circumstances demand it.

Assuming that Mr. CALDWELL holds a seat in this body by fraud, what is the remedy? I have said that on this question there is a difference of opinion. The committee, or at least a portion of the committee, who have reported this resolution, believe that the proper remedy is in declaring the election of Mr. CALDWELL by the Kansas legislature void, while others of this body, and no inconsiderable number, think the only remedy is in the power of expulsion.

So far, I believe, there has been no argument to sustain either of those views drawn from the inherent powers of the Senate as a deliberative body. The advocates of each theory claim to find the warrant for the action they propose in the Constitution.

Certainly the power to expel a member by a two-thirds vote is expressly given in plain and unambiguous terms; none, I believe, have denied the existence of such a power, whatever may be their views in reference to the circumstances under which it may be properly exercised. The power to declare the election of a Senator void for fraud is both affirmed and denied, and much of the debate to which we have listened has turned upon this point. As the views I entertain upon this question differ somewhat from the views of some of those with whom I am accustomed to act in this chamber, I propose to state succinctly the conclusions at which I have arrived in the consideration of this question.

I am not prepared, Mr. President, to deny the existence of a power in this Senate to declare the seat of a member vacant whenever it shall appear that he holds that seat by purchasing the votes of the legislature that elected him. Such action on the part of any member would render him unworthy of a seat in this chamber; and when I look at the Constitution I find the Senate, as well as the House of Representatives, made the judge of the qualifications, returns, and election of its members. "Qualifications," of course, are personal to the member, referring to his age, residence, &c. "Returns" are the certificates and evidences of his election. But what is meant by the authority conferred upon each House of Congress to judge of the election of its members? It is something distinct from judging of their qualifications and the returns of election. It must mean that you may look into the election, and judge, not only whether it took place at the proper time and at the proper place, and was the proper legislative body to elect, (for these facts must appear upon the face of the returns,) but also to see if the election was conducted in the proper manner; that is, whether it was the free expression of the legislative will, uncontrolled and undeterred by force or fraud. Does any one suppose for a single moment that an election of Senator determined by force and coercion of the legislature would be a valid election; that duress controlling the action of the legislature in the choice of a Senator would not vitiate the election and render it void? And who would doubt the power of this Senate, upon proof of such a state of facts, to declare the illegality of such an election of a member of this body? If the Senate, under the power given to judge of the election of its members, could set aside and declare void an election

under such circumstances, can it not, under the same power, declare illegal and void an election controlled and determined by the bribery of the legislature? The duress of bribery as effectually subverts the legislative will as the duress of force or the apprehension of great bodily harm. I am unwilling to admit that, in either case, this Senate could not vindicate its own dignity and the freedom of senatorial elections by treating such an election as a nullity. Those who would restrict the power of the Senate, in judging of the election of its members, to the simple inquiry as to whether the body electing was, in fact, the rightful legislative body, and whether it met at the right place and elected at the right time, would be compelled to admit, if these facts appeared, that such an election of Senator as I have supposed, whether controlled by force or fraud, was a valid election, and binding upon this Senate. From such a conclusion I most respectfully dissent.

I do not, however, admit, but on the contrary deny, that the bribery of a single member of a legislature would vitiate the election of a Senator. That was the rule recognized by the British Parliament, and which I understood the Senator from Indiana [Mr. MORTON] to insist is the true rule to govern such cases. The rule adopted by the House of Commons was founded in the necessities of the times, and, perhaps, was proper under the circumstances existing at the time in England. The reason for the rule was to protect the freedom of elections and to prevent the undue influence of the ministry in the election of members of Parliament. The ministry endeavored to fill the House of Commons with men whose votes they could control, not only to sustain the just measures of government, but to vote the most liberal supplies and to act in everything as the pliant tools of the Crown and ministry. To protect itself from the presence of such members, Parliament was compelled to declare that the bribery of a single voter should render an election void. But that rule has never been recognized in this country, and in fact has no justification in the circumstances surrounding us, and no fitness in its application to our institutions. The bribery which can render the election of a Senator void must control and determine the result of the election. It must be the means by which the election is secured. The purchase of a single vote of a member of a legislature, or of ten or twenty, or any number of votes, unless it had that result, unless it determined the choice of the legislature, and secured the election of the purchaser or the person for whom they were purchased, would not render his election void.

In affirming, therefore, the power of the Senate to declare the election of a Senator illegal and void for bribery, I maintain that the fraud must be controlling in its influence and must determine the result of the election. Such I believe to have been the case in the Kansas election, and am therefore prepared to affirm the right of this Senate to declare the election of Senator CALDWELL illegal and void.

But it is said that the power to declare an election of Senator void for any cause may be abused and become a most dangerous power. I admit it. That, however, is an argument against the improper or hasty exercise of the power rather than against its existence. The existence of a power can do no harm so long as it remains dormant or is exercised only in a proper case. It is the improper exercise of the power that is attended with evil. True, the danger of such a power becomes greater the more easily it can be exercised; and in this view I admit that the power of the Senate to declare a seat vacant by a majority vote is more likely to be abused than the power of expulsion. It is, however, the abuse of the power in either case from which harm is to be apprehended, and not the existence of the power or its exercise in a case proper for such exercise.

But let me ask Senators if the absence of such a power in the Senate might not become equally dangerous and be attended with consequences the most serious. The necessity for all legislative bodies to be able to protect themselves from the presence of persons not properly entitled to seats therein has been recognized and admitted from time immemorial, and if the Senate has no such power, then it is an anomaly among deliberative bodies and an exception to a rule indispensable to the preservation of its own character and dignity. Those who oppose the right of the Senate to vacate a seat in the body for fraud, in the manner proposed by the resolution reported by the committee, admit the right of self-protection to exist, but claim that it is found in the power of expulsion. In support of this view they say that the right to expel is absolute and unrestricted save by the requirement of a two-thirds vote. That is true. The power of expulsion is uncontrolled by anything but the discretion of the Senate. It might to-day be exercised upon any member of this body for cause or without cause. But, I ask, does it furnish the means of protection to the Senate from the presence of persons who ought not to sit in this chamber, in all cases that may arise, unless by its exercise in the most arbitrary and cruel manner? Suppose it should be found that some member of this body held his seat here by corruption and fraud controlling the action of the legislature that sent him, but that he himself was wholly unconnected with and ignorant of the means by which his election had been secured; suppose some gigantic corporation, for purposes of its own, should buy up enough votes in a State legislature to elect a Senator, and should by such means place in this hall a man of its own choice, contrary to the will of the people of the State, and who but for such fraud would never have been thought of for the position; and suppose that the Senator himself was unconnected with the fraud and ignorant that his election was procured by such means, would any Senator here contend that his case was a proper one for the exercise of the power of expulsion? Certainly not. In such a case you would be compelled to submit to having a seat filled in this body by a man whose election had been procured by the most notorious and flagrant fraud and corruption, or driven to the necessity of exercising the power of expulsion upon a man as innocent of wrong himself as the purest man among us, if the power of expulsion is the only power of self-protection in the Senate. In the case I have supposed, I apprehend that no one would dare to be so unjust, not to say so cruel, as to brand by expulsion a man for offenses not his own. I am free to say for one that I would not. I would sooner resign my own seat in this chamber than be guilty of such injustice to another.

It may be said that I have stated an extreme case—one not likely to occur. Suppose I have; it is only by extreme cases that you can fully test the correctness of any theory. I do not admit, however, that the case supposed is an extreme one, unless it may be in the supposition of the possibility of innocence in the person selected by the corrupting corporation as its agent in this body. When I see the increasing power of monopolies in this land, the consolidation of railroad corporations, stretching across this entire continent, and by a combination of capital and influence controlling the legislation of the States of this Union; when I hear on every hand of the potent influence of these corporations, not only upon legislation in the States, but also upon judicial decisions; when I see them resisting all legislation adverse to their wishes and interests, and dictating the measure of public burdens they shall bear; above all, when I see them around these halls, by hired agents demanding the gift of the public lands, and asking the privilege to be permitted to rob the Treasury by obtaining subsidies under acts of Congress, I cannot repress the apprehension that at no distant day they will attempt to influence the legislation of this Senate, not alone by the influence of the "lobby," but by the votes of their own agents, whose seats here have been purchased by the use of corporate money, unless this body may protect itself by declaring the seats of all such agents vacant by reason of the fraud practiced in procuring them. The remedy proposed, the power to look into the elections of members of this body, upon allegations of corruption and bribery, and, if found true, of vacating the seat, may be a delicate and dangerous power; but in view of the consequences that may follow if such a power is denied, I confess that I should come to such a conclusion with much reluctance.

Now, Mr. President, let me inquire if the power of expulsion is not also a dangerous power, if you can go behind the oath of office which inducts a member into this body and inquire into and expel for causes occurring anterior to that time. The power of expulsion is absolute, as I before remarked, controlled only by the discretion of the Senate. You may expel for cause or you may expel without cause if two-thirds of this body so determine. I admit it may be more difficult to procure the vote required to expel than a mere majority vote, and to that extent the power of expulsion is less dangerous than the power of vacating the seat for fraud in the election. If, however, you go behind the oath of office, and inquire into matters occurring anterior to that time, you are treading on dangerous ground, and will find it difficult to fix a limit to the exercise of the power. I know that it may be said that fraud perpetrated in bribing the legislature is a part of the *res gestæ* and connects itself with the induction of the Senator into office, and thus gives jurisdiction to the Senate of the offense. But is expulsion, I ask, for bribery in such a case not punishment for something done while the man was a private citizen, having no connection with this body in any manner whatsoever? I do not wish to be misunderstood on this point. I am not denying the right of the Senate to expel in such a case. I am simply endeavoring to show that the power of expulsion is equally as dangerous as the power of declaring the election void, save only in the greater security found in the vote required to expel. In everything else the power of expulsion is as dangerous as the power to declare an election for bribery void. It is as dangerous to the right of members in this body and as dangerous to the rights of the States they represent, except for the protection found in the two-thirds vote required to expel.

In one aspect the power of expulsion is even a more dangerous power than that of declaring a seat in this chamber vacant for bribery of the legislature in the election of a Senator. In the latter case the exercise of the power is restricted to causes connected with the election; it is derived from the authority to judge of the elections. No one would contend that it could be exercised for any matter not relating to such an election, and connecting itself with the seat in this body to be declared vacant. But where is the restriction of the power of expulsion? None is expressly found in the Constitution; it rests alone in the discretion of the Senate. If you go behind the oath of office—the induction of a Senator into this chamber—where are you to stop; who shall fix a limit to the exercise of the power? There is no limit except the discretion of the Senate. In this view of the case I ask, is it not more liable to abuse than the power to declare an election of Senator void for bribery in his election?

Mr. President, there has been an argument against the resolution reported by the committee drawn from precedents. I have great respect for precedents. The law of the profession to which I belong is *stare decisis;* and if any Senator can produce a precedent in a parallel case to the one now under consideration, I shall feel bound to be governed by that case; but I affirm that no such precedent exists. I am glad for the honor of the American Senate that this is a case of first impression.

In the case of my friend from New Jersey, [Mr. STOCKTON,] that

was not a case where the Senate attempted to look into the election of a Senator on a charge of bribery, but upon another question. The only case which has been brought to the notice of the Senate having the least similarity to the one now under consideration is the Pennsylvania case; and yet the true question presented in that case was simply whether the Senate upon the presentation of a memorial from members of a legislature, preferring vague and indefinite charges, would go into an investigation; and in submitting their report, declining to send out a roving commission to hunt up testimony upon vague charges, the committee may possibly have used expressions that looked as if they were contemplating expulsion as the only remedy for the Senate if a case of bribery existed; yet I say they had not the case before them and did not decide that question. Mr. Pugh, who differed from the committee, in the discussion which followed, did maintain the right to vacate a seat for fraud; and in that discussion he put the direct question to Mr. Butler, of South Carolina, whether the bribery of the legislature in the election of a Senator would not render the election void, and, if my memory serves me right, Mr. Butler admitted that such would be its effect. I do not quote his language, but the impression made upon my mind from reading that discussion was that he admitted, in the debate with Mr. Pugh, after the report was brought in, that if a case of bribery were presented it would vitiate the election and render it void. Therefore I say there is nothing in the precedents that have been cited that can possibly bind the Senate. There is no authority to be derived from them indicative of what is the proper action in this case.

Having thus expressed my view of this subject, I wish now to say that, while I maintain the existence of both powers, the power to expel and the power to declare the action of the Kansas legislature void, I believe that in this particular case the power to expel is the appropriate remedy. I believe it is so, because the Senator himself is connected so indisputably with the fraud that it becomes a case in which the character of this body requires that the higher remedy, that which touches the member himself, should be resorted to. And in that view of the case I should prefer to see the resolution offered by the Senator from Mississippi [Mr. ALCORN] passed, rather than the resolution reported by the committee.

That we ought to take some action in this case certainly will not be denied by any member of the Senate who believes that the election of the Senator from Kansas was procured by fraud. One consideration demanding the prompt action of the Senate is the preservation of the character and the dignity of this body. If any member of this Senate has obtained a seat here by the use of corrupt influences, we owe it to ourselves as members of the highest legislative body on earth, at least in this country, to see to it that the Senate is purged from the presence of such a man.

In making use of this language, which is pretty strong, I admit, I do not wish to speak harshly of the Senator from Kansas. From all that I have seen of that gentleman I should judge that he was a gentleman of kindly feelings and courteous disposition. I will go further and say that I am ready to admit that, though the legal fraud connected with his case is the most glaring, so far as moral fraud is concerned, there is not the same degree of turpitude that would have attached to the case if bribery had been committed by many other persons. He was in a new country; he was surrounded by influences and by a state of public morality that palliated and invited to some extent the resort to such means; and, looking from his stand-point at the question, I would not charge the same degree of moral turpitude on the act of the Senator from Kansas that I would upon myself, or upon some other gentlemen in the Senate with surroundings entirely different, if we had been connected with a transaction of the same kind. He acted in obedience to what seems to be the practice in senatorial elections in his State.

I say that we owe it to ourselves, we owe it to the dignity of this body, if the facts in this case have established the complicity of the Senator with the bribery, to use the highest power given to this body for the purpose of vindicating its dignity and its character.

What will be thought of the American Senate by the people of this country; what will the nations of the earth think of the American Senate, if, with a case of this kind presented before them, reported from their own committee, detailing the facts, showing the corrupting influences that were used to procure this election; what will be the judgment of the world in reference to the character of the Senate, if, with such a case before them, they fail to apply a remedy and vindicate the honor of this body? What will be the respect which the people of this country will entertain for the Senate?

Sir, I am fearful that we as a legislative body have already lost caste in the public mind, judging from the public papers of the country. The scenes transpiring in Congress, the investigations that have been going on here during the recent session, have not been calculated to impress very favorably public sentiment throughout the country, and I fear the American Senate to-day has not that high character that it once had. Sir, I remember in the days of my youth, long before I had any aspirations for a seat in this body, I regarded this chamber not only as the theater of the highest intellectual powers, but as the true exponent of political morality in this land. If we fail to vindicate the honor of this body by ridding ourselves of the presence of any member who is connected with and has obtained his seat by bribery, that character will be lost, and with it will be lost the respect of the American people for ourselves and the laws here enacted.

If this Senate shall fail either to declare the election of the Senator from Kansas illegal and void, by the passage of the resolution reported by the committee, or to pass the resolution of expulsion introduced by the Senator from Mississippi, it will be a virtual announcement that seats in this chamber are for sale to the highest bidder. Men who are too conscientious to buy their way into the Senate, or whose fortunes are too limited to enable them to do so, may dismiss their aspirations for the position. The prize will no longer tempt the ambition of the poor or the virtuous, but will become the inheritance of the mercenary and venal. Genius, learning, and fitness will avail but little in a contest with gold, and those who occupy these seats hereafter may regard their claim to them as vested and indefeasible because purchased with a price.

I have not time at present to discuss more fully the subject under consideration, being compelled to leave in a few moments for my home. What I have said has been prompted from a sense of public duty, and not, I trust, from any consideration unworthy of the place or the occasion.

Mr. STOCKTON. I desire to ask a question of the Senator from Delaware before he leaves the chamber. I did not wish to interrupt him while he was speaking, for fear I might interfere with the tenor of his remarks; but I wish to call his attention and that of the Senate to the fact that, from the commencement to the end of his remarks, "bribery" and "fraud" were used as synonyms, and he treated this case precisely as if it were a case of fraud. In the remarks which I had the honor to submit to the Senate a few days ago the point I made was that there could be no inquiry in reference to the motives of the members of the legislature if it was plain that the manner of the election was fair; that the manner of the election was the only subject to be inquired into; that the Senate had no right to examine into the motives of the individuals composing the legislature.

Now, sir, nothing can be more distinct than "fraud" and "bribery." In bribery the motive is direct and plain; indeed, that is the very definition of bribery; but fraud in law vitiates everything; it vitiates everything because the motive does not exist, and the individual who is casting the vote may be himself defrauded. "Fraud" is defined as "deceit, cheat, guile, deception, trick, artifice, subtlety, stratagem, imposition." A "bribe" is "a reward given to any one, especially to a judge, an officer, or a voter, in order to corrupt or influence his conduct." And the lexicographer, to illustrate, gives this quotation from Samuel: "His sons turned aside after lucre and took bribes and perverted judgment."

The distinction is as broad as it can be. It is a distinction which absolutely prevents one single word uttered by the Senator from Delaware being an answer to any argument that has been used on this side of the question. If you come here with the legal proposition that fraud avoids all transactions, that may be true. It may avoid an election if the voter is defrauded. If such a course has been pursued as I am told has been in regard to some of the negroes of the South, where, not being able to read, they were made to vote one ticket when they supposed that they were voting another—if that were proved, it would avoid that transaction beyond all doubt. But the very fact that it was bribery is an admission that the motive was there.

As I said when I spoke to the Senate before, whether the motive be love and affection, whether it be public duty and a belief that the man who is chosen is the best man, whether the motion be a pure one or a foul one, whether it be a sordid and a base motive or a noble and honorable one, whether the man be carried by personal devotion to his friend away from his public duty, so as not to select a man who is the best man for the place, or whether the motive be of any other kind, it is a motive; the man does choose, he does select, he does the work. He does the work so that the Senate can get no further than to inquire whether he has done it. But, in the case of fraud, the work is not done at all. The distinction it seems to me—and it is all I rose to say—is as broad as it can possibly be; and the Senator from Delaware has failed to observe that distinction, or I think he would not have expressed his opinion as he has done this morning.

Mr. MORTON. I should like to make a single remark to the Senator from New Jersey, in that connection, on the distinction between fraud and bribery in a case of this kind. There may be fraud in an election in a great many ways in which there is no bribery; but you cannot imagine bribery without fraud. An election procured by bribery is essentially a fraud; it is a fraud upon the people of the State; it is a fraud upon the Senate; it is a fraud upon the nation. Bribery involves fraud, although there may be other species of fraud that do not involve bribery. So far as dealing with the motives of members of the legislature is concerned, I submit to my friend that that is a distinction without a real difference. It is the acts of men which you inquire into. If a member of the legislature accepts a bribe, that is an act. If a candidate gives a bribe, that is an act susceptible of proof. You may infer motives from acts; but it is the acts that are proved. From the acts the law infers the motive. If an act is fraudulent or corrupt in its character, the law infers the fraud and infers the consequences.

Mr. PRATT obtained the floor.

Mr. SUMNER rose.

Mr. PRATT. I am told the Senator from Massachusetts rises for a special purpose, and I am willing to yield to him.

Mr. THURMAN. I have not risen to speak on this case, but to put

a question to my friend on my left. If improper motives cannot be imputed to a member of the legislature for the purpose of declaring the election void, if we are estopped from imputing improper motives to a member of the legislature when that is the inquiry, how can we impute improper motives when the question is upon expulsion? How is it that the same estoppel will not work if the resolution were to expel, that does work when the resolution is to declare the election void?

Mr. STOCKTON rose.

Mr. CONKLING. If nobody else wishes to answer that question, I should like to answer it.

Mr. STOCKTON. The Senator from Ohio, I think, spoke to me. He said he wished to put a question to his friend on the left, and I suppose he alluded to me. If he did, I am prepared to answer that question. The answer is, because there is a clause in the Constitution of the United States, which I wish the Senator from Ohio would refer to, which absolutely allows the Senate to expel for cause, and makes the Senate the sole judge of the cause. If the Senator from Ohio had done me the honor to listen to me when I spoke the other day, he would have observed that I said the power was absolutely unlimited, and, being unlimited, you can inquire into anything, but the instant you find that a man is not, in your judgment, a peer of yours, you can expel him if you can get a two-thirds vote.

In the other case, the clause in the Constitution is simply that the Senate shall be the judges of the qualifications, the elections, and the returns of its members; and, as I attempted to show the Senate on another occasion, that simply means to judge of the manner and form of election, and not of the motive of the voter. In one case your power of inquiry is unlimited, and, as I said, our fathers required a two-thirds vote before you can expel, so that party passion cannot control the matter. In the other case, you may unseat a man by a majority of one vote, and keep your power permanently in the Senate by pretending, by construction of the word "election," to examine into the motives of individuals. One is dependent upon an unlimited clause in the Constitution, and the other upon a clause which is limited all the way through by the context in which it is placed.

Mr. THURMAN. My excuse for not having heard my friend from New Jersey the other day was that I was in New York, and I could not hear him that far. That was my misfortune, of course. I wish, however, to say that I utterly dissent from his doctrine, that the power to expel is an unlimited power. It is a power to be exercised within the discretion of the Senate, but it is a legal discretion. It is not an unlimited power at all. It is a power to expel for cause. In determining in its discretion what is cause, the Senate is bound to exercise, not a capricious or arbitrary discretion, but a legal discretion. And, perhaps, at some future time in this debate, I may endeavor to show my friend that the reason which he supposes to exist, and which authorizes us to charge corruption upon a legislature when the question is expulsion, is no sufficient reason at all; and that, if we can charge corruption upon a legislature, on a resolution to expel, it will be extremely difficult, by any logic of which I am aware, to say that you cannot, on a resolution to declare the election void.

Mr. CONKLING. Will the Senator from Indiana [Mr. PRATT] allow me one moment to answer the question put by the Senator from Ohio?

The VICE-PRESIDENT. The Senator from Indiana has the floor on the question, but the Senator from Massachusetts rose for a special purpose, and yielded the floor to the Senator from Ohio.

Mr. CONKLING. I do not wish to stand in the way of another Senator; but before it passes away, I wish to answer the question put by the Senator from Ohio which he gave an invitation to us all to answer. Let me state the question. If we are estopped from imputing corruption to members of the State legislature in order to avoid an election of a Senator of the United States, why are we not estopped to impute corruption to members of the legislature in order to expel the Senater they elect? That is the question. My answer is this: Upon a resolution to expel, we are not called upon to impute wrong or corruption to the members of the legislature at all, nor to anybody else, save only the Senator upon whom the resolution acts. The question solved by a resolution of expulsion is the guilt or innocence of the member of this body whom it is proposed to expel, not of the members of any other body. I beg the attention of my friend from Ohio to one illustration. Suppose it were proven that Mr. CALDWELL offered one hundred bribes to one hundred members, every one of whom spurned the approach with such indignation that he who made it "started like a guilty thing upon a fearful summons," and crept away baffled.

Mr. THURMAN. Yes.

Mr. CONKLING. Could corruption be imputed to the men who drove him from their presence because he dared to offer bribes? Does not such a test answer the question of the Senator? If the member be steeped in turpitude himself, is not that the turpitude for which you expel him? Do you explore the question whether others were corrupted or contaminated?

Mr. President, I agree with the Senator in the dissent he expresses to the proposition stated by the Senator from New Jersey. I deny that the Senate is a law unto itself to expel at its caprice. I deny that the Senate can rightfully expel me for spilling sand upon the floor. I deny that the Senate can sit in inquisition upon all my past life and expel me for a delinquency which occurred twenty years before I was a Senator. The power to expel is, as the Senator from Ohio says, a power regulated by law and by legal discretion; but the Senator must hamper it and define it narrowly indeed before he can prove that our province to expel consists in any degree in the power to impute corruption to members of the State legislature, or members of any other body, except this body, which we purge by expulsion.

Mr. THURMAN. At some future time I will endeavor to convince my friend from New York that his answer is not sufficient. I may fail, but I shall make the effort.

Mr. STOCKTON. I desire to say a word both to the Senator from New York and the Senator from Ohio.

The VICE-PRESIDENT. The Senator from Indiana has the floor, but yielded it to the Senator from Massachusetts for a special purpose, as the Chair understands.

Mr. STOCKTON. I was not aware of that. I simply desire to draw the distinction between power and right. The power in the Constitution, I said, was unlimited. I did not say that the right was unlimited, and both the learned lawyers who have commented upon what I said have lost sight of that distinction.

CREDENTIALS.

Mr. SUMNER. Mr. President, I present the credentials of my colleague, Mr. Boutwell, as a Senator of the United States, and ask to have them read and filed and the oaths of office administered.

The chief clerk read the credentials of Hon. George S. Boutwell, elected by the legislature of Massachusetts a Senator from that State to fill the vacancy occasioned by the resignation of Hon. Henry Wilson, for the term ending the 3d of March, 1877.

The oaths prescribed by law having been administered to Mr. BOUTWELL, he took his seat in the Senate.

ELECTION OF SENATOR CALDWELL.

The Senate resumed the consideration of Mr. MORTON'S resolution in regard to the election of ALEXANDER CALDWELL.

Mr. PRATT. Mr. President, while the discussion of Mr. CALDWELL'S case was confined to the members of the committee whose report we are considering, I felt no disposition to say a word; but Senators outside of that committee have deemed it proper to submit their views to the Senate, and I feel that it is due to the gravity of the procedure and to Mr. CALDWELL himself, for whom personally I cherish the most kindly sentiments, that I should briefly state the reasons for the vote I shall give. In doing so I do not seek to influence anybody's vote. We are sitting as judges in his case, anxious only to do our duty, acquitting him, if we can, under our convictions of the law and the evidence; unseating him, if we must, only in consequence of an overruling sense of duty.

The precise question upon which we must first vote is whether Mr. CALDWELL was duly and legally elected to a seat in this body by the legislature of Kansas. The resolution of the committee, which until this debate began I had supposed was nearly unanimous, is that he was not duly and legally elected. It is, however, admitted, I believe, on all hands that an election was held by that legislature at the time and place appointed by law, and that Mr. CALDWELL received more votes by twenty-five than were necessary to his election, and that his credentials, founded upon the election, are in proper form and show a *prima-facie* title to the office he holds.

Our power to deal with Mr. CALDWELL is derived from two provisions of the Constitution. One declares that the Senate shall be "the judge of the elections, returns, and qualifications of its members;" the other authorizes the Senate to "determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member."

In confining what I have to say to the pending resolution, which simply looks to unseating, and not expelling, I begin by asking what limitations are found, if any, either in the Constitution or statutes, to our power sitting as judges under the first provision? It is conceded on all hands that the power of judging of elections is a judicial power, and, being granted to the Senate, is denied to the courts. When the Constitution declares that each House shall be the judge of the elections, &c., of its own members, it excludes by the grant every other judicature. If the Senate may not determine whether Mr. CALDWELL'S election is legal or void, no other tribunal can. The control over this question has passed even from the legislature of Kansas. While that body could elect, it had no power to unseat. True, it could assume that no valid election was held, and send another Senator here to try titles before this body with the incumbent, as was the case in Rhode Island forty years ago in the case of Potter and Robbins; but it possessed no power to recall or eject him; nor, for the reason I have just given, could any judicial tribunal pass upon the question.

If, therefore, we cannot in this procedure go behind Mr. CALDWELL'S credentials to inquire whether anything occurred in the manner of his election which should vitiate his title, then all allegations of fraud, bribery, intimidation, and violence in the procuring of an election must fail of a hearing. Mr. CALDWELL'S commission must be accepted as absolutely precluding all inquiry except upon the points whether he was of the requisite age, had been nine years a citizen of the United States, and was at the time of his election an inhabitant of Kansas. And this I understand to be the proposition of the Senators from Wisconsin, [Mr. CARPENTER,] New York, [Mr. CONKLING,] Illinois, [Mr. LOGAN,] and Pennsylvania, [Mr. SCOTT,] who have spoken against the resolution. They hold, if I understand them correctly, that if the returns and certificate show a valid election, nei-

ther the Senate nor any other tribunal can go behind them for any causes except those I have spoken of relating to his qualifications.

Mr. CONKLING. I do not hold that, for one. I observe the Senator enumerated me, and therefore I wish to enter my *caveat*.

Mr. PRATT. But, Mr. President, can this be true? If I can conceive of a case—a single case—where it would be proper to go behind the commission to learn what transpired in the course of the election, for the purpose of invalidating the title, then the proposition is not absolutely true. Now, let me suppose it was true in point of fact, and susceptible of the clearest demonstration, that in order to compass his election Mr. CALDWELL marched a squad of soldiers into the State-house, at Topeka, to overawe the members of the legislature, at the time the election was progressing, and that such was the persuasive power of the muskets pointed at the members that a majority voted for him. To be sure, I have put an extreme case, one very unlikely to happen, and which has not happened, but the proposition must bear the pressure of every supposable case or it is not a sound one. Will gentlemen tell me that this might happen and the election still be held valid, provided the credentials were regular on their face? Shall I be told that such a stupendous outrage could happen in a republican form of government, the very essence of whose system is perfect freedom of elections, and yet no power exist in this body, when a seat is claimed here as the legal result of this violence, to inquire into it? Must everybody else be cognizant of all the circumstances of the outrage except the Senate of the United States, which must know nothing of it by reason of the bar which the commission puts up to all inquiry?

Mr. SCOTT. Mr. President——

Mr. PRATT. If my friend will wait until I get through, I will then cheerfully answer any questions.

Mr. SCOTT. I do not wish to interrupt my friend, but, as he alluded to the position I had taken, I wish to say that I confined my remarks to the cause under consideration in this case, and not to such a case as he has supposed at all.

Mr. CONKLING. Which rests upon wholly different grounds.

Mr. SCOTT. That rests upon wholly different grounds. The difference between bribery and violence is so apparent that I need not state it.

Mr. PRATT. Then I misunderstood the position the Senator occupied. I supposed his argument was that on a proposition to unseat we could not go behind the credentials.

Now, sir, if in the case I have put we could deny Mr. CALDWELL his seat notwithstanding his commission, or unseat him afterward, then it is not absolutely and universally true that we are precluded from going behind the great seal of a State and inquiring into the validity of the election certified.

Mr. LOGAN. I did not intend to interrupt the Senator; but I think he unintentionally places all the Senators who argued this question on the other side in a false position. I presume no man will contend for a moment that you cannot go behind the certificate for certain causes. The argument I made was in reference to this particular cause. I could give the Senator plenty of illustrations where the Senate could go behind the certificate—for instance, to inquire whether the election had been by a proper legislature or not, which has been done frequently. I hope the Senator will not say that I at least pretend that you cannot go behind a certificate for any cause. I said no such thing.

Mr. PRATT. Then I misunderstood the position of the Senator, and I cheerfully accept the correction he has now made.

Mr. LOGAN. I stated, in reference to the facts before us applicable to this case, that it was not a case in which you could go behind and inquire into the election of the member. That was the argument—not in reference to any other question.

Mr. PRATT. Mr. President, proceeding with the line of argument I had marked out, I say if we may, in the instance put, invalidate the commission on account of the duress, on account of the constraint put upon the members who voted, and because the choice certified was not a free but coerced choice, then what reason prevents our instituting an inquiry whether fraud, bribery, or corruption in any form produced the choice?

The Senator from New Jersey [Mr. STOCKTON] quoted in this connection the clause in the Constitution which declares that "the Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof." He did not lay too much stress upon that word "*chosen*," though this chamber fairly rung with his earnest emphasis. "To choose" implies freedom of will, and how can it be said a man is "chosen" to this office or that if the voters are intimidated or corrupted so that the will is led astray?

Every State has its laws punishing bribery. Bribery is the act of giving or taking rewards for corrupt practices. It is a crime in him who gives and in him who receives the compensation. The purpose of a bribe is to procure an advantage which the undisturbed judgment would not accord. A bribe is calculated to enlist the feelings and stimulate the receiver to greater activity to accomplish the thing which the giver wants. It corrupts the judgment, perverts the will, and shuts the eyes of the understanding in the judge, the juror, the legislator, and voter; wherever one holds an official position having the power to bestow what another wants, here is the precise field for bribery to operate in. It operates on the will, and perverts the healthy action of the mind. There is no department of government which it may not assail. Its whole scope is to obtain what conscience and judgment would deny. Though no statute had ever been penned denouncing it, it would be not the less a crime against justice and against human rights. Since governments were organized among men, it has been recognized and denounced as a crime—a crime against justice, good morals, and the health of the body-politic. In the ministrations of government, bribery constantly finds its opportunities. After murder and other crimes of violence, no offense has met with more general rebuke in all civilized communities. It saps the very foundations of society and thwarts the ends of all government.

Now, it is found by the committee that Mr. CALDWELL was guilty of bribery in procuring his election: first, in inducing Governor Carney to withdraw his candidacy for the Senate, and engaging him to use his influence to procure his election; and, next, in bribing members of the legislature to vote for him; and the conclusion of the majority of the committee is that these acts invalidate his election. The report purports to be the unanimous finding of the committee that the charge of bribery is sustained by the evidence, but the discussion reveals that a portion of the members dissent at present from this finding. Laborious arguments have been employed, indeed, to show that the witnesses who prove it are not to be believed. Mr. CALDWELL denies specifically every charge of corruption imputed to him by the witnesses. But it is a noteworthy circumstance that, with the opportunity of denying these damaging charges under oath, he preferred to submit his case for decision upon his denial on the honor of a Senator. Free himself to cross-examine the witnesses, and avail himself of every inconsistency in their statements, and to contradict them at pleasure, he does not allow himself to be put in the position of a witness, to be subjected to like cross-examination and criticism. In my judgment, we should give to his statement the effect of a simple denial of the charges, and nothing more. It is the general issue pleaded, or the plea of "not guilty," and nothing more in legal effect.

What, then, is the case as made by the proofs? In the brief time I propose to occupy, I shall not enter upon debatable grounds, so far as the facts are concerned. I leave out of the question all the testimony tending to establish bribery of the members of the legislature on the part of Mr. CALDWELL, and confine myself exclusively to that arrangement with Governor Carney which stands substantially admitted. It is not denied by Mr. CALDWELL that he made an agreement with Governor Carney, a rival candidate, for the Senate, and took from him the following obligation:

> I hereby agree that I will not, under any condition of circumstances, be a candidate for the United States Senate, in the year 1871, without the written consent of A. CALDWELL, and in case I do, to forfeit my word of honor, hereby pledged. I further agree and bind myself to forfeit the sum of fifteen thousand dollars, and authorize the publication of this agreement.
>
> THOS. CARNEY.
>
> TOPEKA, *January* 13, 1871.

The committee find that it was a part of the contract, though not expressed in the written agreement, that Mr. Carney was not only to withdraw as a candidate, but he was to give his influence and support to Mr. CALDWELL, and they find that he was to be paid therefor the sum of $15,000, for which amount notes were given and afterward paid; the notes being given by Smith, who conducted the negotiation, but paid by CALDWELL. They further find that one of the notes for $5,000 was made contingent upon CALDWELL'S election. Looking over the evidence, I cannot doubt that this was the contract. Mr. CALDWELL himself does not deny the payment to Carney of the $15,000, but claims it was simply to defray the expenses he had incurred as a candidate. I think the written contract fairly implies of itself that the price of Carney's withdrawal was fixed by the parties at $15,000.

I find it, then, admitted substantially by Mr. CALDWELL that, as a means of reaching a seat in this body, he bought off one opposing candidate. I say nothing of the alleged negotiations with Clarke, another candidate, to purchase his retirement from the canvass, because it is insisted that Clarke is discredited. Confining myself, then, to the Carney transaction, I am constrained to regard it as corrupt and against public policy. By that arrangement he got rid of a formidable competitor. That competitor was only formidable because of the votes he could control. In purchasing Carney's support he intended to purchase the votes of Carney's friends in the legislature, so far as that gentleman could control them. The transaction has no significance if it does not mean this. As a private citizen merely, and not an aspirant for the same office, his purchase would have been of little account. No, sir; I am forced to believe that Mr. CALDWELL counted upon those personal and political attachments which exist toward political leaders in thus bargaining for Mr. Carney's support. This fact is placed beyond doubt in my mind by the condition that the price to be paid was to be increased by $5,000 in case he was elected.

I cannot doubt that this arrangement was immoral and against public policy. It was virtually the purchase of the votes of those members of the legislature whom Carney could control.

But am I asked, how could Carney transfer the votes of his friends? One way would be to bribe them by sharing with them the money obtained. Another and more probable mode would be to place his withdrawal in such a way before his supporters as to satisfy them that, by casting their votes for CALDWELL, they would advance either the public interest or some interest local to the people of Kansas, or Mr. Carney's private interest in the way of political advancement, he all the while carefully concealing from his friends the real mercenary motive which was operating upon him. That political leaders like Governor Carney do possess and wield upon occasion this power over

the votes of their adherents all experience proves. Illustrations might be found in every nominating convention. That Carney possessed, or was thought to possess, such power, is proved by the very fact that Mr. CALDWELL was willing to pay such a price. It was this power he bargained for and obtained. It was the very essence of the agreement that the money paid, and agreed to be paid, could and would bring that support in the shape of votes which he thought necessary and could not otherwise obtain.

Now, sitting as a judge in this case, can I, should I, shut my eyes to this corrupt means employed by Mr. CALDWELL to secure his election? Called upon to pronounce whether that election was valid, can I say that such means were honest and proper and not calculated to interfere with that freedom of election which is the very soul of our political system? Pausing, then, right here, and not entering upon controversial ground, and giving to Mr. CALDWELL the benefit of all the doubts he has raised as to other testimony, I feel constrained to say that in my judgment this transaction invalidates his election. Fraud corrupts a contract and makes it void. Why should it not taint an election? No verdict could stand a moment in a court of justice brought about by such influence as is proved here.

It only remains, Mr. President, that I should answer the objections taken to this view of the case. It is said that Senators represent the State, the body-politic, being chosen by the law-making authority, and that we can no more inquire into the motives of the eighty-seven members who voted for Mr. CALDWELL than we could into the motives of men who voted for an obnoxious law; that in either case they are the acts of the State, performed by the instrument designated by the constitution for that purpose.

To this objection there are, it seems to me, several answers. The first is, that the Constitution of the United States has delegated to the Senate the very power in question, in declaring that it shall be the judge of the elections of its members. You do not doubt, sir, nobody doubts, that the Senate might wholly disregard the act of Kansas, or New York, or any other State, performed in its highest sovereign capacity, if she sent a man here for one of her Senators who was an alien, or less than thirty years of age, or not an inhabitant of the State. Clearly he could not be admitted; and the sovereign act of the State, of which we hear so much in this debate, would be unhesitatingly set aside, with the approbation of all. Why? Because the Constitution of the United States defines what sort of a man the State may send here, and the Senate is made the judge whether he possesses the required qualifications. The Constitution has just as clearly made the Senate the judge of the election, and I think a fair interpretation of the clause in question allows the Senate to institute the very inquisition which has been held in this case, with a view of ascertaining whether a valid, a real, or a simulated election was held.

Now, sir, when the people of the several States consented to place that power in the Senate of the United States, they, to that extent, discrowned the States of sovereignty. They did not intend to create embassadors of Senators, but made the Senate a tribunal to pass upon a right to a seat here of any one claiming to represent a State. The Constitution declares that the States may choose the Senators, but it leaves it to the Senate to determine whether they shall be received. The next answer is that in refusing to receive Mr. CALDWELL, or unseating for the cause alleged, we do not presumably do violence to the will of the people of the State. The theory is that that will was not represented in his election. The body of the people is honest, and they would never sanction bribery as a means of reaching office, especially of the exalted character of this. But their hands are tied. They could punish by fine and imprisonment briber and bribed, provided they have any statute adapted to this form of bribery, which I believe they have not. But it is beyond the power of the people of Kansas, acting through their legislature or otherwise, to cancel or annul Mr. CALDWELL's election, though they should desire it ever so much. I believe it is conceded by all that while the legislature of a State may elect a Senator it may not reconsider or repeal that act. No other tribunal under heaven may pass upon the validity of those proceedings in the Kansas legislature under which Mr. CALDWELL claims the right to be a Senator here, unless the Senate of the United States may do it, and it is said the Senate may not. Then his right must remain unquestioned, the seal of the State being held up before us as a bar to all inquiry.

But to those gentlemen who are so sensitive upon the subject of State rights, let me say that this very investigation was set on foot by the people of Kansas; nay, by that very instrumentality which sent Mr. CALDWELL here. For what purpose was an investigation held by the legislature of Kansas, and the evidence sent here to be laid before the Senate, unless this very action we are taking now was contemplated and desired?

The office of Senator never dies. Though Mr. CALDWELL be turned out, the Constitution provides against any failure of representation; the governor may appoint as well as the legislature may choose; but were this not so, Kansas would not complain of our action, since the Constitution has referred it to this tribunal who shall be accepted as Senators.

An election is not like a law which you may not go behind, for another reason. A law may be repealed by the body which passed it, which is sure to be done if it do not reflect the general will; but the body which elects may not recall the act.

I have already shown that no other tribunal, except the Senate, can set aside this election. Besides, there are reasons of public policy prohibiting an inquiry into the corrupt means brought to bear in the passage of a law, for the purpose of setting the law aside, which do not apply to elections. Now, since a bad law may be repealed at any time, pitiable indeed would be the condition of the people if no power existed anywhere to repeal a bad election!

There is one more argument used in this connection which I want to notice. It is said that in unseating Mr. CALDWELL we are defrauding the people of Kansas of their choice for the corrupt action of a few members whose votes exercised no control over the result; in other words, that, deducting all suspected votes, he still had a majority of virtuous ones. I do not stop to inquire whether this is true or false, for that does not touch the real question, in my estimation. I apply to this election the same principle I would apply to a contract, that the fraud proved taints the whole transaction. You cannot eliminate the diseased part, and say this part is sound, that unsound. If fraud enter into the contract or election, the whole thing is affected by it, and must fail. And right here I want to distinguish between that done by others and that done by Mr. CALDWELL. Though half the members of the legislature were bribed to vote for him, if the bribery was committed by others, without his knowledge or consent, I would not hold him responsible for it. He would not be criminal in any sense if knowledge of the corrupt appliances were not brought home to him until after the election. It would be a sufficient answer for him that the result was not brought about by him or by his authorization. To render his election void, it should be shown that he was a party to the bribery or other corrupt practice employed.

Answering for myself, then, and nobody else, I shall vote for this resolution, because Mr. CALDWELL was a party to the Carney arrangement, and the scope and purpose of it was, by the use of money, to procure his election. Whether a single vote was obtained in consequence of this agreement I do not know, nor do I think it material to inquire. It was an improper means, I think, to be employed, and he should not enjoy the fruit of what it was intended to accomplish.

Mr. President, I feel, we all feel, the grave responsibility of this procedure. It will pass into history, and whichever way the question is decided it will be looked to as a precedent. It is, therefore, most important that our decision rest upon sound principles which cannot be successfully attacked. I painfully feel this responsibility for another reason. The honor of Mr. CALDWELL is concerned, a thing of infinite value to him, and, therefore, challenging our profoundest sympathy; but his individual honor is small in comparison with the honor of this body, the highest depository of legislative and executive trusts in the nation, which we are charged by our oaths of office to guard and preserve. A seat here is justly regarded worthy the highest ambition. This chamber in times past has been filled with some of the ablest and purest men of the country, whose wisdom, learning, genius, and virtues inspired confidence in legislation, and made this body the object of confidence, respect, and reverence. What, Mr. President, will become of these sentiments, so freely accorded in the past, when seats shall be obtained here, not as the recognition of those great qualities, not as the reward of distinguished services in other fields of duty, not because of experience in public affairs and of ability to serve the nation in this, its highest legislative forum, but as the result of successful bargain and intrigue?

Sir, I would preserve the ancient glories of this chamber. I would have the country maintain its confidence in its purity, which assuredly will be shaken if we allow our sympathies to overrule our convictions of duty.

Therefore it is that, because I think the means employed by Mr. CALDWELL to reach the Senate were immoral and corrupt, impairing the freedom of elections, and, in every light in which they may be viewed, against public policy; because I feel that his presence here, after all these developments in the testimony, would lessen the respect and weaken the confidence of the people in this body, I feel constrained to vote for the resolution.

EXECUTIVE SESSION.

Several messages of an executive character were received from the President of the United States, by Mr. BABCOCK, his secretary.

Mr. CONKLING. 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 minutes spent in executive session, the doors were re-opened.

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. BAYARD. Mr. President, nothing but the gravity and importance of the proposition involved in the report and resolution of the Committee on Privileges and Elections in the case of Mr. CALDWELL could overcome the reluctance which I feel in taking part at this time in the debate. This feeling of reluctance arises chiefly from the sense of physical fatigue engendered by the labor, the unresting labor, of the last three weeks of the session of Congress just closed, leaving us all quite worn out in body and mind, and therefore disinclined to consider a subject which may well call for our highest powers and freshest condition of mind and body. For the more I have reflected upon the logical results of admitting the power in the Senate, by a majority vote, to oust Senators from their seats by de-

clearing their seats vacant, the more plain does it become to me that a great change would be wrought, and a safeguard intended sedulously to be maintained in the Constitution of our Government evaded or overthrown. I refer to the right of the States to have and maintain at all times their full and equal representation as independent sovereignties in this chamber of the national councils, so that their influence may be felt on every measure. This right of representation to the States appears upon the face of the Constitution with peculiar emphasis, and is secured to each State beyond even the power of amendment by all the other States combined, unless the consent of the State itself be given thereto.

Subject to the qualifications required by the Constitution, of age, of citizenship, and inhabitancy, the right of each State to *choose*, and, when chosen, to keep in the Senate, two Senators, cannot be invaded, or in any degree or in any way, directly or indirectly, interfered with, excepting in the exercise of the power reserved by the Constitution to expel any Senator with the concurrence of two-thirds of the body.

In this way, and by these means only, can a State in this Union be deprived of her full and equal representation in the Senate, and no such pretext as that suggested by the Senator from Vermont, [Mr. MORRILL,] who spoke a few days ago, that "the Senate was the guardian of the States," can be permitted to deprive the States of a right and power which is their own. The Senate is in no sense the guardian of the rights of the States to representation. The States compose the Senate; they create the Senate; and their rights are secured by the Constitution to them, and do not rest in the discretion of the Senate in any degree.

I will now use the language of the Supreme Court of the United States, delivered at the December term, 1870, which received the approval of every member of the court, save only Mr. Justice Bradley, who dissented, and I have not had the opportunity of examining the extent of his dissent. The opinion of the court was delivered by that venerable and able judge, Mr. Justice Nelson, who has since retired from service with the respect and gratitude of his fellow-citizens. I cite it for the purpose of defining the relations of the States to the Federal Government, and from that deducing the rights of the States in respect of their choosing their representatives in this body.

Much, Mr. President, of the just argument in this case, much that must control our decision in this case, will be drawn from considerations of the nature of our Government, in the absence of those precise definitions which would otherwise save much of the questions which we are compelled to solve by analogy, by reason, by broad views of the entire Constitution, and the relation of the States to the General Government.

The General Government and the States—

say the court—

although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme, but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "reserved," are as independent of the General Government as that Government within its sphere is independent of the States.

The relations existing between the two governments are well stated by the present Chief Justice (Chase) in the case of Lane County *vs.* Oregon, (reported in 7th Wallace.) "Both the States and the United States," he observed, "existed before the Constitution. The people through that instrument established a more perfect union by substituting a national government, acting with ample powers directly upon the citizens, instead of the confederate government, which acted, with powers greatly restricted, only upon the States. But, in many of the articles of the Constitution, the necessary existence of the States, and, within their proper spheres, the independent authority of the States, are distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them, and to the people, all powers, not expressly delegated to the national Government, are reserved." Upon looking into the Constitution it will be found that but few of the articles in that instrument could be carried into practical effect without the existence of the States.

Two of the great departments of the Government, the executive and legislative, depend upon the exercise of the powers or upon the people of the States. The Constitution guarantees to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the General Government itself would disappear from the family of nations.—*The Collector* vs. *Day*, 11 Wallace's Reports, pp. 124, 125.

Again, in referring to the same relations, the court say:

Without this power—

That is, the power of self-control over all such subjects as were then under consideration, such as taxation—

and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence. A despotic government might.

Now, Mr. President, considering the relation of the States to the General Government under what has been well called "this complex system of ours," and in view of the light of that recent and almost unanimous decision of the Supreme Court, let us examine the power now sought to be exercised by the Senate of the United States in regard to the choice of Senators by the States.

Under no pretext, however plausible, for no object, however laudable, ought the principles which lie at the foundation of our system of government to be overlooked, and there never was in the history of our Government a more dangerous proposition enunciated than that which is contained in the resolution of the committee now before the Senate. That resolution is in these words:

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.

This resolution has received the honest, unhesitating, but I think mistaken support of the Senators from Vermont and Missouri. Indeed I may say that the crowning danger of our time in American politics is the belief and practice in the party now dominant of doing any act and supporting any measure which seems to be at the moment virtuous, useful, and beneficent, without reference to the fact that the power to perform it is comprised within the just bounds of the charter of limited powers delegated to the Federal Government. Thus we have seen, in the name and for the sake of public welfare, an assumption by the Federal Government of control over subjects never committed to their charge, instances of which are to be found in the late proposition for the institution and endowment and control of colleges for public education in the several States, and now the purgation of State legislatures of bribery and corruption by trials of the members and their candidates before the Senate of the United States. The rule for an American legislator is plain and as simple as are all great truths, and it is that his aspirations and action for public welfare must be subordinated at all times rigidly to the limitations imposed by the written charter which he is sworn to support. He is not justified in straining constructions to accomplish his desires, however honest, unselfish, and beneficent may be his object. And it is to a disregard of this principle of action in legislation that I attribute almost entirely the difficulties which surround us now, have covered our country with the pall of sorrow, placed a huge debt upon our people for many generations to come, and threaten in the future the very existence of our form of government. Because a thing is admittedly good in itself, that is no reason why we as Federal legislators should enact it into law, unless the subject and mode of action have been delegated to our control; nor because a thing is evil, hateful, and abominable in itself, that we should enact measures for its suppression, unless the power to do so is clearly within the scope of our agency.

Let it not be forgotten that the powers delegated to the Federal Government are comparatively few, and that the great mass of governmental powers are expressly "reserved to the States or to the people thereof," to be called into exercise by the exigencies of the times, under the healthful and proper demands of local self-government, the capacity for which is the true test of our people to maintain a republican form of government. We must rely upon that to remedy public abuses and moral delinquencies, and let our people and States learn, through the usual processes of suffering and sorrow, how to abate and punish evil in their midst. They will, in time, learn the truth so well stated by Montesquieu in his Spirit of Laws:

It does not require much probity for a monarchical or despotical government to maintain or support itself. The force of the laws in the one, the arm of the prince always uplifted in the other, regulate or keep in its place everything. But in a popular state some additional power is required, which is virtue.

And again:

As virtue is necessary in a republic, and honor in a monarchy, fear is what is required in a despotism. As for virtue, it is not at all necessary, and honor would be dangerous there.

If such apothegms should ever create an impression on the public mind, surely it is at this period of our history, when the results of congressional investigation disclose so melancholy and discreditable a condition of political morals in many States of the Union.

Let us consider the duties and powers of this Senate in relation to its members.

First. How are Senators chosen or elected, by *whom*, to *represent whom*, and *what?*

Article I, section 3, of the Constitution declares that—

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

It then proceeds to declare when they shall assemble, and that they shall be divided into three classes, and provides:

And if vacancies 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.

The second provision, relating to Senators, is in section four, providing for the time, place, and manner of holding elections for Senators and Representatives; that they shall be "prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators." The place is kept within the control of the State, for palpable reasons, to prevent an act of Congress causing the legislature to sit at any point beyond the limits of the State, or at inconvenient and inaccessible points, or at a point where they would be less under the control and protection of their own people, and that is an illustration of the reserve intended by the States over Congress, in respect of these three things combined in the section: time, and place, and manner; the State to have in the first place choice of the time and manner; the Congress to have the supervising power of regulation; but, with regard to the *place*, Congress is to have no control whatever; that is reserved to the States exclusively.

Then, in section 5, we find that—

Each House—

The Senate and House of Representatives—

shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Again: "Each House shall be the judge of the qualifications, elec-

tions, and returns of its own members;" and, in the same section, "each House may punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." Here I would note that it is in the same section, in the same frame of language, that the power to "judge of elections" and to expel by two-thirds is given. The power to expel by two-thirds is an unqualified power. I do not like the term "absolute" in a government of limited powers, and I doubt whether any power may be termed "absolute" under our system; but it is an unqualified power; it rests in the discretion of the body; it is capable of abuse, but nevertheless it is unqualifiedly delegated. It is meant for the necessary self-protection of the Senate, although it should temporarily deprive a State of its full and equal representation in the Senate.

It has been argued that such a power was naturally inherent in any representative body, and the great name of Chief Justice Shaw has been cited. But the Constitution expressly confers it; and the Senate may, in its discretion, justly exercise it. The wisdom of requiring a two-thirds instead of a majority in our popular system of government, where party organizations and party spirit form the basis of rule, is very demonstrable. A party consisting of two-thirds of the body is already so strong that it may not only pass any resolution requiring the usual majority, but even overcome the veto of the Executive, or impeach that official, and expel at will any obnoxious member. It needs no illegitimate accession of power; it is strong enough already, and, therefore, being beyond temptation, is not likely to be induced to commit injustice toward any member of the minority by expelling him under false pretext, or in the spirit of party persecution. The case is quite otherwise, and all the reasons directly reversible, when a bare majority are to be considered.

Each House is to be the judge of its elections; and because of this application of the same language in delegating power to each, the proposition has been advanced during the debate that the powers of the House of Representatives, and its action, are the same, and must proceed, and may justly proceed, by the same methods as the Senate. Sir, the Constitution must be construed as a whole. In considering the powers of the House and the Senate, the constituencies of each must be considered; the form of government; the relation of the States, as States, to the General Government must be considered. The House is the popular branch of representation. The Senate is placed by the Constitution as a check upon the popular power represented in the House. You cannot change the nature of the Senate by an implication founded upon a delegation of power in the same language to both Houses where naturally the operation of the power and their action under that delegation must be different. The members of the House of Representatives are chosen by, and represent directly, the people of the States; the Senators in this body represent the independent sovereignties of the States. The election of a member of the House is an exercise by the people of their right of suffrage in their primary capacity. There is no political organization interposed between the voter and the House of Representatives; there is no tribunal of investigation or determination of fact. This is not so in the case of an election to the Senate. An election of a Senator is the political act of the State; it is the act of an organized political community, sovereign and independent as to its choice.

Mr. MORTON. Will the Senator allow me to make a suggestion on that point?

Mr. BAYARD. Yes, sir.

Mr. MORTON. The point I desire to submit for the Senator's consideration in that connection is, that this cannot involve any question of the original or reserved rights of the States, or, to use a word which I do not approve, the "sovereign" rights of a State, because the Senate itself is the creation of the Constitution of the United States. The members of the legislature are made electors, not by virtue of any original State right, but by the Constitution of the United States. The right of a State to choose a Senator is a right conferred by the Constitution of the United States.

Now, what is the impropriety, how is it not competent, for the same Constitution that confers upon a State the right to choose a Senator, that makes the members of a State legislature the electors of a Senator, to empower the Senate to judge of that election? All the rights the States have in the matter are derived from the Constitution of the United States; and the same instrument empowers the Senate to judge of the exercise of that right. So there is no question of State rights, so to speak, no question of original or reserved power at all involved, inasmuch as the only right which the State has is derived from the Constitution of the United States, as conferred by the people of all the States in convention assembled in 1787.

Mr. BAYARD. Now, Mr. President, let us take the converse of the Senator's proposition: all the powers that the Congress of the United States have over the States are to be found here delegated, or they do not exist at all. The States were States before the United States Government was formed, and they were intended to remain such. When I speak of them as independent sovereignties, (a phrase that is so distasteful to the honorable Senator from Indiana, so that he objects to using it, or uses it only under protest,) let me say to him that I am using the precise language of the Supreme Court of the United States in the latest case in which this question was considered—language in which the States are termed "separate and distinct sovereignties," the General Government being one sovereignty, "the States being separate and distinct sovereignties, acting separately and independently of each other within their respective spheres."

The existence of the Senate, as I have already stated in a prior portion of my remarks, depends upon the States. They compose the Senate, under the Constitution, and when the honorable Senator speaks of the States deriving their power from the Constitution, it is by regulation that prescribes what their representation here shall be, and proceeds to delegate to these representatives, when organized as a Senate, the powers necessary for the maintenance of the Government of the Union.

Mr. SCHURZ. Will the Senator permit me to ask him a question?

Mr. BAYARD. Certainly.

Mr. SCHURZ. I do not think that I agree with the Senator from Indiana on a great many questions concerning State rights; but is it not true, after all, that the Senate of the United States is a creation of the Constitution of the United States? Would the Senate of the United States have existed without the Constitution of the United States?

Mr. BAYARD. No doubt the Senate of the United States is part of the frame-work of the Constitution.

Mr. SCHURZ. The Senate, then, being a creation of the Constitution——

Mr. BAYARD. Certainly, as a means by which the States were to be represented here.

Mr. SCHURZ. Precisely; the Senate being a creation of the Constitution of the United States, not established for the purpose of giving the States, one sovereignty, diplomatic representatives near another sovereignty, but for the purpose of forming a distinct branch of the legislative department of the Government, is not, in so far, a member who becomes part of that body also a creation of the Constitution of the United States in his political existence?

Mr. BAYARD. There is no question with regard to the Senate being part of the Federal Government, and that it was intended as the body through which the States should exercise control as sovereignties in the legislation for the Union. That was the intent. The States that were to constitute the Union created this instrument, this charter of powers, "to establish a more perfect Union," and to substitute a national Government instead of the Confederation which had existed before. But these definitions have been given, I think, accurately by the Supreme Court, for the purposes of this argument that I am attempting to make, and perhaps before I get through the Senator from Indiana will be more fully answered. He was rather anticipating my points, that the Senate, sitting as judges of the election, are judges of three things, and I like that word "judge." It recalls to us the temper in which we should approach the consideration of these subjects; the impersonal, non-partisan, judicial temper with which all these grave subjects should be discussed. I feel that I am delivering judgment in a case, my only regret being that the argument could not have been more full—that my own time and capacity for examination should not have been enlarged. But, sir, we should remember that we sit as judges on the act of a legislature, on the political act of an independent sovereignty. We are not sitting in judgment upon the act of the candidate. There is where I think my respected colleague who addressed the Senate this morning failed to discriminate. We are not judging of the act of the candidate, Mr. CALDWELL; we are judging of the act of the political body that sent him here. It is not *his* act, but it is the act of the political body and its competency to perform it. We judge of three things: of the elections, of the returns, of the qualifications of members of this body. What qualifications? Of citizenship, of proper age, of inhabitancy. Those are all unquestioned in the present case. *Whose* qualifications may you consider—the qualifications of the electing body or the qualifications of the candidate elected? Certainly the qualifications of the candidate alone; the qualifications of the electing body must be judged by other authority than yours. The Constitution gives this body no power to determine the qualifications of the electing body. You are judges of the qualifications of the candidate, and what those are the Constitution has prescribed, and you may neither add to nor subtract from one jot or tittle of that which is there laid down.

The returns shall state the qualifications, and they shall be in due form; they shall be in accordance with the law of Congress prescribing the time and the manner, and of the State prescribing the place where these elections shall be held.

There is less difficulty upon these two grounds of qualifications and returns, but of elections we sit as judges. Judges of what? Whether the legislature has chosen; not *why* the legislature chose, but *whether* they chose. Did the *legislature* choose? Was the body that assumed to choose, the legislature of the State? Were the legislature present at the time of choice? Were they prevented from meeting by force or other means? Was it the legislature? To answer these questions of fact and of law you must consult the constitution and the laws of that State to know whether it was the legislature. If there be questions of doubt as to the votes cast, as to the absence of its members, you must consult their journals and their records. Was the election in accordance with law? Congress has the right to regulate as to time and manner. The law of 1866, passed by Congress, is the guide of the Senate in that respect. Was that law fulfilled? All these requirements the Senate has a right to insist shall be proven to it affirmatively in order that it may declare that the election has been held in accordance therewith. The time must be in accordance with law; the manner must be in accordance with law. What we mean by "time" is capable of immediate apprehension; what we mean by "manner" is simply the method, whether by ballot, or whether, as

prescribed by our statute, *viva voce*. That will appear by the journals of the legislature into whose action you are inquiring.

But, sir, can you inquire into the motives of the legislature as to why they cast their ballots, or why by their voice they declared their wish, which has been recorded upon their journals? Can the Senate undertake to try or punish a member of a legislature for bribery or any other crime? Can you sit here upon the qualifications of a member of the legislature? No, sir. To know whether he was or not, the body of which he is a member is the sole judge, and the Senate of the United States can no more infringe the right of the legislature of a State to judge of the qualification of the membership to that legislature than can the legislature of a State presume to sit in judgment upon the qualification of a member of this body. They are, to use the language of the court, independent and sovereign in regard to those things which are committed to the charge of each.

If it is presumed to say that the Senate of the United States can assume the jurisdiction to try a member of a legislature for the crime of bribery or any other offense, whence is that power derived? Where is the letter of the Constitution, where is the intendment that by any honest construction can be held to warrant such a power? Remember, sir, you are trying the validity of the political act of a sovereign and independent State, especially independent of you in the exercise of her choice of a Senator. The Senators shall be "*chosen*" by the legislature. That legislature is elected by the people of the State in accordance with their constitution and laws, and the fact is simply, has it chosen, and your power is to ascertain that, and beyond it you cannot go.

How can you sit here and impeach the validity of a political act of an independent political community of competent jurisdiction? Can you invalidate, or is there a power on earth that can invalidate, the decree or judgment of the Supreme Court of the United States, although it should be proved that the judgment was procured by the bribery and corruption of one or more of its members? No, sir; the judgment would stand, it would be valid, it could be pleaded in law, and nothing but revolution could prevent its having force.

A man procures a pardon from the Executive of the United States, or of a State, for some heinous crime of which he has been duly convicted. He presents that pardon; it may be proven the pardon was bought with money, a gross perversion of the powers of the Executive, a gross breach of trust; corruption may have been the source of that act; but the pardon stands, and nothing but revolution can disregard it.

These are two instances of political acts emanating from the duly authorized source in a political community which cannot be questioned, and which there is no power short of absolute revolution to overrule. An act of the legislature becomes a law, it stands as a law, no matter how procured, until repealed. Its repeal cannot remove the consequences of the original passage of the act. Such has been the solemn decision of our court of last resort in this country in the great Cherokee land case in the State of Georgia, and it is in consonance with the principles of law which I have been endeavoring to state.

But, sir, the States which shall have been thus outraged by corruption or wrong have within themselves the powers of self-vindication, and we here in the Senate of the United States are not left without the right and power of plenary self-protection, because, when the wrong has been proved to occur at the instance or by the complicity of a man who proposes to sit as a member of this body, our power of self-protection is ample to expelling him from his seat by a two-thirds vote.

I have said we do not sit here as a court of appeal from the action of the legislature of Kansas. We are not in any sense of the word the guardian of the State of Kansas. We are the judges of the election of a Senator as to its regularity, as to its form, as to its compliance with law, but we are not the judges of the wisdom of her choice, nor are we the judges of the motives of the body of legislators who sent their representative to this place. The right and the duty of self-government are in the State. If you remove them, you take from the people the spur that will teach them, if they are capable of being taught, the necessity of exercising their power of self-government for their own protection. It may well be that, by suffering, and suffering alone, will men be taught, for such is human history. It is only by bitter experience that we can learn how to protect ourselves.

Now, Mr. President, this doctrine of the relation of the States to the General Government and of the power of the Senate of the United States as a branch of the General Government to sit in inquisition upon the action of the legislature of a State has been inquired into in calm and temperate times by men of learning and experience. My inclinations might lead me to follow the easy path, indicated eloquently and ably in this debate, of punishing a wrong wherever I see it—of adding my contribution toward the purity of the elective system of the country; and I have felt an actual distress in being compelled to withhold my vote from a proposition which might tend to purify our Government, but which I felt as a delegate with limited powers I was not justified in supporting. I am glad to say that no such case as this has occurred before. God grant that none such other may occur again. I trust that the result of this debate and the action of the Senate will be such as to teach men that by such corrupt means office cannot be retained, even though for a time it may be unlawfully reached.

In 1834, not upon the question of the bribery and corruption of a legislature, but under the question of a conflict of rival governments in the State of Rhode Island, two parties presented themselves for admission to the Senate, Mr. Potter and Mr. Robbins, both citizens of the State of Rhode Island, duly qualified as to citizenship, age, and residence.

Mr. CONKLING. That was in 1833.

Mr. BAYARD. Well, it was in 1834 that the report was made, the first session of the Twenty-third Congress. The question as to the rights of these two parties was referred to a committee composed of Mr. Poindexter, Mr. Rives, Mr. Frelinghuysen, Mr. Wright, and Mr. Sprague. I will read a portion of the report of the committee. After reciting the constitutional power given to the Senate to be the judge of the elections, returns, and qualifications of its own members, it proceeds:

> The members of the Senate are to be chosen by the legislatures of each State, and the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Congress having passed no law on the subject, we must look into the statutes of the several States for those regulations, and conform our action to them.

Since that time Congress has by law prescribed regulations, which this election has been held to conform to.

> The Senators from each State are equal in number, and cannot be increased or diminished, even by an amendment of the Constitution, without the consent of the States respectively. They are chosen by the States as political sovereignties, without regard to their representative population, and form the Federal branch of the national legislature. The same body of men, which possesses the powers of legislation in each State, is alone competent to appoint Senators to Congress for the term prescribed in the Constitution. In the performance of this duty, the State acts in its highest sovereign capacity, and the causes which would render the election of a Senator void must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the Constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their legislatures by the Constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he, at the time of his election, a Senator of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs; and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission for defects in the component parts of the legislature, or into the peculiar organization of the body, for reasons to justify the Senate in declaring its acts absolutely null and void. Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature, whose elections were contested, might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void, who possessed the requisite qualifications, and was chosen according to the forms of law and the Constitution.
>
> These general views are offered to show that contested elections in the popular branch of Congress, where the people exert, in their primary capacity, the right of suffrage under various limitations and restrictions in the choice of Representatives from certain prescribed districts, open a much wider field of inquiry and investigation than a like contest for a seat in the Senate, which is a body wholly federative in its character and organization, and whose members hold their appointments from and represent the States as political sovereignties.—*Contested Elections in Congress*, 1789–1834, pp. 900, 901.

Subsequently Mr. Silas Wright, of New York, whose eminently judicial mind, whose learning and ability, and whose great purity of character secured for him the confidence of men of all parties, in commenting upon the reasoning of that report, with most of which he agreed, but from part of which he dissented, spoke in respect of this very matter of bribery and corruption of members of a legislature being competently inquired into by committees of the Senate of the United States. He said:

> So, also, in the case supposed by the majority of the committee, of alleged bribery and corruption. The undersigned has always supposed that a member of a legislative body who should accept a bribe was punishable for the crime; but he has never understood, nor does he now understand, that the vote of the member given under the corrupt influence vitiated the proceeding voted upon, or rendered either void or voidable, by legal adjudication, such proceeding. The member bribed is still constitutionally and legally a member of the body notwithstanding his corruption, and retains all his rights and all his powers as a member, until conviction for the crime ousts him from his seat.

There was one other case where the power of the Senate was inquired into, and a construction given to their power of investigation into the motives and conduct of legislators in choosing Senators.

Mr. MORTON. Will the Senator please state that, in that case of Robbins *vs.* Potter, there was no question of bribery or of personal misconduct involved at all?

Mr. BAYARD. I stated that expressly, that I was glad for the character of the country that no such question was raised. It was, however, a case in which, not by way of *obiter dicta*, but in deciding the principles upon which they could act, we had an expression formal, positive, and exhaustive, on the part of this committee, of the powers of the Senate in respect to a case just like the present, where bribery and corruption had been alleged or proved as entering into the choice by a legislature of a member of this body.

In 1857 there was the case of Mr. CAMERON, of Pennsylvania. Allegations were there made that members of the legislature, in vot-

ing for him, had voted under corrupt and improper influences. A large number of members of one branch of the legislature memorialized the Senate of the United States, praying an investigation, and alleging these facts. The committee made a report which was adopted without a division by the Senate. This report says:

If it be, indeed, true that members of the house of representatives of Pennsylvania have been influenced by corrupt considerations or unlawful appliances, the means of investigation and redress are in the power of the very parties who seek the aid of the Senate of the United States. Let their complaint be made to the house of which they are members, and which is the tribunal peculiarly appropriate for conducting the desired investigation. That their complaint will meet the respectful consideration of that house, your committee are not permitted to doubt. If, upon such investigation, the facts charged are proven, and if they, in any manner, involve the character of the recently elected member of this body from the State of Pennsylvania, the Constitution of the United States has not left the Senate without ample means for protecting itself against the presence of unworthy members in its midst.

It was argued the other day by the Senator from Indiana [Mr. MORTON] that this had no reference to the power of the Senate to expel, but which might have had reference to their power to vacate a seat, and that, too, by a resolution similar in character to the one now before us. Why, sir, what is meant by "the Senate protecting itself?" When the Senate declare that the seat of Mr. CALDWELL is vacant, because he was not duly elected, is that the language of self-protection? No, sir; it is the judicial declaration of one who sits in judgment between two parties, himself being independent and disinterested. When the Senate protects itself, it is not by virtue of the laws of Pennsylvania, it is not by virtue of the action of the house of representatives of Pennsylvania, or of Kansas; it is by virtue of the exercise of its constitutional power given to it for its self-protection. Clearly this language shows that the committee had no reference whatever to the power to oust a member from his seat by a majority vote, by the passage of a resolution declaring the seat to be vacant. It clearly meant that the Senate had the power of self-protection in a case in which the Senate was the complainant and the individual member was the defendant, not sitting as a judge, but acting as a party to protect itself against the presence of a man unworthy to hold a seat in its councils.

The argument in the CAMERON case, and the more direct and emphatic argument in the case of Robbins and Potter, are directly in refutation of the idea that either of those committees, or that any member of Congress at that day conceived that the Senate had the power to inquire into the facts which led to the election and influenced the motives of legislators in voting for a Senator of the United States, or that they had any other power to get rid of an improper person except such as was given them under the vote of two-thirds to expel him. There is nothing in the case I have quoted which in any way reasonably can be held to justify the present resolution. On the contrary, as the expression of one thing is held constructively to be the exclusion of another, so the reference to the power of self-protection shows that that committee considered that by a two-thirds vote, and by a two-thirds vote alone, could the Senate become purged of an improper member.

I am right now if these precedents are right, and such has been the unquestioned action of the Senate, so far as action has been taken at all, in respect of this almost unprecedented state of facts. You have no power, under color of judging of an election, to declare the action of a legislature invalid because of the corrupt motives of its members. If they voted for the candidate, they *chose* him, and they alone are qualified to choose.

The rule that fraud vitiates all contracts is not to be applied to the present case. Fraud does vitiate contracts; it defeats that good faith which the law imports into every contract; but it is not so where there has been dereliction of a public duty or defalcation of a public trust. Where the act is in the nature of an execution of political power, although you may punish the man who committed the fraud, nevertheless the act, if committed by a competent political power, stands valid and cannot be impeached, nor can it be overthrown. This act is one over which the Senate of the United States is not invested with power by the Constitution. It is the power of the State to choose a Senator. It is simply the power of the Senate of the United States to judge whether she has chosen, not why she chose, or whom she chose, except in respect to the qualifications which are described in the Constitution itself.

Mr. President, we have had the precedents of the English Parliament cited to us here. I do not see how, with reference to the different systems of our governments, the British government being imperial in system, we can adjust their precedents to our system. Their precedents do not apply. In the first place, Parliament is a law unto itself. The Congress of the United States is a government of limited, enumerated, delegated powers. No act committed by it *ultra* those powers has any validity. The committee would apply the rule of British law as here cited to our elections, and claim that the bribery of a single member would invalidate an entire election; in other words, that ninety-nine men voting purely and honestly in the performance of their public duties could have their action annulled by the corrupt conduct of a single member. What power would this give to a partisan majority!

Now, Mr. President, the committee propose to adopt, as their rule for setting aside elections in the legislatures of the States, this doctrine of the Parliament of Great Britain, that bribery in a single case, whether committed by the candidate or not, or with or without his knowledge, vitiates the entire election. It is true that this rule is derived from certain statutes, which are in their effect disabling statutes, disqualifying a member from holding his place. Is it not apparent to us the impossibility of applying this precedent when the British Parliament can create any qualification at its will, and insist upon its absence as disabling the member from holding his seat? What qualification can the Congress of the United States establish save those which are stated in the Constitution? At once you find the difference between our systems. We are fettered by a written constitution; the British Parliament is not. It can impose qualifications, and vary them from session to session, and make them at its will. This Congress has no such power, and can add no qualification to membership in this body save that which the Constitution itself prescribes.

But granting, for the sake of the argument, the power in Congress to establish such a rule for us, consider some of its necessary results. A powerful railroad combination, one of tariff protectionists, or of heated political partisans, may find in almost any legislature men weak enough or wicked enough to accept money for their votes. The candidate might be one of the best of men, totally ignorant and innocent of the wrong, and yet the doctrine proposed would unseat him. In other words, every candidate, however honorable and pure, could thus become an easy victim to those who are unable by open opposition to secure his defeat.

Nor under this doctrine does the extent or influence of the corrupting influence upon the result of the election in any degree diminish or restrain its effect in totally annulling the election.

Mr. CALDWELL had a majority of twenty-five votes in the joint assembly. The number of votes bought, and which can be specified by testimony, so far as I have examined, is less than twelve. Any beyond that number were presumed to have been bought. The number of votes specifically proved to have been paid for would not have changed the result of the election. If the motives of the legislature are to be inquired into, it might become necessary to ascertain the number of votes lost to CALDWELL by the purchase of his rivals as well as those gained by him. This illustrates the impracticability, if not the impossibility, of entering upon such an investigation as it is supposed by the committee the Senate have the power to institute.

Mr. President, the British Parliament may have power to create these disqualifications, and say that no man shall sit if, at his election, with or without his knowledge or complicity, a single voter was bribed; but that Parliament can expel, not by two-thirds, but by a vote of one-third, or by less than one-third, if they see fit so to provide by law. The House of Commons consists of six hundred and fifty-eight members; forty members of that house constitute a quorum. Why, sir, in the last summer I chanced to visit the British Houses of Parliament, and found it was impossible to seat one-half the members of the House of Commons in the chamber appropriated for their use. I was tempted to ask the reason why the new Houses of Parliament, constructed at great expense, were so designedly made for the exclusion of one-half the members. The answer was, that if the building were large enough to contain them, it would be impossible to hear sufficiently well for the transaction of business; that more than one-half the members did not attend, and when important divisions did arise, members could go out as others came in for the purpose of casting their votes. The British Parliament is unpaid. Probably for that reason the same space and accommodation are not necessary, for members do not attend, and spend half their time, or more than half their time, absent from its sessions. Perhaps many of them are not needed; but it is useless, as you will see, for the reasons which I have stated, to attempt to adjust the precedents of such a body, so constituted, so acting, with a body like our own, in which the presence of all the members from the States is sedulously sought to be maintained for the protection of the States.

There is in the British empire no such body as an independent state; there is no such body as the representatives of states as independent communities; and the laws that may apply, therefore, to one system of government, or the precedents which may be wise and applicable to one system, cannot be applied to a system like our own. The qualifications of electors are as open to inquiry by the British Parliament as the qualifications of candidates. I submit that in the case of a Senator the electoral body that sends him here is not open to question, and I do not think the Senate anywhere has gone far enough yet to declare it. Hence it is that as the British Parliament has control over the qualifications of electors as well as over those of candidates, they can disqualify for bribery. The whole matter is in their hands. They are without the trammels which our Constitution imposes upon us, and the theory of their government would make such trammels inconsistent with its very nature. As I said before, they can impose what qualifications they please, and disable a man from membership, but we have no power either in the House or in the Senate to add to, or alter in any way, the qualifications required by the Constitution.

And, sir, there is another reason why we have no jurisdiction to try members of a legislature for bribery. We have no imaginable delegation of power to enable us to take cognizance of such an offense. All we can do is to try the candidate for his own acts, and his acts may be committed in connection with his election; but we have no right to try the legislature under pretense of trying him; and we do try the legislature when we undertake to test their acts irrespective of him. His acts committed in connection with his presence in this body are within our jurisdiction plainly, but the acts of the legislature preliminary and accompanying his presence in this body are not capable of being tried by this Senate. If there was no

other reason, the very unfitness of this body to adjudicate upon such questions of fact and law would of itself be an answer. Under what forms would you proceed? How would you summon the parties charged? What rules of evidence would you adopt? We have none of the certainties of pleading; and all those regulations of testimony which the experience of centuries has shown to those who speak the English language to be essential to justice, are wanting here. Who is to decide the vexed questions? Where are the men learned in the law sitting as an independent judicial authority in this chamber?

Sir, we have none of the machinery for the proper ascertainment of law and fact in connection with crimes of that character. We have a right, however, when we consider the act of the candidate, the act of one of our own members, to judge of that, and we try him, not upon a technical criminal charge, not by technical rules, but we try him sitting as a Senate, considering our own honor and safety, and applying to his case the broadest and least technical rules of equity and justice for the ascertainment of his guilt or innocence of the charges laid at his door.

Mr. President, two propositions are before us—the one contained in the report of the committee to declare this seat vacant and to oust the sitting member by a majority vote, and the other to expel him by a vote which will require the concurrence of two-thirds; these are the two courses open for us. The one is, to say the least, uncertain, doubtful, and not only of doubtful expediency but of still more doubtful right. The other is clearly and unqualifiedly within our just power, and which in every respect will vindicate the character, the dignity, and the purity of this Senate.

Why should we embark, for the first time in the history of our country, in disregard of the only precedents which can be produced on this subject, against the doctrine of great and wise men on this subject, upon this dangerous path of forced construction, for the purpose of accomplishing a desired end, when, on the other hand, we have a clear, unquestioned power, which may be exercised, and can be controlled only by our official and personal conscience?

Sir, I cannot, in such a case as this, doubt my duty. I cannot, in such a case as this, consent to exercise a doubtful power, when one clear and unquestioned is open to my vote on the other side. When the act to be accomplished is directly to be accomplished, I am not to reach by indirection a result which I can justly reach by a direct vote, under clear powers intrusted to me.

The power of expulsion is clear. I do not use the term "absolute power," but I say it is an unqualified power in each branch of the Congress of the United States by a majority vote to punish a member for disorderly behavior, and to expel him only with the concurrence of two-thirds.

Now, sir, has the sitting member, Mr. CALDWELL, so offended against decency, good government, and sound morals as to be unworthy a seat in this body? It is not necessary for me in this case to decide, and therefore I refrain from considering the question whether the Senate can regard the impropriety and criminality of an act as a ground for expulsion when it was committed before the term of office of the individual charged. The alleged acts of bribery and corruption of the legislature of Kansas, if committed as found by the committee, were committed in direct connection with the presence of the sitting member in this body. The transaction of his election had several stages. The last stage was his presence in this chamber. It was an entire act, a continuing act, culminating in his presence here. If bribes were paid in Topeka, they were part and parcel of the membership of this body, part of what lawyers term the *res gestæ* of the case. The disclosures in the testimony of the case before us are indeed shocking. It would seem that the legislature of Kansas had embarked upon a system of politics from which truth, and honesty, and honor all alike were banished. It has been to me a wonder in reading this testimony that society there had sufficient coherence to remain even a government in form, when the essentials of a government, that confidence between man and man which inspires the citizen with either respect or fear for his government, of confidence in anything that took the shape of a political act, were so entirely wanting, and that men had not returned to the laws of nature and to the rule of simple self-protecting force. Certain it is that every element which makes republican government possible of existence seems to have gone out from that community, if the history of their legislative action, in connection with this senatorial election, is to be taken as true.

Now, sir, what share had Mr. CALDWELL in all this? So far as we have seen him, I believe I speak but the sentiment of every man in this chamber when I say that his disposition seems one of amiability and gentleness and general kindness; certainly nothing in my intercourse with him but has been entirely of that nature. What has been his part in these proceedings which resulted in his election? Has he been a willing or an unwilling actor in these frauds? Has he been an ignorant or innocent, or has he been a guilty participant in these results?

It has been alleged by those who discussed this testimony at some length, especially by the honorable Senator from Illinois, [Mr. LOGAN,] that there is such a want of good character in the witnesses as to deprive them of all right to be believed, and we are asked to dismiss this case, to refuse to find either one way or the other, because the witnesses on both sides are so mutually destroyed by each other's testimony as to leave nothing upon which the mind can rest with moral certainty, or with any conviction. But, sir, there are broad and philosophic rules relating to human testimony which must control us, because a decision must be had, otherwise criminals would go unwhipped of justice, and the judge must be condemned when he who is guilty is absolved.

There was a report drawn by Edmund Burke, respecting the class of testimony which should be admitted and the rules of evidence that should be applied in the great impeachment trial of Warren Hastings. There was the absence of all small technicalities, and the presence of that philosophy of justice which best recommends itself to the human mind. The language of Lord Hardwicke was cited as containing the great rule by which testimony should be obtained and applied:

> That the judges and the sages of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will admit.

Now, sir, what is the testimony, of what class of men is the testimony that the nature of this case will admit? There was an old maxim in regard to cases occurring in disreputable localities, *testes lupanares in re lupanari*. The same rule must apply here. You cannot expect that high-minded, pure-hearted men of integrity could have knowledge of such transactions as are described in this testimony. Such men could not be brought in contact with such offenses; they would not be permitted to have knowledge of them, because knowledge brought to them would necessarily result in the exposure and defeat of all such nefarious schemes. In judging of these cases, you judge of them by the best testimony of which the case is capable. Here you have it; it must be weighed; a result is obtainable. It is our duty to arrive at it.

I have examined this testimony; I have read it carefully; I have weighed it. The weight of testimony leads me to the conclusion that the allegations of bribery are not fictions; that they are not the creations of personal malice and hostility without facts for a basis. I am compelled to believe that large sums of money were paid to members of the Kansas legislature to secure their votes for Mr. CALDWELL, and, further, that Mr. CALDWELL had knowledge thereof, and that he acted in complicity with his agents.

It is not necessary for me to do more than state these conclusions, premising the statement that they are made after due examination, and have been arrived at sadly and with regret, but not the less positively. I believe that such facts as proven constitute in themselves high offenses against republican government; that they are fatal stabs at its existence, and render a man who commits them, or who aids in their commission, unfit and unworthy to sit here and vote for all the States of this great Union. Justice, steady, deliberate, and clear-eyed justice, demands his expulsion.

The Senate is the guardian of its own reputation. It has the power to rebuke slander and obtain public confidence and respect; but it is by its acts and not by cheap professions that public respect is to be attained. If corrupt men shall be whitewashed by reports of committees, if expulsion shall be voted down, where facts clearly proven justify it, all denunciations of fraud, all praises of honesty, will be mouth-honor, mere breath, and we shall sink, as we ought to sink, in the estimation of the country, until at last it shall come to be that sensitive men of honor and integrity will refuse to accept membership in a body which has proven that it cannot rise to a sense of duty for its own vindication.

Of course in such times guilt will invent schemes to blind and confuse public sentiment and opinion by connecting the names of high and pure-minded men with like offenses to its own, but whatever weak inventions of this nature may be resorted to, time will soon destroy them. The common sense of mankind, that sense of natural justice of which I believe the people of this country are so capable, will in the end detect the true man from the pretender. They will mark the slanderer and they will protect the honest man. But they will rejoice over any act of justice that strikes down the cheat and hypocrite from the high places of public trust, and take heart and encouragement in every positive movement which tends to elevate the character of our public men to that high level of personal integrity that is needed to make them trusted and beloved in their private relations.

Sir, the Senate has this question in its own hands; the effect of its decision for good or evil cannot well be overestimated. The responsibility of each one of us—to the individual whose case we are considering and to the country whose eyes are turned upon us—is indeed heavy, and we must meet it understandingly. Such considerations ought to banish from our minds all feelings but those of high justice and patriotic duty, and these will be appreciated by our fellow-countrymen better when expressed by our votes than by our speeches.

Mr. THURMAN. I move that the Senate adjourn.

Mr. SHERMAN. Every Senator must begin to feel that the time has arrived——

The VICE-PRESIDENT. Is the motion to adjourn withdrawn?

Mr. THURMAN. Temporarily.

Mr. SHERMAN. It seems to me that this subject has been debated long enough, and that by to-morrow at least we ought to have a vote on the two pending propositions. Every Senator has had at least ten days during which his mind has been directed to this question alone, the only question that has been presented during the session. Most of us have made engagements; I among others have made engagements that may soon call me away. I should like to know what is the desire of the Senator from Indiana in regard to the subject; what is his expectation as to when the vote shall be taken. This is a subject that may be debated for weeks. I think that, rather than adjourn at four o'clock, we had better continue, unless we can have some understanding as to when the vote can be had.

Mr. MORTON. My desire is to get through as soon as it can be done conveniently. I do not like to press the Senate to a vote in a matter of so much importance. I understand there are a number of Senators yet to speak—several who do not want to go on to-day. I should be glad if the argument could be concluded by Wednesday evening. I do not believe it can be before that time.

Mr. SHERMAN. If we can agree to have a vote on Wednesday evening, I shall have no objection. I submit, then, as the rule by which the Senate shall be guided in the disposition of this case, that before the adjournment on Wednesday evening we shall dispose of this whole matter. That will give us two more days for debate. Let that be done by general consent.

Mr. MORTON. I hope that may be done; at the same time I do not agree to that except by unanimous consent. I wish to have some opportunity to reply to Senators who have spoken.

Mr. HOWE. I should like to ask the Senator from Ohio what public necessity there is for submitting a rule or agreeing to a rule now on this matter.

Mr. SHERMAN. I think it rather a matter of public convenience that we should know when we shall probably dispose of this subject.

Mr. HOWE. I do not know that the public has any convenience about it. I may have, and so may the Senator from Ohio, but that is private and personal.

Mr. SHERMAN. I will call it a private convenience, so that each Senator may know when this matter will probably end.

Mr. HOWE. That convenience will be consulted, I suppose, when the Senate has discharged its duty in the premises, and I really think this matter is altogether of too much moment, the idea of public necessity being out of the way, for us to make stipulations now that we will vote at any particular time. I have no purpose to take part in the debate myself, and I should like to get away from Washington. I do not mean to be understood as stipulating that I shall not take part in the debate. I have no such present purpose, but I am very certain that, in spite of my personal convenience, the Senate ought not to be brought to a vote on this case until the Senate has exhausted itself upon the question. I am not a bit afraid of too much being said upon it. I think there is more danger of too little than too much being said on such a question as that now under debate.

Mr. SHERMAN. As I do not intend, and I do not think I shall be induced even, under any circumstances to participate in the debate, as I have substantially made up my judgment and am ready to vote, I merely made the suggestion which I have made with a view to procure an early vote. I do not desire to prevent any one speaking who desires to do so; but it does seem to me that a question of this kind, that involves only a comparatively few facts, and a single case, can be considered by any intelligent jury in at least nine days. We have now occupied nine days in discussing the question, and I do not think prolonged argument will throw much further light on it; but as there does not seem to be common consent that the discussion is about at an end, I shall withdraw all objection to its proceeding.

Mr. CAMERON. I am very anxious to dispose of this subject. I have some very important matters that require my attendance in Pennsylvania immediately. I do not like to leave while the reputation and the fortunes of a fellow-member here are at stake; and yet I ought to go away. It seems to me that the Senator from Ohio spoke very wisely when he said that nine days ought to be enough to dispose of this question. I have not seen in any of the arguments much difference, and I doubt whether anybody's opinion will be changed by any speech which may be made. I wish that we could get this matter disposed of and let us go home. This has been a hard winter; short as was the session, it was a very laborious one; the public mind has been very much excited by supposed wrongs done in Congress, and I fear Senators, to some extent, have partaken of that impression made on the public mind. I doubt whether it would not have been better if we had postponed this case until next year, when we could have a calm and quiet decision upon the subject; but that is now impossible, and I hope we shall end it. Suppose we sit to-night and dispose of it. Surely by to-morrow morning we can end the discussion and have a vote, and the next day, if it is necessary, we can take up the case from Arkansas; and that will be the end of our business. I put it to Senators, is it not better for us to end this subject now, and go home? I was not in when the motion was made by the Senator from Ohio, and do not know its precise terms. I know the general idea of it, of course.

Mr. SHERMAN. The motion that I submitted was a motion that could only be adopted to-day by unanimous consent, but I will offer it to-day so that it may be taken up to-morrow, that before the adjournment on Wednesday evening this matter shall be disposed of.

The VICE-PRESIDENT. Is there any objection to making that agreement?

Mr. SHERMAN. If there is an objection, I will simply submit the motion now.

Mr. CONKLING. I should have more objection to such an order as that being made by the Senate than I should have to general consent being given. I do not understand from the remark of the Senator what he means by disposing of this case. There is a resolution before us——

Mr. SHERMAN. I meant the two kindred resolutions.

Mr. CONKLING. I anticipated that probably the Senator meant that. There is but one resolution before us. Another resolution lies contingently on the table, perhaps to be taken up, perhaps never to be taken up. When that resolution shall be taken up, it involves, first, questions of law, upon which I believe no Senator has entered save only the Senator from Delaware, [Mr. BAYARD,] and it involves also an examination of this evidence. Now, I am candid to admit that I have had neither the time nor been constrained by duty to go through the whole of this evidence, because, whatever it may prove in detail, it cannot change my opinion of the right of the Senate to adopt the pending resolution. Before, however, I vote upon that resolution, which, as I conceive, does invoke with more probability the rightful power of the Senate, of course I shall want to look at the evidence far enough to determine in my own mind the questions of fact. I think this must be the case with other Senators. Therefore, if we agree that on to-morrow or the day after we shall vote upon this resolution, and, in the event of the pending resolution failing, we shall immediately take up the other resolution and vote upon that, I submit to the Senator from Ohio that he could hardly reconcile it to himself, and could hardly say that the observations he makes about the present inquiry would be applicable to that.

Mr. President, I have only one other word to say. This is not an ordinary proceeding of the Senate. It is not like a bill reported by a committee, the chairman of which has it in charge and has a right to urge Senators to come to a vote, as far as he can, at a particular time. This is a judicial proceeding. Every man who is here is a judge upon a question of law or a juror upon a question of fact, or a judge upon a mixed question of law and of fact. We are consulting with each other. We are endeavoring to enlighten each other, and, if we can, to agree upon something upon which the conscience of the Senate can repose. Therefore I suggest, as did my friend beside me, [Mr. HOWE,] that it is one of the last of all instances where an attempt should be made to control the question by the ordinary modes of parliamentary proceeding. It is a case, I submit, to which these rules do not apply; a case in which no Senator is responsible more than every other Senator; a case with which no Senator is charged any more than any other Senator. I hold myself bound, as much as the Senator from Indiana who reported the resolution is bound, to know the law of this case, and to assume all my responsibility before I vote upon it. I cannot put it upon him or upon the committee, or upon anybody else, even in the sense in which in ordinary matters we may confide in committees and in each other. Therefore, while I should be glad to see this matter disposed of as soon as may be, while I should be very glad to be relieved from this session, which I evidenced by submitting a resolution the other day to adjourn finally on a day which has already passed, I doubt very much whether the good order or the wise result in the case will be promoted by attempting, under the rule of the Senate, or under any agreement to be obtained now, to fix a particular time when we shall vote upon either resolution, and especially upon that resolution, which has not been considered in respect of the facts which are to support it, or in respect of the law which must govern it.

Mr. THURMAN. It seems to me very obvious that we can make no agreement by unanimous consent, and I begin to be very doubtful whether any order of the Senate can be made to bring this case to a final issue. For myself, I desire to take up a very little time of the Senate by a brief statement of the reasons that bring me to the vote I shall give. I think that almost everything that can be said on this case has been said. The argument is very nearly or quite exhausted, and almost all that any Senator could wish to do would simply be, in vindication of himself for the vote that he should give, to state the reasons that bring him to his conclusions. That is all that I desire to do. I shall not take half an hour of the time of the Senate, probably not twenty minutes, simply to state the reasons that bring me to the conclusion at which I have arrived.

Now, sir, in regard to the testimony of which the Senator from New York has spoken, laying aside other things, upon a question of so grave a nature as this, that arises for the first time fairly before the Senate, and under circumstances that of all others are best calculated to enable us to arrive at a correct conclusion, I have felt it my duty to read every word of this testimony with my pencil in my hand. I do not know what other Senators have done.

I heard a remark awhile ago that every Senator had no doubt made up his mind, and that further discussion was unnecessary, or something of that kind. I should be very sorry indeed if every Senator had made up his mind. It may be that others may be more gifted than I am, but I will say this: no legal question that I ever considered has given me such serious trouble as this; and the very fact that the best minds of the Senate, without any regard to party lines, are divided in opinion upon this question—that the Senate is not in any way divided by party—shows the difficulty of the question and the importance of its thorough discussion. If there are Senators who have long ago and before discussion made up their minds, I pray them to reconsider what they have done; I pray them not to jump to a conclusion, nor to allow conclusions at which they have jumped, without consideration and without hearing all the argument, to bind them when they come to give their votes.

This is a question whose gravity can scarcely be overestimated. It is a question which comes before the Senate under circumstances that enable us to make a precedent that perhaps will govern in all time to come; for the gentleman who is now on trial before the Senate is one who, in the language of the Senator from Missouri [Mr. SCHURZ] the other day, has not an enemy on this floor; a gentleman courteous in his manners, kind, respectful, and modest; without one single man on this floor whom he has ever offended; a gentleman whose question

divides the Senate, without regard to party at all; and, therefore, I repeat that never in the history of this Government, perhaps never in the future, was there or will there be so fair an opportunity to decide a great constitutional question by the light of reason, devoid of passion and party prejudice.

Mr. President, I do not wish to occupy the time of the Senate with saying more. I have opinions on this question that are the result of much reflection, of long study, and of no little reading. I can very briefly state them to the Senate, and some time to-morrow, when it may suit the Senate to hear them, I shall be glad to do so. For the present, the Senator from Georgia [Mr. NORWOOD] desiring to speak in the morning, I give way to him that he may move to adjourn.

Mr. WEST. If the Senator from Georgia will allow me, I wish to offer a resolution that I should like to have read, with a view of having it printed and getting it before the Senate to-morrow morning.

The VICE-PRESIDENT. Does the Senator from Georgia yield the floor for that purpose?

Mr. NORWOOD. Yes, sir.

COMMITTEE ON LEVEES OF THE MISSISSIPPI.

Mr. WEST. I offer the following resolution:

Resolved, That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess, and to investigate and report upon the condition of the levees of the Mississippi River; also upon the propriety of the Government of the United States assuming charge and control of the same, with a view to their completion and maintenance; and that they have power to employ a clerk, and that the expenses attending this investigation shall be paid out of the contingent fund of the Senate, upon vouchers approved by the chairman of the select committee aforesaid.

I ask that the resolution lie on the table and be printed.

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

Mr. NORWOOD. I move that the Senate do now adjourn.

The motion was agreed to; and (at four o'clock and twelve minutes p. m.) the Senate adjourned.

IN THE SENATE.

TUESDAY, *March* 18, 1873.

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

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

MISSOURI SENATORIAL ELECTION.

Mr. BOGY. I rise, Mr. President, to a question of privilege.

The VICE-PRESIDENT. The Senator from Missouri will proceed, if there be no objection.

Mr. BOGY. Yesterday, while absent from my seat here, and in the Supreme Court room, a memorial was presented from citizens of my State alleging that my election as a Senator of the United States from the State of Missouri had been obtained by the use of improper means, by bribery and corruption. I feel it due to myself, as a Senator on this floor, and due also to my State, to detain the Senate for a few moments to give a brief explanation of this really important question to me and to the State which I represent in part on this floor.

I repeat, Mr. President, that I look upon a matter of this character, as developed in the discussion of the case of another gentleman, a member of this body, as a question of very great importance, affecting the character of every individual Senator on this floor, and thereby striking at the very body itself. I have appreciated much the remarks that have been made by distinguished gentlemen here in regard to the high character this body should maintain before the country and before the world. I participate in those feelings myself, and I feel much humiliated that any portion of the people whom I represent upon this floor should place me in the position which I now occupy by the presentation of this memorial.

I was elected a Senator from the State of Missouri, I think on the 15th of January. It is true our contests in the West for this distinguished position, as is known to western Senators upon this floor, are always attended by heat and animation, and success is no easy matter. The contest in my State of course participated in a very high degree in this excitement. It has been stated very generally that money was used in that contest; but at no time was I or any of my distinguished competitors charged with having used any money. One person came in as a candidate, of no political distinction, and according to a phrase which has been used upon this floor, of no political status, a man of large fortune, who, it was stated, had made up his mind to buy a seat as a Senator from the State of Missouri. Immediately after the election this resolution was introduced in the legislature:

Whereas it has been reported that money has been used in the senatorial contest: Therefore,

Be it resolved, That a committee of five be appointed by the speaker, with power to send for persons and papers, and report to this house at as early a day as practicable if there has been money used to advance the interest of any of the senatorial aspirants.

It did not connect me with this report, or any of my competitors, by name. The object was, as will be made manifest in a few moments, to reach another individual who had aspired, but who really was not classified in our State as an aspirant for the Senate. This resolution was adopted. A committee was appointed consisting of five members. It will be seen in a moment how it was composed and why it was thus composed, and consisted of five of the most intelligent and worthy members of our legislature. After nearly one month, or perhaps fully one month—I am not prepared to state the exact time—it made the lengthy report which I hold in my hand, lengthy as to the testimony, but brief as to the mere report itself. I will read it, so that the Committee on Privileges and Elections may have the full understanding of the case as it is understood at home:

MAJORITY REPORT.

Mr. Speaker: Your special committee, to whom was referred house resolution to investigate certain reports that money had been used in the senatorial contest, have investigated the same, and most respectfully beg leave to submit the following report:

After a thorough and full investigation, giving the greatest latitude of inquiry, allowing all questions to be propounded that any member of the committee should see proper, and compelling witnesses to answer the same:

First. Your committee find no evidence, either directly or indirectly, to criminate the Senator-elect, Hon. L. V. BOGY, and we fully exonerate him.

Secondly. We further find that George P. Dorris, of Saint Louis, did attempt to bribe two members of this general assembly, by the offer of $1,000 each, to wit, Hon. W. S. Pope, of Wright, and Hon. Charles H. Morgan, of Barton, to induce them to vote for him (George P. Dorris) in the democratic caucus for United States Senator; and we also find that said Dorris placed money in the hands of other parties, who are not members of this legislature, to advance his (George P. Dorris's) interest in the election for United States Senator. We find no evidence which, directly or indirectly, criminates in any manner whatever either Hon. John S. Phelps, Francis P. Blair, jr., John B. Henderson, Thomas L. Anderson, George G. Vest, General Cockrell, General Craig, Thomas C. Reynolds, James I. Birch, William A. Hall, Governor Silas Woodson, William B. Napton, A. W. Slayback, Nathan Bray, or Norman J. Colman, and we fully exonerate them from such charges.

The gentlemen whose names I have just read were not all candidates, but their names had been mentioned and voted for.

Thirdly. We find from the evidence that no member of this assembly received, directly or indirectly, any money or consideration to influence his vote in any manner whatsoever in the senatorial contest.

Fourthly. For further facts, we refer you to the evidence herewith transmitted to the house,

which I hold in my hand. This report is signed by Mr. Newman, who was the mover of the resolution in the house; by Mr. Bell, representative from the city of Saint Louis; by Mr. Walker, a representative from the county of Howard, one of the oldest and wealthiest, and, I might use the expression, most moral counties in the State; and by Mr. Sorrell, from the county of Maries. With this there was a minority report signed by Mr. Headlee, the only republican on the committee. This minority report, which I will not read in full, as it would take too much time, contains these expressions:

And it also appears from the testimony taken before your committee that a large sum of money, to wit, the sum of $15,000, was brought to Jefferson City shortly prior to the election of Senator as aforesaid, by one Thomas Dorris, and that a considerable portion of that amount was used, or offered to be used, to advance the interest of some candidate for the office of United States Senator; and that the testimony, in part, goes to show that said money was intended to advance the claims of one George P. Dorris, and, in part, goes to show that it was designed to be used to advance the claims of L. V. BOGY. That on this issue the testimony is not satisfactory, and the undersigned states that, against his consent, a majority of said committee decided, on the 8th of February, 1873, to close the doors against further investigation by said committee, and make report to this house, by reason of which the undersigned was unable to obtain testimony clearly showing by whom said $15,000 was furnished or for the advancement of whose election it was intended and partly used.

This minority report being thus made I felt it my duty then to address to the legislature the following letter, which I find in the memorial itself, which has been sent to the Senate:

JEFFERSON CITY, *February* 17, 1873.

The following communication from Mr. BOGY, Senator-elect, was read to the house:

DEAR SIR: I feel it to be a duty both to the legislature and to myself, and, indeed, I may say to the State, that I should no longer maintain the silence which has up to this time been observed by me in relation to the charges of bribery and corruption in connection with the election of United States Senator. I was at Jefferson City at the time the resolution was introduced in the house, it being my intention to spend some days here, to make an examination into the condition of the "swamp-land question," in which the southeastern counties are very deeply interested, I being anxious to pay back to this portion of the State a debt of gratitude for the strong support given to me by the members from that section. I desired to get this information to enable me to do something in Congress to clear up this (to that section of the State) most important question.

As soon as I was informed of the introdution of this resolution, I immediately determined to leave Jefferson City so that the committee should be at perfect liberty, so far as I was personally concerned, to make such investigation as it might deem proper, and due to the legislature and to myself, and leaving no one to represent me before this committee.

From that day to this I have been passive, excepting the expression of the wish that you, as speaker, should appoint a committee on which none of my political friends should be placed. The committee you selected I think was judicious. It was composed of two members who voted for General Blair, one for Governor Phelps, one republican, and one (Mr. Walker) who voted for me on the last ballot, after his first choice, Judge Napton, was dropped.

With this committee I was and am yet satisfied. I sent them word by telegram that if the committee, or any member of it, desired my presence and my testimony, I would at once attend. This committee has made a report, signed by four out of five of its members, in which I am completely and entirely exonerated. If the testimony which has appeared in the papers be correct, and I have no other knowledge of it, it must certainly be plain, beyond a doubt, to any fair and impartial man, that not a word of testimony was given before this committee implicating me in the charges so freely and wantonly made by my political enemies. Nevertheless, a member of this committee made a minority report, in which, by insinuations and the magnifying of unimportant facts and trivial occurrences, and the relating of idle talk and street-rumors, and connecting me with the doings and sayings of other parties with whom I had no connection whatever, during the canvass for Senator, an effort is made to make it appear that it may be that my election was influenced by the use of money.

The two leading republican papers of Saint Louis say the same thing, and the

Missouri Republican, with singular personal malevolence, also makes the same charge.

A Senator from this great and proud State, heretofore represented in the Senate of the United States by a long list of distinguished characters, should be irreproachable and above suspicion. And as I know that there lives not a human being on earth who can truthfully say that I approached him in an improper manner to get his support for Senator, and as I deny all combinations of any kind whatever with any one of the different persons whose names have been mentioned in connection with the place of Senator, I desire that an opportunity be given to every one who may know any fact in connection with these charges to come forward and make his statement.

If I may be allowed, I will only ask one condition, that this be done speedily, and limited to this week, as it will soon be my duty to proceed to Washington City, to attend the meeting of the Senate usual at the inauguration of the President, for the confirmation of Cabinet appointments.

It is due to a sovereign State that on an occasion like this it should be fully represented in the Senate, and it is for this reason, and none other, that I desire the investigation to be closed at an early day. Any person who acted as my friend during the canvass will attend as soon as notified, and I shall waive all question about the right of the committee to examine my bank-account—cashier or president of any bank with which I have done business.

Will you, Mr. Speaker, have this communication read to the house, so that it may take such action as it may deem proper at an early day?

I am, with great respect, yours, very truly,

LEWIS V. BOGY.

Hon. Mr. MCILHANEY,
Speaker of the House of Representatives.

This letter, I will remark to the Senate, became necessary in consequence of the statement contained in the report of the minority of this committee, in which Mr. Headlee says:

That on this issue—

In relation to Dorris—

the testimony is not satisfactory, and the undersigned states that, against his consent, a majority of said committee decided, on the 8th of February, 1873, to close the doors against further investigation by said committee.

Mr. Dorris had never been examined, because from the time the committee was raised he could not be found. He had left his home in Saint Louis to attend, as it was reported, to his private business, and consequently was not to be found by the sergeant-at-arms. About the time the report was made he returned to his home. As soon as the reports were made I went to Jefferson City and asked the legislature to re-open the investigation, so that Mr. Dorris might be examined, and also that my bank-account, that had never been examined before, should also be examined. The investigation was re-opened, and Mr. Dorris was examined, and my bank-accounts were examined for months prior to the election and for a long time afterward. I was enabled to trace not only the amount of money that I paid, but every dollar to the person and the object for which money had been paid by me. The committee thereupon made another report, re-affirming their first report, and asked to be discharged. That report was unanimous, and it was adopted by the legislature. This is the second report of the committee:

Mr. Speaker: Your special committee of senatorial investigation, to whom were recommitted the majority and minority reports of same, have examined the following witnesses: E. C. Breck, S. G. Kitchen, and George P. Dorris. Your committee find no evidence to change their former reports.

Respectfully submitted.

HENRY NEWMAN.
JOHN WALKER.
NICHOLAS M. BELL.
E. J. SORRELL.
S. W. HEADLEE.

Four democrats and one republican (Mr. Headlee) signed this report. It was submitted to the house. A vote was taken, and the majority report was adopted by a vote of 61 to 22. This resolution exculpating me was then passed:

Mr. Chandler offered the following resolution:

Whereas the special committee appointed by the house to investigate the charges of corruption and bribery of members of the twenty-seventh general assembly by candidates for the office of United States Senator in the late senatorial election, have made a thorough and searching examination of said charges; and

Whereas said investigation has failed to connect the Senator-elect, Hon. LEWIS V. BOGY, with any attempt to corrupt or bribe any member of this assembly to his support in said election: Therefore,

Resolved, That it is the sense of this house that said investigation fully exonerates Hon. LEWIS V. BOGY from all suspicion of having used any corrupt means to secure his election to the distinguished office of United States Senator, and that our confidence in his purity and honesty is unimpaired.

Resolved further, That a copy of these resolutions be transmitted by the clerk of this house to each of our Senators in Congress, and a copy to the President of the Senate, with the request the same be laid before that body.

This was adopted by a vote of sixty-odd to twenty-odd, and was laid by yourself, sir, some time ago, before the Senate.

This matter was then thought to be ended. I had left the city of Jefferson for my home. Some time afterward I heard of an effort being made, that the republican members were getting up an outside memorial which has at last found its way to this body. I furthermore heard at the time that the gentleman who had signed the report, Mr. Headlee, refused to sign that memorial, as it was his duty to refuse, as he had joined in the report which had been made before by the committee; nevertheless, I saw afterward that he addressed a letter to the Senator from Indiana, who is chairman of the Committee on Privileges and Elections, stating that he had not signed that memorial because he was absent from the city of Jefferson. Be that as it may, my information was different. Of course I do not know of my own knowledge whether my information be correct or not.

Now, sir, this question comes up in this body. A memorial, which I will not detain the Senate to read, couched in very general terms, is presented, not asserting that the memorialists can prove anything, but simply that the investigation was not sufficient, that the legislature did not give them sufficient opportunity, and that a resolution offered by a certain member of that legislature was voted down and another one was adopted. These things may be, and I presume are, all true. The democrats had the majority in the legislature, and they believed that their resolution was sufficient, as it certainly was.

Now, Mr. President, this matter assumes an aspect of great importance. Here is a State with as bright a record as any State in the Union, whose escutcheon is as clear of stain as that of any sister State, and which has never been charged, in all its great political contests for the fifty years past, with anything that at all indicated corruption. Here is a legislature where a person, as was reported, went with a view of buying his election. It resisted all the temptations presented to it, and the gentleman obtained but one vote in the caucus, and that the vote of an honest man, an old farmer from one of our distant counties, who voted for him because he had known him for years. There has been no charge of corruption made against the man who voted for Mr. Dorris. Here is a legislature which was beyond the reach of improper influence, and which, as soon as it was reported that money had been used, at once adopted a resolution of investigation. The committee was composed, as I state in my letter, of men divided among the different parties, excepting that my own friends were not represented upon that committee. That committee sat for about one month, and produced, as you will see, sir, this large book of testimony, which amounts to nothing at all, and is mere trash. Every man in the city of Jefferson, every dead-beat, every loafer, everybody that was supposed to know anything, was examined. I returned to my own home, attended to my private business, and let them do as they pleased, being represented in no shape, way, or form before that committee. Nevertheless, the matter comes before this body at this day; and it has come to this, that no Senator on this floor is safe if vague charges of this kind can be presented by A B and C D, and entertained by this body. Are we to be thus exposed and at the mercy of bad men and a press disposed to vilify every public man?

I do not, Mr. President, see how the matter can be avoided, or a remedy for the evil; but, under the circumstances, I think I may well claim as a right, due to me and to my State, that the Committee on Privileges and Elections should at once take this matter up and make a report to this body. My legislature is yet in session. It has given no evidence whatever of a disposition to shield anybody or cover up corruption, the say-so of these men to the contrary. If there has been any corruption practiced, there is the body to investigate that matter, and we are not here, while it is in session, authorized to go back of a report made by a committee of its own body, and which is sustained by a large majority. Can the Senate of the United States do this? I think not. I may be sensitive on a matter of this kind, because if I have any reputation at all, I may say, without any self-exaltation, it is that of a plain and honest man, though an ardent politician—perhaps too much so; but I have never been charged heretofore with anything like corruption in any of my political acts.

I hope that the committee will take up this matter soon and make their report, as I ask for the fullest investigation. I do not like to be held up before the nation as a man who obtained his seat in this distinguished body improperly. I cannot afford to occupy that position for the next eight or nine months. Neither can my State afford to occupy that position. I cannot vote to expel or retain any member of this body while I myself am a subject of investigation. I hope the Senate will sustain me in asking to be excused from voting on all such questions.

I repeat, Mr. President, that I desire the committee to act speedily and thoroughly.

AGRICULTURAL REPORT.

Mr. ANTHONY. I submit the following resolution:

Resolved, That the Commissioner of Agriculture be directed to communicate to the Senate his last annual report, with the accompanying papers.

Mr. SHERMAN. Is that according to law?

Mr. ANTHONY. It should be communicated to Congress, but was not communicated at the last session of Congress.

Mr. SHERMAN. Is it right for the Senate of the United States to call upon an officer of the Government of the United States to communicate a report which, by law, should be communicated to Congress?

Mr. ANTHONY. There is no law against its being communicated to the Senate. The object is to have the report printed; and apprehending that the strict constructionists, who will not allow us to present a petition, might object to our printing a report that was presented to Congress, I offered this resolution, that the report might be presented to the Senate and that we might order the usual number to be printed. It will be a very great inconvenience to that department of the public service if the report is not printed. I thought I should accommodate myself to the views of my friend from Ohio if I proposed to direct that the report be communicated to the Senate.

Mr. SHERMAN. I will not make any objection; perhaps it would be impolite to do so. The officer can do it if he chooses, but he is under no obligation to do it.

Mr. ANTHONY. The resolution reads "directed."

Mr. SHERMAN. We have no power to direct him.

Mr. FERRY, of Connecticut. I object to its consideration to-day.

Mr. ANTHONY. The Commissioner has no objection to doing it.

Mr. FERRY, of Connecticut. I object to the whole thing.

The VICE-PRESIDENT. The Senator from Connecticut objects to the consideration of the resolution, and it will lie over.

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. NORWOOD. Mr. President, it might be supposed from the manner in which the honorable Senator from Ohio [Mr. THURMAN] yesterday gave me the floor for this morning, that I had made preparation upon this question; but I beg to say that, unfortunately, such is not the case. I wish I had prepared myself in some degree proportionate to the importance of this question; but I have not been able so to do. Having been a member, however, of an investigating committee which had under consideration similar legal questions, if not similar facts, to those involved in this case, I desire to express my views upon the legal points at this time; and if the other case should arise, there will then be nothing for me to do but to discuss the facts.

Unfortunately for us and for our guidance, we are left without a precedent in authority; but, fortunately for the country and for the honor of the American name, we have also been left without a parallel in its facts. We are, therefore, remitted to reason and conscience. We have no other guides or lights by which we can be directed in coming to a proper conclusion in the final determination of this case.

It is hardly necessary for me to go into the cases that have been cited in order to show that we are without a precedent, but I will make a casual allusion to some of them.

The case of Potter against Robbins, which stands, in proceedings of this kind, like the case of Shelley in matters of real estate, and is always referred to as a standard case, is, in my judgment, not applicable. That was a case in which Mr. Robbins, in January, 1833, was elected by a legislature of Rhode Island a member of this body, and, in October, 1833, another legislature elected Mr. Potter. The question came before the Senate upon this state of facts. Both Senators presented their credentials, and the question had to be decided primarily, and mainly, which was the legislature; and that was in fact the only direct question involved in that case. The Senate held that the legislature that acted in January, 1833, and elected Mr. Robbins, was the constitutional body, and upon that finding seated Mr. Robbins, and the contest there ended. It is true that in that case there is much learning set forth by the committee *pro* and *con*, first by the majority, and then by the minority, Mr. Silas Wright, in submitting his views; but that case has nothing to do with the facts in this, and however much that learning may be used for the purpose of elucidation or illustration, we can make no application of it here except in the same way. There was no charge of any misconduct on the part of either legislature or any member of either legislature, and, therefore, I dismiss that case as having no bearing upon this.

The case of Mallory against Yulee, which has been cited by some Senators, was simply a question as to whether twenty-nine votes cast as blanks should be counted. There was no charge of bribery, no charge of corruption. It was simply a legal question as to what was the effect of votes cast in that way.

The case of Mr. CAMERON, in 1857, approaches nearer to the facts of this case than any other that we have on record; but still that has no application to this. The report of the committee, and the decision of the Senate on the report of the committee, was simply this: There being a vague charge of corruption on the part of Mr. CAMERON, or of the members of the legislature, or both, and there being no facts given, the Senate merely resolved that it would not send out a roving commission to hunt up the facts, which, if they existed, it was the duty of that legislature to investigate and bring to the knowledge of the Senate. In other words, the Senate simply refused to convert itself into a detective officer.

So that, as I said, Mr. President, we are without a precedent, and we have no guide in this case except our own reason and our own consciences. We are the jurors and the judges to determine, first, what are the facts, and then, what is the law applicable to those facts. In doing this, it is of the utmost importance that we bear in mind the single issue that is presented for our consideration. That is important in the investigation of all cases, and is especially important in the investigation of judicial cases. We are now acting as judges. Many collateral issues, according to my judgment at least, have been brought into this discussion; many illustrations by way of argument have been produced, and they are calculated to confuse us, to lead us astray, to draw us from that straight and narrow path which we should travel, and which, if we do not travel, like Pilgrim, we shall on the one hand sink in the Slough of Despond, or, on the other, get enchained in the Castle of Despair. We must not allow our judgments to be affected by these side issues in determining this great question. It is a great, fundamental, constitutional question, that lies deep and dark at the very base of our Government. It is to my mind one of the most important questions that the Senate has ever been called upon to consider. And that is my apology for rising to address the Senate. I believe it to be the duty of every Senator on this floor who has a conviction on this subject to express it. As the Senator from New York [Mr. CONKLING] said on yesterday, we are a bench of judges in consultation; and I shall be happy to hear the views of any Senator, however briefly they may be expressed.

I have said that collateral issues have been presented here, and I now propose to get rid of them before I proceed to the main question.

The first false issue we have presented to us is the danger to our system of government, and especially to the rights of the States, if the Senate should exercise the power which is called for by the resolution that has been reported by the Committee on Privileges and Elections. We are called upon to hesitate, because there is danger ahead if we exercise that power. Well, sir, as I apprehend, there are dangers on either hand. There are dangers if we do not exercise that power, and there are dangers of equal import if we do exercise it. But what of that? What have our apprehensions to do with our judgment? I repeat, we are judges. What would any Senator on this floor say of a judge on the bench who, instead of being guided by authority and by law, should consult his apprehensions of danger to come? What would he think of a judge who would stop to consider what the effect of his ruling might be upon himself in some future case, or upon a friend whose interests might be involved in a like case? Sir, no pure judge will allow such considerations to shape his judgment. As a judge he must pronounce the law. And so with us; no party considerations should influence us; no dangers to a minority should enter into our consideration; no probable change of political power in the future should influence our determination. We are here to say what is the law on the state of facts presented by the committee, and we have no right to consider consequences, political or personal.

Dangers are around us. If we adopt the resolution of the committee, then it may be possible that in some future question like this, in high political excitement, some Senator might be unlawfully deprived of his seat. But if, on the other hand, we decide that that resolution is wrong, then the Senate of the United States itself may become the refuge of scoundrels, a sanctuary for criminals.

If in the case of the judge upon the bench the law works a hardship, it is for the legislature to correct the evil. In this case, if the law as we may lay it down endangers State rights or works evil to the Senate, then it is in the power of the people, through their legislatures, three-fourths of them concurring, to adopt such amendments to the Constitution as will correct the evil.

Therefore, Mr. President, I say I do not stop to consider what are the dangers surrounding us. I am looking simply to the question of law as my judgment conceives it, and I intend upon that judgment to cast my vote, shutting out of view all apprehended dangers.

Another collateral matter is raised by an interrogatory propounded the other day by the Senator from Pennsylvania [Mr. SCOTT] to the Senator from Missouri, [Mr. SCHURZ,] when he was addressing the Senate. The question was this, as I remember, and if I be in fault I hope the Senator from Pennsylvania will correct me: When the Senator from Missouri was discussing the power of the House of Representatives to investigate the acts of the electors of the members of that branch of Congress, the Senator from Pennsylvania asked him whether a committee of the House of Representatives, or the House itself, could investigate the fact that an elector for a member of the House had procured his naturalization-papers by bribing a member of the court. What bearing has that upon this case? It has none, and yet it is calculated to mislead, unless we understand the import of the question; and I now propose to show the parallel between the case put by the Senator from Pennsylvania and the case of an elector of a Senator to this body. The House of Representatives cannot investigate that question, and why? The action of the court in granting the naturalization-papers is a judgment of that court. A petition is presented by a party desiring to be naturalized; the facts are brought to the knowledge of the court; the court passes upon the facts, and that becomes a judgment of the court; and it is a very well-settled principle of law that you cannot in any collateral proceeding attack the judgment of a court. This rule would hold in the investigation which would be instituted by the House of Representatives. But now comes the parallel. When that elector has been naturalized and he casts his vote, then the House of Representatives may inquire whether that vote was obtained by bribery. They cannot go back of his naturalization; but when he becomes an elector, and stands upon the same footing as a native-born citizen, you can investigate the fact as to whether he has been bribed, just as in the case of one native-born. And so as to an elector for a Senator. While you cannot go back of the act that makes that man an elector in the legislature, yet when he becomes an elector, when he is seated as a member of the legislature of the State by the action of that legislature, then his act as an elector may be the subject of investigation, and you may inquire in that case, as in the case of an elector of a member of the popular branch of Congress, as to whether his vote has been induced by bribery.

Another issue that has been raised is as to whether the Senate would have the power to investigate a case and to vacate a seat if a Senator had secured his seat by a promise of office to a friend, or by a promise of his influence to secure an office.

Mr. SCOTT. Before my friend leaves the other point, as he called my attention to it, with his permission I will say to him that he apprehended only in part the purpose of the question which I put to the Senator from Missouri. While we agree that the judgment of the court cannot be inquired into for the purpose of setting aside the right of the naturalized citizen, the Senator forgets that my question had in it two elements. The report of the committee took the ground that one bribed elector would set aside the whole election; and my question went to the point whether, even if you could inquire into the judgment and show that one of three judges had been bribed, you

could set aside the judgment; intending to apply it to the argument of the committee, that proof that one elector had been bribed in a legislature would set aside an election although there was a majority of twenty-five.

Mr. NORWOOD. Mr. President, I can say to the Senator from Pennsylvania that I am in accord with him upon the point that the bribing of one voter, if that does not secure the election, does not avoid it. I suppose that is an answer to his question.

Mr. SCOTT. Then we are in entire accord.

Mr. NORWOOD. In entire accord upon that point. I am glad to hear the Senator say we are in entire accord, because I take the position that, if the election of a Senator is secured by bribed votes, that would vacate his seat.

Mr. SCOTT. That is another point, on which we are not in accord.

Mr. NORWOOD. I wanted to know whether we agreed on that point.

Mr. SCOTT. No, sir.

Mr. NORWOOD. Then, Mr. President, the question that I was on when interrupted by the Senator from Pennsylvania was as to whether we can go into an investigation of a case where influence has been promised to a party to secure his vote. I say again, that has nothing to do with this case. The simple question here is, and it is important for us to bear it in mind, can we vacate a seat obtained by bribery? It is unnecessary for us to go into the investigation of other questions or the consideration of other facts. When they arise it will be proper for the Senate to consider them; but how unreasonable it is for a bench of judges, when they are considering a question made by a record, and but one question involved in that record, to be led off on outside issues.

Another question has been raised here as to the power of a legislature to repeal an act which has been secured by bribery. I differ with many of the Senators who have spoken on this point. I consider the question immaterial here; but still, as it has been brought in and has been discussed, I propose briefly to submit my views upon it.

An act of the legislature that has been procured by bribery can be repealed by a subsequent legislature so far as to affect the rights of those who procured the passage of the act by the bribery. If the rights of third parties intervene, the case is different; but if the question is confined to the parties who procured the passage of the act, (on the principle of law that no man can take advantage of his own wrong, and the further principle that he has procured the passage of the act by the commission of a crime,) that act is not valid, and it only remains for any subsequent legislature so to declare.

The celebrated case of Fletcher *vs.* Peck, arising out of the Yazoo frauds in the State of Georgia, has been relied upon as authority on the other side, to show that a subsequent legislature cannot repeal an act that has been procured by corruption and bribery.

I respectfully submit to the Senate that the case of Fletcher *vs.* Peck does not bear out that enunciation. The case was, briefly stated, this: A, B, and others, who procured the passage of the act by bribery, obtained the grant of lands, and immediately after securing the grant made a transfer to other parties, who were innocent of the bribery, and, indeed, not cognizant of the fact. The question then arose before the courts as to whether the rights of these third parties, to whom the transfer of these lands had been made by the parties who had bribed the legislature, could be affected by a repealing act passed, over a year afterward, by a subsequent legislature; and the Supreme Court held that it could not be, and put it expressly on the ground that the repealing act would be in violation of that clause of the Constitution of the United States which forbids any State to impair the obligation of a contract. Now, as between the original parties to the fraud, I call the attention of the Senate to what the court say, the decision being delivered by Chief Justice Marshall:

> In this case the legislature may have had ample proof that the original grant was obtained by practices which can never be too much reprobated, and which *would have justified its abrogation so far as respected those to whom the crime was imputable.* But the grant, when issued, conveyed an estate in fee-simple to the grantee, clothed with all the solemnities which law can bestow. This estate was transferable; and those *who purchased* parts of it were not *stained by that guilt which infected the original transaction.*—6 *Cranch's Reports*, pages 134, 135.

And so the court go on for a page more upon that line of remarks, and Mr. Justice Johnson, who dissented from the decision of the court, dissents upon the ground that the court placed its decision upon the clause in the Constitution which forbids a State to impair the obligation of a contract.

Now, Mr. President, I propose to submit a few remarks upon the main question involved in this case, to wit, what is the effect of bribery upon the election of Mr. CALDWELL? I assume now that the bribery, if it exists, procured the election of Mr. CALDWELL, and not that there was only one vote bribed or any number less than the number of his majority. I say, Mr. President, that this election is void, because, if it was procured by bribery, *it was not an election.* I state the proposition that, if it was procured by bribery, it was not an election; and now, in considering that question, it becomes necessary for me to go into a consideration for a few minutes of the nature of a legislature acting as electors of a Senator of the United States. In what capacity do they act? Are they acting as a legislature? Is the State acting in her sovereign capacity? When a legislature meets and resolves itself into a body for the election of a Senator, in what capacity are those men acting? If they are acting as a legislature, then they are passing a law, for a legislature is a body for the enactment of laws. But is the election of a Senator the enactment of a law? If they are not, then, acting as a legislature, in what other capacity can they be acting except in the capacity of electors? To show that they are acting simply as electors, and that they are in no sense acting as a legislature, let us look for a moment at the manner in which they act.

Mr. BAYARD. If the Senator will allow me, I will merely remark that, if they are not acting as a legislature, they are not acting in accordance with the Constitution of the United States; they are not acting, therefore, at all. Their action is void unless they are acting as a legislature. The language of the Constitution is that—

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

Now, how can they choose unless they choose as a legislature?

Mr. NORWOOD. I am glad the honorable Senator interrupted me; it does not disturb me in the least. I am happy to answer him. What is the legislature of the State? What does it assemble for? To enact laws for the people of the State to which it belongs, for the people who elect it. And how do they act when they are acting as a legislature? There is a senate and a house of representatives. The senate acts independently of the house, and the house independently of the senate. They pass laws according to the constitution of that State, and in that capacity they are a legislature. Now, when the honorable Senator says that, if it is not acting as a legislature in electing a Senator, it is not acting in accordance with the provisions of the Constitution, he is sticking in the bark. Has the Congress of the United States any control over that body as a legislature? Can the Congress of the United States control the action of that body acting as a legislature? Can it prescribe the manner in which it shall pass laws? When acting as a legislature and passing laws, what control has the Congress of the United States over it?

Mr. BAYARD. Does the Senator wish an answer now?

Mr. NORWOOD. Yes, sir.

Mr. BAYARD. It has the control which the Constitution expressly gives to Congress.

Mr. NORWOOD. To control it in passing laws?

Mr. BAYARD. Not to control it in passing laws; but the Constitution of the United States delegates to the Congress of the United States the power of altering the regulations of the State, that is, the laws of the State, as to the time and manner of holding elections. So far the legislature of the State in holding elections for Senators is controlled by the law of Congress under a power expressly delegated to Congress by the Constitution, quite as much as the power is delegated to the legislature of the State to choose its Senators.

Mr. NORWOOD. Now, then, if it is acting as a legislature, as I said, (for we must come to the definite term,) it must pass a law. The meaning of a legislature is a body to enact laws. But the mistake the honorable Senator from Delaware is making is simply this: the Constitution of the United States does nothing more than merely designate the body, the collection of men, who are to act in the capacity of electors of United States Senators. The Congress of the United States, under the Constitution, has the power to control the legislature as it may please, as to time and manner for choosing a Senator. Has the Congress of the United States any control over it as a legislative body? No one, I do not care how far he may go in grasping at centralization and consolidation, and giving power to Congress over the States, will contend that Congress has any right to control a State in its legislative capacity, and I am surprised at the honorable Senator from Delaware when he assumes upon this floor that when Congress passes an act prescribing the time and manner in which a Senator is to be elected, it is directing the action of a State legislature, *as a legislature.* To show that I am not mistaken in this, let us look further. How does the legislature act? It acts through its separate bodies; but Congress has the power, under that provision of the Constitution giving it the right to prescribe the time and manner of holding the election, to say that the legislature shall resolve itself into any form that Congress may see fit to prescribe, must act in any manner that Congress may say it shall act. And how does Congress prescribe? Why, that the senate and house of representatives of the State legislature shall meet in *joint convention* and elect a Senator of the United States. Is it acting as a legislature when it meets in joint convention? Does the honorable Senator from Delaware know of any legislature that meets in joint convention, when acting as a legislature, to enact a law?

Mr. BAYARD. O, yes, sir. Before the act of Congress prescribing the manner and the time of election was passed at all, when the manner was left as the Constitution left it, primarily with the States, the legislatures of the States met under State law in joint convention for the purpose of electing Senators. That was, indeed, I believe, the only way. They never elected separately, or proposed to elect separately, until the passage of the act of Congress; but the two houses met as a legislature in joint assembly; and I think it would require a remarkable refinement and discrimination that, without disrespect to the Senator from Georgia, I might call hair-splitting, to decide between persons who are members of the legislature acting in their legislative capacity, and who are members, whether they be in joint assembly under the law of the State, or in joint assembly under the direction of the act of Congress passed in pursuance of the Constitution.

Mr. NORWOOD. The honorable Senator from Delaware loses sight of the fact that is plain and palpable, that when they meet to elect

a Senator they are not acting in a *legislative* capacity; and that is the answer to the whole question. They are, then, in no sense acting as a legislature; they are casting votes under a provision of the Constitution and by the direction of Congress to elect a Senator to this body, and they therefore are nothing more than a designated body under the provisions of the Constitution which is to elect members to this body. Why, sir, suppose that the Constitution, instead of saying that the legislature shall elect members to this body, had said that the supreme court of the State should elect Senators, will the honorable Senator say that when that supreme court should sit and cast their votes for a Senator they were acting as a court, simply because the members of the court had been designated as the proper body to elect the Senator? Would they in so doing render judicial judgment? They would simply be a body of men, as in this case the legislature is, that is designated by the Constitution of the United States to exercise the power vested in them to elect members to this body.

Mr. BAYARD. If the Senator will yield, I should like to ask him another question.

Mr. NORWOOD. Very well.

Mr. BAYARD. Do the Senators in this body represent the States, or do they represent the electoral body that chose them? Do they represent this body of electors or are they here to represent the State? Read the concluding part of Article V of the Constitution:

No State, without its consent, shall be deprived of its equal suffrage in the Senate.

Does not that answer the whole question as to how the Senator shall be chosen and who chooses him? The Constitution says the legislature shall choose him; the Constitution says that he shall be chosen to represent the State; and yet the honorable Senator here is seeking to find a difference between a legislature acting under the direction of Congress, perhaps separately, perhaps in joint assembly, and a legislature acting under State law as an elective body. The Senator does not represent those who elected him; he represents the sovereign State; and her right is his right of suffrage in the Senate, and it is so declared in the Constitution. The election is a legislative act, and not the act of the individuals as a mere mob, without legislative authority.

Mr. NORWOOD. I agree with the honorable Senator, perfectly, that the Senators represent the State, that they represent the sovereignty of the State; but that is foreign to this question. I do not intend to be led off upon any side issues. The question here is, who elect Senators, and in electing them in what capacity do they act? That is the question, and not what the Senators represent. Nobody, I suppose, will question that they represent the States. But when they are to be chosen, and the legislators meet to choose them, in what capacity do the legislators act? That is the sole question, and we are therefore remitted to the question again, do they act as a legislature? If they do, then they are legislating; they are acting in a legislative capacity, and they are not simply acting as electors of Senators. I repeat that they are nothing more than the component parts of a particular body that is designated by the Constitution as the body to cast the votes in choosing a Senator to this body.

Mr. MORTON. Will the Senator allow me to call his attention to one provision of the Constitution?

Mr. NORWOOD. Certainly.

Mr. MORTON. The Constitution provides that—

The House of Representatives shall be composed of members chosen every second year by the people of the several States.

That is, elected by the people of the several States. Again:

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

That is, elected by the legislature thereof; in which, of course, the members of that body are merely to be electors.

Mr. NORWOOD. There is to my mind, Mr. President, no doubt as to the proper construction of that word "chosen," as mentioned by the Senator from Indiana. They do not act in a legislative capacity at all. They are not a legislature when they meet to elect a Senator. They are the body appointed by the Constitution, and Congress cannot change that; but that was done because the legislature of the State is the most convenient and the best body to act in choosing a Senator to represent that State; they do not represent the legislature, and the legislature in choosing them is not the sovereign power of the State; they are nothing more than the electors appointed under the Constitution to make the choice.

Mr. President, I say, therefore, acting in the capacity of electors when they come to choose a Senator, the legislature of a State, if in casting their votes as such electors they are controlled by bribery, and that bribery results in procuring the election of a Senator, it makes that election void. Bribery is a crime at common law. Assuming my premises to be correct, that they are acting as electors in choosing a Senator, I say that any election by the popular voice, or by any other body who are designated simply as electors, and acting in the same capacity, will be void, if it is secured by bribery; for the reason that it has its inception in crime, its progress in crime, and ends in crime. And no election thus beginning, thus progressing, thus ending, can be valid in law, either at common law or under the provisions of the Constitution.

But there was another view presented by the Senator from Delaware yesterday to which I propose to advert for a moment. His proposition is that in investigating this matter, in acting upon the resolution reported by the Committee on Privileges and Elections, we should be investigating the action of the State. He admits that the legislature is not the sovereignty of the State, as I understand him; and yet his position is that if we were to investigate an act of bribery we should be acting upon the sovereignty of the State. Mr. President, that is not consistent. The legislature is but the representative of the people of the State. The people are the sovereign power. We are not investigating the acts of the people of the State; we are not investigating the acts of that entity which is called a State; we are not investigating that which represents an idea which we call sovereignty, but we are investigating the acts of those who are designated under the Constitution as a body of electors, and who act under the laws of Congress when casting their votes in electing a Senator. So that in no sense can it be said that we are investigating the acts or the action of a sovereign State. But suppose it were true that we were investigating the acts of a sovereign State, are we not authorized by the Constitution to investigate its acts? Has not the State to a certain extent surrendered its sovereignty upon this question? Has not the State delegated to the General Government the power to control this question? Has it not in the Constitution of the United States consented that the Congress of the United States shall prescribe the time and manner of holding the election? Has it not consented that the Constitution of the United States shall prescribe the particular body that shall elect the Senator?

Let us see to what extent the States have delegated power and jurisdiction over the question of their representation in this body. First, they have limited their representation to two members. Secondly, they have in the Constitution prescribed and limited beyond change the qualifications of their Senators. Thirdly, this is a surrender of an attribute of sovereignty, to wit, the right to choose embassadors without prescription of their qualifications by the power or sovereignty to which they are commissioned. Fourthly, they have surrendered the right to designate the body of electors who shall choose their Senators. The Constitution regulates that, and no State can change it. Fifthly, they have surrendered the right to fix the *time* for electing Senators. Sixthly, they have surrendered the right to regulate the manner of their election. Seventhly, they have surrendered their right to decide on the legality of the "elections, returns, and qualifications" of their Senators. And if it be true that we are investigating the act of a State, our investigation is within the bounds limited in the Constitution by the States themselves.

Here are seven distinct points in which the State, in her sovereign capacity, and acting in her sovereign capacity, has yielded to the General Government the power of supervision and control over her Senators; and can it be true that when the Senate assumes to act under those powers conferred by the States, and under the laws enacted by Congress through that provision of the Constitution giving Congress the power to regulate the time and manner of elections, we are infringing upon her sovereignty? When she consents that a certain body shall act as electors of Senators, and that we shall investigate the manner of their election and the time of that election and the election itself, is there any invasion of State rights?

Jurisdiction has been conferred by the Constitution; nobody disputes that fact, not even the honorable Senator from Delaware, [Mr. BAYARD,] and the sole question is as to how far that jurisdiction goes. We can investigate the qualifications; we can investigate the return; we can investigate the election; and the sole question, I repeat, is how far the Senate shall go in considering the validity of the election.

Mr. STOCKTON. I should like to say a word to my friend, with his permission, if it will not annoy him.

Mr. NORWOOD. It will be no annoyance.

Mr. STOCKTON. Perhaps so far from annoying the Senator from Georgia it may be a convenience to him to know a fact that he may not recollect. The first clause of the fourth section of the first article of the Constitution, the one to which he has reference, provides that—

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This provision was assailed in the State conventions, on the ground that Congress might contrive the manner of holding elections so as to exclude all but their own favorites from office. The conventions of the States of Virginia, Massachusetts, New Hampshire, New York, Rhode Island, and South Carolina accompanied their ratification of the Constitution with a solemn protest against the power of Congress over the elections. They prepared amendments to the Constitution calculated to carry out their view, and recorded upon their journals perpetual instructions to their Representatives in Congress to urge earnestly and zealously their adoption, and to refrain from the exercise of any power inconsistent with the principles of the proposed amendments.

Judge Story, in his Commentaries on the Constitution, section 826, after having stated the objections to the latter part of the clause which were made at the time of the adoption of the Constitution, and the reasoning by which they were made, thus concludes:

A period of forty years has since passed by without any attempt by Congress to make any regulations or interfere in the slightest degree in the elections of members of Congress. If, therefore, experience can demonstrate anything, it is the entire safety of the power in Congress, which it is scarcely possible (reasoning from the past) should be exerted except upon very urgent occasions. The States now regulate the time, the place, and the manner of elections, in a practical sense exclusively. The manner is very various; and perhaps the power has been ex-

erted in some instances, under the influence of local or party feelings, to an extent which is indefensible in principle and policy. There is no uniformity in the choice or in the mode of election. In some States the Representatives are chosen by a general ticket for the whole State; in others they are chosen singly in districts, &c. In some States the candidate must have a majority of all the votes to entitle him to be deemed elected; in others (as it is in England) it is sufficient if he has a plurality of votes. In some of the States the choice is by the voters *viva voce*, (as it is in England;) in others it is by ballot. The times of the elections are quite as various, sometimes before and sometimes after the regular period at which the office becomes vacant. That this want of uniformity as to the time and mode of election has been productive of some inconvenience to the public service cannot be doubted, for it has sometimes occurred at an extra session a whole State has been deprived of its vote, and at the regular sessions some districts have failed of being represented upon questions vital to their interests. Still, so strong has been the sense of Congress of the importance of leaving these matters to State regulation that no effort has been hitherto made to cure these evils, and public opinion has almost irresistibly settled down in favor of the existing system.

Mr. President, contrary to the prediction of the learned commentator, Congress passed an act in 1842, entitled "An act for the apportionment of Representatives among the several States, according to the sixth census," the second section of which provides that in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts, composed of contiguous territory, equal in number to the number of Representatives to which the State may be entitled. The authority under which Congress made this provision was the fourth section of the first article of the Constitution, the latter part of which says Congress may at any time make or alter the State regulations in reference to the manner of choosing Senators and Representatives.

When that law of Congress passed, New Hampshire, New Jersey, Alabama, Georgia, Mississippi, and Missouri had election-laws requiring their Representatives to be elected by general ticket. New Jersey and Alabama conformed to the law of Congress. It was insisted that the elections of New Hampshire, Georgia, Mississippi, and Missouri, under the State law, were void. The debate on the subject occupied a large part of the session. The majority of the committee to whom it was referred, reported that the law was unconstitutional, and the members elected on general ticket entitled to their seats. The minority reported that the law was valid, and the seats should be declared vacant. Neither report was formally agreed to; but it was voted by a decided majority that the members retain their seats. The reports were both prepared by gentlemen of great ability—the majority report by Stephen A. Douglas, and that of the minority by Garrett Davis; but both the majority report of Mr. Douglas and the minority report of Mr. Garrett Davis agree, so far as the question which we now have before us is concerned.

Mr. Douglas says:

An imperative duty rests upon the legislatures, while a mere privilege is granted to Congress. In the performance of this duty, the legislatures are clothed with a wide discretion, upon which the Constitution imposes no restraints. They may provide for elections by general ticket, or in districts; for voting by ballot or *viva voce*; for opening the polls at once place and on one day, or at different places and on different days. These, and all things pertaining to the times, places, and manner of holding elections, are confided to the wisdom and discretion of the several legislatures, to be performed in such manner as they shall deem most favorable to popular rights and just representation.

He alludes to the fact that when General Pinckney proposed in the convention which formed the Constitution, that the Representatives "should be elected in such manner as the legislatures of each State shall direct," he urged, among other reasons, in support of his plan, "that this liberty would give more satisfaction, as the legislatures could then accommodate the mode to the convenience and opinions of the people."

Mr. Garrett Davis says:

Some of the States have passed laws regulating their election of Senators; others have not; and yet the constitutionality of the regulations of the latter States for holding their elections of Representatives has not been and cannot be questioned. Such States as have no regulations by law for the senatorial elections may make them also. So Congress could pass a law requiring the election of Senators generally; for that would be an alteration of the election regulations of some of the States by adding to them. Congress could thus establish uniformity in the mode of electing Senators, by enacting a law requiring both branches of the State legislatures to choose by their aggregate vote, and might confine its action to that or any other particular regulation for the election of Senators. That principle has generally prevailed in senatorial elections, &c. The State legislatures might alter their existing regulations relating to time or place, or manner, confining their action to either one.

This report proceeds to illustrate the meaning of the expression "chosen" by the legislature, as used in the Constitution in reference to Senators, and "chosen" every second year by the people of the several States, in reference to Representatives, insisting that this is only an indication of the body of electors, not the manner of elections, or the absurdity follows that the people of every State not only have a right, but are bound to "choose" the House of Representatives; which is the natural result and the only logical result of the proposition proposed.

I beg pardon of the Senator from Georgia for occupying his time, and perhaps it may be well for me to explain that I was reading from my own remarks submitted to the Senate on a former occasion, when the New Jersey case was before the Senate. I examined this matter carefully then, and I really felt, in view of the remarks the Senator was making, that I had a right to call the attention of the Senate to the fact of the origin of this clause of the Constitution, of the view taken of it by all those distinguished men, and of the protest which was made at the time the Constitution was formed against such construction being put upon this clause as I think my distinguished friend from Georgia is now putting upon it.

Mr. THURMAN. Will my friend from New Jersey tell me what was the decision of the Senate after having heard that argument? [Laughter.]

Mr. STOCKTON. In reference to that argument it would be very difficult for me to tell how the Senate decided; but as there are many Senators present who recollect all the circumstances, the Senator from Ohio will find no difficulty in getting information on the subject.

Mr. NORWOOD. I am very much obliged to the Senator from New Jersey for interrupting me, because, having a severe cold, my voice is out of order, and the interruption has afforded me a rest. I must, however, apologize to him in return for asking him what particular point he presents by reading that long speech.

Mr. STOCKTON. The point presented, in the first place, is the solemn protest entered by the States at the time of the formation of the Constitution against interference by Congress with the elections. The point is, that Judge Story says that for forty years Congress never attempted to prescribe any "manner" whatever, and from the whole of those remarks, as well as the report of Mr. Davis, that the meaning of the word "manner" and the effect of the word "manner," as used in the Constitution, did not refer at all to any interference with the motives of the choice, is manifest beyond question. Then we have the remarks of Mr. Pinckney when the clause was first introduced in the Constitution of the United States, and, finally and lastly, the reports of Stephen A. Douglas and Garrett Davis upon the difference between the body of electors, that the word "chosen" in the same clause of the Constitution had a very different meaning when it referred to members of the legislature, and if you gave it any other meaning, you obliged all the States of the Union to choose all the members of Congress. Those points were the cardinal points of my proposition.

Mr. NORWOOD. As to the first point presented by the honorable Senator relating to the protest that was sent up by those States, a sufficient answer to it is *ita lex scripta est*. They may have protested against the adoption of such a provision, but the provision is in the Constitution. Congress, by the Constitution, has the power to prescribe the time and manner of the election of a Senator; and that is a sufficient answer to that protest.

As to the second point, as to the choosing of a Senator, I have simply to say that the word "choose" there can mean nothing else than "elect," and when legislators meet in convention for the purpose of electing, they are not legislators, but electors, and, as such electors, their action is subject to the review of this body. How can it be otherwise?

We are here now speaking in the interest of State rights. Honorable Senators say it would be detrimental and destructive to State rights to hold that the Senate of the United States might inquire into the validity of an election upon a question of bribery. I, on the other hand, maintain that it is not only within the power of the Senate, conferred by that provision of the Constitution, but whenever the case arises it is the paramount duty of the Senate to investigate that question in the protection of State rights and in the preservation of purity and the perpetuation of republican government. Where would we drift if this power could not be exercised? A man prostitutes the legislature of a State, absolutely debauches it with money, secures his election, comes here, and presents himself to be sworn in as a member of this body, and yet we are told the Senate cannot investigate the crime, because it does not affect the manner, though it affects the essence of the election, and because the motives of the members of the legislature might be involved. Why, sir, we are not investigating motives. As the Senator from Indiana said yesterday, the only thing that we are investigating is the act, the fact, the action of the parties, and the motive is a matter of no consideration. Where an act is a crime, and a party commits that crime, you do not have to investigate the motive. When a man commits homicide, the law attaches to him the motive and makes it murder, because it presumes malice. When a man takes goods that do not belong to him, surreptitiously, the law presumes the motive, and says it is theft. The act itself carries with it the motive and the condemnation of the law. So it is here. Where the legislator, acting in his capacity as an elector, acts through the influence of bribery, we do not stop to inquire what motive he had in casting his vote. Whether he cast it as a patriot, or whether he cast it in order to have a friend in the Senate, is a matter of no moment.

Mr. CONKLING. Will it interrupt the Senator if I try to understand him at that point?

Mr. NORWOOD. Not at all.

Mr. CONKLING. In the shape in which he is now presenting the question, is the act inquired into there the bribe or the vote? The Senator says if a man commits homicide or a theft, we do not inquire into the motive, but into the act; and, if a man is guilty of bribery, the law relieves us of inquiring into the motive of the bribe. Now, I say, applying that to his argument here, are we now inquiring into the act of the bribe or into the act of the vote?

Mr. NORWOOD. Both.

Mr. CONKLING. And if we are inquiring wholly or partly into the act of the vote, can we consider the bribe except as furnishing the motive of the act?

Mr. NORWOOD. We are inquiring, as I said, into both. If the fact is established that a legislator was bribed by Mr. CALDWELL, with a view to induce that legislator to cast his vote for him, and subsequently, when the election came off, that legislator cast his vote for

Mr. CALDWELL, we do not stop to inquire into the motive. I say the law raises the motive. The act of bribery makes it a crime

Mr. CONKLING. Does the law raise the motive of the bribe or of the vote? is the question I put to the Senator.

Mr. NORWOOD. Of the vote. The inducement to the vote, in other words, is the bribe paid to secure the vote.

Mr. CONKLING. Then I understand my friend to admit at this point that the criterion is the motive of the vote which he says the bribe furnishes.

Mr. NORWOOD. The criterion of the vote!

Mr. CONKLING. The criterion of our judgment at that point, I understand him to admit, is the motive of the vote, and his argument is that the fact of the bribe supplies us with that motive.

Mr. NORWOOD. Yes, sir.

Mr. CONKLING. That I do not deny; but I am simply asking the question whether in reality we are to investigate the motives of the voter or not.

Mr. NORWOOD. Not at all. We do not stop to investigate the motive of the vote. We are to investigate the *fact* as to whether the legislator was bribed, and if, being bribed, he casts his vote; that is the end of the inquiry, and the law declares the act a crime.

Mr. MORTON. The law infers the motive.

Mr. NORWOOD. The law raises a presumption as to the motive.

Mr. MORTON. Just as it does in a case of burglary where a man is killed.

Mr. NORWOOD. Just as it does in a case of homicide or a case of theft; there is no difference at all; and the bribery being a crime, that vote is invalid; and if enough votes thus procured were cast to secure the election of that Senator, that election is invalid.

I forget the exact point I was discussing when interrupted by the Senator from New York, but I believe it was this: that if this election cannot be investigated by the Senate, then a fraudulent election, an election secured by bribery, or an election secured by the most outrageous means that could be devised by human ingenuity, it matters not what, if the views of honorable Senators here be correct, can never be investigated; an election thus secured must stand; it must stand against reason; it must stand against morality; it must stand against the interest and the perpetuity of good government. We are left remediless if we cannot investigate it.

What can the State do that has been thus prostituted, and is represented here by a corrupt man? She has no power. Her people in convention assembled, in their majesty and sovereignty, are without remedy. If the position of the opposition be correct, we have nothing to do but to submit, sit here, and shake our automatic wooden heads, and say to that State, "There is no remedy; it is beyond our power; it is beyond your power." Let corruption run riot, let elections be carried by fraud, let States be trodden upon and trampled in the dust, and yet, sticking in the bark, and upon the letter of the Constitution, the Senate has no power, and the people are remediless.

Is that law? Is that the spirit of the Constitution? When you take away from the Constitution its spirit, you take away its life. When you take away that essence by which it lives, there is nothing left that is worth the having. When you say to the people of this country that the Senate of the United States is bound by the letter of that Constitution, and its vital spark is gone, you might as well declare to them that the vital power of the Government is gone with it. What an absurd conclusion, if I may say so, with all due respect and deference to those who oppose me, is it to say that where manifestly, openly, wickedly a State has been defrauded in the manner I have supposed, there is no remedy, no helping hand to save.

Let us illustrate. I will suppose a state of facts, without commenting upon the facts or assuming that they are true. We will assume that in the case of Mr. CALDWELL, after the election had occurred, an investigation had been ordered by the legislature, and it had turned out that that legislature had been corrupted to the extent (for that is sufficient) of securing his election; that he had been a party to it; that the parties who had been bribed had been convicted of bribery, and that we had the certified records of the courts here, showing that they had been so convicted, and a memorial from the whole body of the people of Kansas protesting against his admission, anticipating the time when Mr. CALDWELL would make application for a seat in the Senate. What would the Senate say? What would be its decision? If we are to be governed by the judgment of those who say that we cannot look into the corrupt acts of the electors of a Senator, I ask in the name of justice, what would be the result in a case of that sort? The answer, I suppose, must be, "We are without power; you are remediless; there is nothing in the Constitution that gives us the right to investigate that matter, and we are bound to admit him here and hold him as a member of this body, unless we exercise the power of expulsion." Now, see what an absurdity arises. You have the power, you say, to expel such a member, one thus elected, but you have not the power to keep him out of his seat, and therefore you have to admit him to his seat, and then expel him for the bribery. That is the logical sequence of the argument on the other side. You cannot keep him out of his seat on account of the bribery; you can only expel him as a personal punishment; but you cannot expel until you admit him, and while you cannot prevent him from taking his seat, you will admit him to get rid of him by expulsion.

Mr. CONKLING. If I do not disturb the Senator, I should like to ask him a question at that point.

Mr. NORWOOD. Certainly.

Mr. CONKLING. May I suppose the case of a man convicted of perjury, or of murder, or of larceny, after his choice to the Senate, coming here and applying, the people of his State sending with him a petition as numerously signed as the population of the State, crying out against the disgrace; could we say he was not elected, or should we be compelled to open the doors and then drive him out? And if we must admit him first and expel him afterward, is not the absurdity as great in the one case as in the other?

Mr. NORWOOD. I was only presenting what I consider the logical sequences of the position of the other side. The consequences are with them, not with me. I say that, taking the view of this question that they do, from their stand-point, you are driven inevitably to the position that when a man presents himself, that you admit would not be a worthy member of this body, you must admit him to a seat in this body and then expel him because he is not a worthy member. The consequences are not with me. It is not my logic.

Mr. President, I have but a few words more to say. I have already spoken much longer than I intended. I yield to no man on this floor in my advocacy of State rights. But a few days ago, when the question of Louisiana was before the Senate, it would have rejoiced my heart, and I would have leaped forward with alacrity, if I could have found any way by which I could extend a helping hand to the people of that State; but, sir, I felt manacled and fettered by the oath which I took when I came into this body to support the Constitution of the United States. My construction of that Constitution is simply this: that in the management of a State legislature, in the setting up or the tearing down, in the making or the marring of a State legislature, the Congress of the United States has no power and no control; and hence, when that question came on, I voted against the bill, because that bill assumed that the legislature which had been wrongfully established in that State should be controlled by an act of Congress.

I yield to none, not even to the honorable Senators from New Jersey and from Delaware, in my devotion to State rights; but when I see the consequences that are to follow, which must result in the trampling of a State in the dust, which must result in a people being misrepresented here by a man who has not been elected by their voice, who is not their choice, who has prostituted their agent, who has secured his seat here by bribery—I say it is not only in the interest of State rights, but it is in the interest of the perpetuity of our republican Government that the Senate should lay its hand upon that man, and say to him, "You shall not come within the precincts of this chamber;" and, if seated here, he should be expelled.

On the other hand, as I said in the beginning of my remarks, I see dangers to the Senate if we pursue the other course. What would this body become if we are to sit here, taking the illustration I gave awhile ago, and allow Senators-elect to become members of this body when they come tainted, polluted, corrupted, and corrupting? Shall they be allowed to sit here as the peers of honorable men, who have secured their election by honorable means, and who are, in truth, the choice of their States? What becomes of the dignity of the United States Senate? What becomes of its purity? What becomes of its honor? What becomes of the safety of the people of this country if its laws are to be passed by criminals? If you once pass power into the hands of such men, I ask Senators who are the advocates of State rights, how long will those States be protected? How long will it be before those very men will lay their mailed hands upon the States, and subvert and destroy all State rights?

It may be said that if we pursue this course we are depriving the States of representation in this body. I do not see how that follows. If a seat is vacated, the same result follows as if a party is expelled from this body. The State holds another election, or, if the legislature is not in session, the governor makes an appointment until the legislature meets. What matters it, therefore, so far as State rights are concerned, whether we expel a member or whether we vacate his seat? We are not depriving the State of rights in either case. We are in the one case, or in both cases, saying to that State, "When you send a member here who is qualified to sit in this body—when you send a member here who will not sell his vote for a bribe—he shall be entitled to his seat; but, until you do, you are not standing upon the same platform of equality with the other States in this Union, and we will not consent that the Senate of the United States shall be thus degraded."

Mr. THURMAN. Mr. President, as I desire to be as brief as possible, I hope I may not be interrupted in the course of my remarks. I do not expect to shed any new light on this question; and my only apology for speaking is that I feel it to be a duty I owe myself; for, sir, we cannot conceal the fact that Mr. CALDWELL is not the only Senator on trial to-day—the whole Senate is on trial. The question is not simply whether CALDWELL is guilty, but whether the Senate has the intelligence and the firmness to pronounce his guilt if guilty he be. And if any Senator, after looking at this testimony, shall believe him guilty and feel it to be his duty so to vote, there seems to be a necessity that he should state the reasons of his belief. It is a most responsible step to declare a Senator guilty of high crimes and misdemeanors, to declare that he procured his seat by corrupt and corrupting means, and he who does so should be able to state why it is that he renders a verdict of "guilty."

Now, Mr. President, feeling the responsibility that rests upon each

one of us in this investigation, I have carefully read every word of the testimony. I have read it in the retiracy of my library, with my pencil in my hand, determined to the best of my ability to form a correct judgment upon it. It has made an impression upon my mind that I do not think is likely to be removed. I cannot go into the testimony in detail to show why it is that I have arrived at that conclusion; to do that would take up more time than is allotted to me to speak; but I may say, in general terms, that I cannot avoid the conviction that the election of Mr. CALDWELL was thoroughly corrupt; not that there was bribery of one member of the legislature alone, but that there was, directly or indirectly, bribery of more men than constituted his majority.

I do not pretend that I can name the men, nor do I believe that in any such case as this the Senate ever will be able to name the men. The Senate must act, as was said yesterday by my friend from Delaware, [Mr. BAYARD,] upon the best evidence that the nature of the case admits; and in this case the only wonder with me is that the evidence is as clear and conclusive as it is. Never before in any such case—and I have been in the investigation of some of them—never before has testimony been so utterly damning as this. Why, Mr. President, let us look at it a little.

In 1871 there was to be an election for Senator in the State of Kansas. There was then a gentleman, named ALEXANDER CALDWELL, living in the city of Leavenworth, who had been known as what is familiarly called a business man; that is, he had been a Government contractor—a contractor to carry provisions and supplies across the plains to Indians and to our military posts—and in the pursuit of that occupation, a perfectly honorable one, he had accumulated a large fortune; but he had not the least political standing above that of any other intelligent elector of Kansas. There was nothing in his political status, nothing in his intellectual ability, nothing in his education, nothing in any public service he had ever rendered, that would make the people of Kansas think for one moment of ALEXANDER CALDWELL as their representative in the Senate of the United States; and had he been a poor man there would not have been, from one end of the State to the other, one man who would have dreamed of his ever holding a seat in this body. Yet, sir, that obscure gentleman grew, in a few weeks' time, to be the most formidable candidate before the Kansas legislature. With no supporters at first, he soon acquired such support that other candidates were compelled to give way, and in the end he was elected to this body by a large majority.

Such things as that are not in the ordinary course of human events, and we naturally look around to see how it was that this phenomenon occurred. A seat in the Senate of the United States has become in this country an object of ambition second to but one, and perhaps not second to that—the Presidency. The struggle for a seat in this body among the ambitious and able men of the country everywhere is a struggle that sometimes convulses a State and attracts universal attention throughout the length and breadth of the Republic. But, sir, here we find the prominent men of the State of Kansas either standing aside most mysteriously or beaten to death in the race, and a Government contractor, who had never figured even in a town meeting, so far as we know, all at once elevated to the highest place in the roll of candidacy, and finally elected.

When we look into the evidence embodied in this report, we soon discover a clew to this mysterious event. In the first place we find that a conference was held in the city of Leavenworth, where Mr. CALDWELL resided, and that the result of the conference was that he should be a candidate, and that then, in order to bring him out, a paper was signed requesting him to be a candidate. But, sir, that paper, signed by I believe about two hundred of the citizens of Leavenworth, would have had but slight effect in promoting his election. Some other and more potent agency than that was required; and what do we find? Why, sir, one of the first things is the expenditure of large sums of money upon a newspaper of that city, in order to circulate it throughout Kansas, filled with articles advocating the election of Mr. CALDWELL. I do not complain of that. That was perhaps legitimate; that was perhaps an admissible use of money. Although there might be some indelicacy in creating a factitious reputation for one's self, although there are some who do not think that that is precisely the way to acquire that standing which makes people turn their eyes toward a man and say "We want him for our Senator," I shall pass that by and call it, if you please, a legal but an indelicate use of money. And I mention it for no other reason than to show that money was to be used; that money was relied upon to achieve success.

But, sir, we soon come to something more important than that. There was another citizen of the city of Leavenworth, a man who had been governor of the State, a man who in previous elections had been a candidate for the Senate of the United States; a man of influence in Leavenworth, and of extensive acquaintance and influence throughout the State, and that man was Thomas Carney. Now, sir, when we touch Thomas Carney, we begin to see more clearly the agency, the means, by which Mr. CALDWELL was to be elected to the Senate of the United States. A solemn bargain is made with Thomas Carney, and not left to parol, but reduced to writing, by which, for the sum of $15,000 to be paid to him, $10,000 certain and $5,000 contingent on the election of CALDWELL, Mr. Carney agrees, and solemnly pledges himself in writing, that he will not be a candidate. And, sir, more than that, there was a separate article, not committed to writing, that he should use all his power and all his influence to elect Mr. CALDWELL; and, sir, he fulfilled both articles to the letter. He did not become a candidate, and he did go to Topeka, the seat of government, and, from first to last, *per fas aut nefas*, do all he could to elect CALDWELL. He earned his $15,000 if money could be earned by such a service.

But, sir, that is not all. We see now that money is to be used; we get a glimpse of the means by which it is expected that this obscure gentleman is to be elevated to a seat in the Senate of the United States. It begins with $5,000 to a newspaper and $15,000 to Carney.

But, sir, there was another competitor, one Sidney Clarke, a gentleman not unknown to the people of Kansas, for he had represented them, and, I believe, at that very moment was their Representative in the House of Representatives, in Congress—elected by the whole State; a gentleman known to that people and of great influence among them. He was a candidate too. Well, sir, what disposition was made of Mr. Sidney Clarke? He continued a candidate until the first vote was given, until the houses voted separately; and what then? Why, sir, a bargain is made with him that his expenses are to be paid, and he is to withdraw from the contest, and, by the strangest arithmetic in the world, his expenses are estimated at from twelve to fifteen thousand dollars.

But, sir, that is not all. We find the declaration of Mr. CALDWELL that he will be elected to the Senate if it costs him a quarter of a million dollars.

Mr. CARPENTER. Where does the Senator find that?

Mr. THURMAN. In Mr. Carney's testimony.

Mr. CARPENTER. O!

Mr. THURMAN. The Senator says "O!" as if no credit is to be attached to the testimony of that witness. Well, sir, I am not at all in love with that witness, not the least in the world, no more than the Senator is in love with him, but I do find that this Committee on Privileges and Elections, so far as I can see, unanimously reported most material facts in this case upon the testimony of Thomas Carney.

Mr. CARPENTER. My friend will allow me to say that, so far as I am concerned, I reported no fact on the testimony of Mr. Carney.

Mr. THURMAN. Well, sir, I cannot help it; I am obliged to take the report as I find it. I find no dissenting report about the facts; the only dissent I find is as to the conclusions of law upon those facts.

Mr. CARPENTER. I know my friend does not wish to misrepresent me, and he is doing it now, unintentionally.

Mr. THURMAN. It is unintentionally if I am doing it.

Mr. CARPENTER. I stated, on the first opportunity I had in the Senate on that subject, that I dissented totally from the findings of the committee in matters of fact, and the chairman of the committee confirmed that statement, that I dissented all the way through on the findings of fact. I did not take the time, because I had it not, to write a dissenting report. I was engaged in preparing the report on the Louisiana case, which was going on at the same time in the committee, and which took all my time day and night, and for that reason I was unable to prepare a minority report; but every member of the committee knows that I did dissent entirely from the findings of fact, as I stated when the matter was first reached in the Senate.

Mr. THURMAN. I was speaking of the report, and I said that I found in it no dissent. Now the Senator says that he did dissent, and expressed his dissent in the Senate. Doubtless that is so, but it is the first time I ever heard of it. Therefore he is right, and I am right. In the report, on which we are to act, which we take to our rooms, which we read and which we study, I find fact after fact of the gravest importance found upon the testimony of Thomas Carney by our committee.

But, sir, Thomas Carney is not an uncorroborated witness. He stands corroborated so much that it will take more argument, I think, than has yet been adduced to shake his testimony in its material points. Did he receive $15,000 for standing aside and aiding CALDWELL? CALDWELL says so himself in his written paper handed to the committee. Did CALDWELL say to Carney that that election had cost him from fifty to sixty or seventy-five thousand dollars? He said the same thing to two other witnesses, at least, who are not impeached, and there Carney stands corroborated. But, sir, that is not all. He stands corroborated in regard to the use of money by various other witnesses who testify to particular instances. And so, Mr. President, bad man as he is, utterly unworthy of our respect, you cannot say that his testimony is to be thrown aside. No, sir; you have not made against him the old case for throwing a bad man's testimony aside, that it is not corroborated. You have not proved him guilty of perjury in a single instance, so that you may say of him *falsus in uno, falsus in omnibus*, and therefore he is not to be believed at all unless corroborated. You have not convicted him of perjury in any one single instance, so that he could be found guilty by a jury if he were on trial under an indictment.

Mr. CARPENTER. My friend will pardon me for saying that he has not been convicted, but he is contradicted by more than two witnesses on the same point several times in the testimony taken.

Mr. MORTON. He is corroborated by more.

Mr. THURMAN. Although I requested when I got up that I might not be interrupted, as I wanted to speak briefly, I know the laudable habit of the Senate of turning this hall into a chamber for conversation and dialogue, of putting a person through the longer and shorter catechism every time he gets up to debate a question, and therefore

I believe I will not complain, and I will withdraw my request that I may be allowed to proceed without interruption.

But, Mr. President, that is not all. Here is testimony proving, if the witnesses are to be credited, the purchase of the vote of a man named Bayers, proved by Mr. CALDWELL'S own confession, of the purchase of a man named Legate, of giving a thousand dollars for his vote to a man named Crocker; and then there is that most mysterious transaction, and not so mysterious either, in view of the testimony, about the seven Doniphan members, and the missing $7,000.

Mr. President, it is utterly impossible to shut our eyes to the facts. There was a gentleman who had declared that he would be elected although it should cost a sum of money that would gladden the hearts of a dozen Senators here if they owned it in equal parts. Here is a gentleman who suddenly springs up into importance in this way, and who confesses that his election has cost him from sixty to seventy-five thousand dollars, and against whom are proved these particular instances of bribery and the corrupt use of money; and yet Senators hesitate and say, "Why we want proof of so many distinct cases of bribery, enough to have controlled the election, and, until the bribed men can be named, the proof is insufficient."

Mr. President, if you do not expel a Senator for bribery, or declare his election void for bribery, until you get stronger testimony than is in this case, the power to expel and the power to judge of elections might as well be stricken out of the Constitution.

Now, sir, I am not troubled at all in this case with the question, what would be our duty if there were a single case of bribery proved and nothing more; a single case of bribery where the majority was large. I cannot resist the conviction, I cannot shut my eyes to the fact that Mr. CALDWELL bought his way through that legislature into the Senate of the United States, and therefore the question is plainly presented, is an election which is procured by bribery a valid or a void election? Is it the law of this land, is it the Constitution under which we live, that a man can buy a seat in the Senate of the United States? That is the question. The question is whether you shall make proclamation to the people of the United States that seats in the Senate are merchandise, and that the man who has the longest purse gets the goods.

And now it is said that it is the law of this land that, no matter how plain and flagrant the bribery may be, although it were confessed upon the record, although the testimony was such as to convince beyond all reasonable doubt, nay, though there should be no doubt at all, yet the election is a valid election. That is the doctrine. Why a valid election? Because, as we are told, we cannot look into the motives of the members of the legislature who cast their votes. If every man of them who voted for ALEXANDER CALDWELL were to come before the Senate at its bar, and swear that he did so vote for a money consideration, and CALDWELL should stand here and say, "I admit it; now what can you do?" the Senate of the United States would have to reply, "O, we cannot impute to these gentlemen that they were guilty of being bribed; we cannot impute corruption to them; they are members of a State legislature; State rights prohibit our imputing anything like crime to them; we cannot do that at all; and although they stand at our bar holding up their hands and pleading guilty, and their elected man pleads guilty too, the election is nevertheless perfectly valid, and all the Senate can do is to expel the man if two-thirds are found voting to expel him!"

Mr. President, before I come to such a conclusion as that, I shall have to hear stronger arguments than I have yet heard. I admit that there is danger—and that is the only thing that makes me falter in my conclusion—there is danger that the power of a majority of the Senate to declare an election void may be abused.

I know that, when party spirit runs high, acts of injustice are done to a minority; and I do not underrate that danger at all. But, sir, on the other hand is a danger that is more appalling than that. I cannot conceal from myself that if there were not corruption in society itself, no such transaction as that election of Mr. CALDWELL could ever have taken place. It is because corruption threatens to permeate the community, it is because the use and the illegal use of money in elections is becoming the rule and not the exception, and that too many people are stopping their ears and shutting their eyes to the fact of how their elections are carried, and too often tacitly saying that all is fair in politics—it is because of this corruption that menaces the whole body-politic of the country, that such an election as that of ALEXANDER CALDWELL ever could have occurred; and now, if the Senate of the United States shall say to the country, "This thing is legitimate; we make proclamation to all adventurers that they may buy a legislature at their will, and we will not hold the election to be void;" if you say that, you will have done more, Senators, to overthrow purity in the Government, more to overthrow the power of republican institutions, more wrong to the people, and more wrong to the Government than ever will be perpetrated by a lawless majority in this chamber turning out without cause a member of the minority. The mass of the people, thank Heaven, are yet pure. I beseech you, Senators, to aid them and not the corruptionists.

But, Mr. President, what is the legal argument in the case? To my mind it is in a very narrow compass. I agree that it is to be determined by the Constitution. I do not say that if there were nothing in the Constitution on the subject of our being the judges of the elections, qualifications, and returns of our members, we would have no power of decision upon these matters. I think, with Chief Justice Shaw, and I do not see how anybody can think otherwise, that that is an inherent power, and that, in the absence of express grant, we should resort to the inherent power in order to exercise it. But when there is an express power given to us, it is not admissible for us to resort to implied powers. I say there is an inherent power in the legislature to judge of the election of its members.

Mr. BAYARD. The authority relied on did not say so.

Mr. THURMAN. If he did not he ought to have said so; that must be so. But when there is an express power given, then, I say, you do not look to implied or inherent powers, you go to the express power, and I go to the express power to find the authority for the resolution of our committee. What is that express power? It is found in Article I, section 5, paragraph 1, of the Constitution:

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

There is the express power. Now, sir, I have first to say to my friend from Delaware that if the power to judge of the elections includes the power which I contend for, then there is no violation of State rights in exercising it, for it is expressly delegated to us. It cannot be a violation of State rights to exercise a power that the Constitution confers upon us. You might just as well say that it was a violation of State rights for us to levy taxes or to declare war.

Mr. BAYARD. I did not say that.

Mr. THURMAN. I know my friend is too able a lawyer to ever say that. The question is a question of the interpretation of the Constitution. If the Constitution confers the power upon us, there is no violation of State rights in the resolution; if it does not confer the power upon us, we do not possess it; that is all there is of it. So that the question is not one of State rights at all, but is simply a question of the interpretation of the Federal Constitution.

Now, is this power delegated? In the first place I have to remark that you find no such power in the Articles of Confederation. Why not? Because the members of the Congress of the Confederation were in fact, whatever you may call them in name, embassadors of the different colonies, or States. Each of them derived his whole power from the State that appointed him. He was not appointed under any general constitution for the whole country, but he was the delegate chosen by the State, and the State alone had the right to inquire whether he was properly appointed or whether he should retain his seat, and the State had the power to turn him out at any time, to rescind his appointment at any time, and compel him to leave the Continental Congress. Therefore you find no such power in the Articles of Confederation. But that is not the case now. We have a Constitution, and the Senate exists by virtue of the Constitution; and the Constitution declares how the Senate shall be constituted, and what shall be its powers; and among them is the power to judge of the elections, qualifications, and returns of its members.

Now, Mr. President, mark it, there is no question as to what is meant by "qualifications." We know that those are the qualifications specified in the Constitution itself, and that you can superadd no other qualification. There is no difficulty, either, about the "returns." What shall be the returns is a matter to be determined by law, and the law declares what shall be the returns, what they shall contain, and what they shall show; that is all matter of law; and we decide upon their face whether they are in due form and in compliance with law. But then, sir, comes the question of the election. We are to be the judge of the "election." What is meant by that? In the first place, mark it that the word is without limitation. It does not say you shall be the judge of the election *quoad* this or *quoad* that; you shall be the judge to the extent of finding whether the election was held on the right day, or whether it was held by a body that constituted a valid legislature, or whether there was a majority, and you shall be judge of nothing else. It puts no limitation on your power to judge of the election. It is a perfectly unlimited power to judge, and is therefore a power to hold the election void for any cause that, according to law and reason and consistency with our Constitution, makes an election void.

But, sir, that is not all. The power given to the Senate is precisely the same as the power given to the House of Representatives. It is not given in a similar paragraph; it is given in the same paragraph. The very same words that confer the power upon the Senate confer the power upon the House. Has there been any one here bold enough to deny that it is competent for the House of Representatives to unseat a member upon proof that he obtained his election by bribery? No one has done that. But when you say that the House has that power, you must say the same thing of the Senate, for the same words that give the power to the House give it to the Senate. There is not one word in the Constitution that makes any difference. The Senator from New Jersey [Mr. STOCKTON] attempted to find a difference, and called our attention to the fact that the clause which provides for the election of Senators was in these words:

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

And he dwelt upon that word "chosen," and said that all we could inquire about was, whether there was a lawful legislature and whether it made a choice; and that we could go no further. That I may not misstate him, I read his very words:

> The first question that comes up, therefore, in every one of these cases, is, is it the legislature of the State? and the next question is, did they choose? and farther than that there is no question.

That is the proposition. Well, sir, it is substantially the same

proposition maintained by every one of the Senators who have spoken against the report of the committee. Cover it up in words if you please, it all comes to that. It is substantially the same proposition—that you can only inquire, was there a legislature, and did it choose? Well, now, might you not with just as much propriety under this clause about the election of members of the House of Representatives, say that the only inquiry is, were the persons who chose, the people of the State, and did they choose? The language, *mutatis mutandis*, is exactly the same. The language in regard to members of the House of Representatives is that—

The House of Representatives shall be composed of members chosen—

Just the same word, "chosen"—

every second year by the people of the several States.

And therefore you might with just as much propriety say in the House of Representatives the only question is whether the men who voted for this member were the people of his State, by which is meant the qualified electors of that State, and did they choose him. And if they did choose him, no matter how corrupt were their motives; no matter how many of them were bribed; no matter though he bought his seat there, still, you can no further go. They are the people, they have chosen, and there is an end of the matter. You can say that just as well in the one case as you can in the other.

But, Mr. President, let us go a little further than that. What is this language in the Constitution? "Each House shall be the judge of the elections," &c. Was that a term unknown to the law, "judge of the elections of its own members?" No, sir; it was known long before this Government had an existence. It was known long before this continent was discovered. It was a term known to the law of that land from which we derive the most of our institutions, and by far the greater part of our law, long before Christopher Columbus was born. "Judge of the election of its own members" is a term as old as the British Parliament. What does it signify if it does not mean that the House may hold an election to be void if it was obtained by bribery? When our forefathers put that language in the Constitution of the United States, they knew what it was for a legislative body to be the judge of the election of its own members, and they knew that, according to parliamentary law, in judging of the election of a member of the House of Commons, if it were found that he was elected by bribery, it was held that his election was void. They knew that in the constitution of every American State then in existence, for those States pre-existed the Federal Constitution, there was a similar provision and a similar construction put upon it.

Mr. CARPENTER. My friend will pardon me. I believe I had his permission to interrupt him.

Mr. THURMAN. Once every ten minutes.

Mr. CARPENTER. I understand the Senator to maintain that the power of the Senate in judging of the election of its members is precisely the same as the power of the House in judging of the election of its members. Am I right?

Mr. THURMAN. Under the same clause.

Mr. CARPENTER. It is conceded on all hands that the House may inquire into the qualifications of the elector voting for a candidate claiming a seat. Does the Senator maintain that the Senate can inquire into the qualifications of the elector—that is, the member of a legislature—to hold his seat and vote for a Senator?

Mr. THURMAN. The Senator has only anticipated me. I had not forgotten that that inquiry would be put. I believe I answered it the other day. The Senator probably did not hear it, or it attracted his attention so little that he paid no attention to it.

Mr. CARPENTER. I would like to hear the answer now.

Mr. THURMAN. The answer is very plain and perfect. The decision of an inspector of election, sitting to receive votes for a member of the House of Representatives, extends how far? It extends to the question of whether or not a man is a legal voter. In some States it does not go that far, for they have prohibited that inquiry in Alabama; but that is as far as it extends in any of the States—to inquire whether a man is legally entitled to vote. That decision of that judge or inspector is not conclusive and final. It is not conclusive and final in the State, for if he decides erroneously—if he rejects the vote of a man who is entitled to vote—he is liable to action and to pay damages, although he acted in the most perfect good faith. That is the law in Ohio, and I am sure it is in many other States. It is not, therefore, conclusive in the courts of his own State, and is not conclusive in that highest and only court which can try the right of a member to a seat in the House of Representatives of Congress. But that is not the case with a State legislature, because the State constitution, which we respect, and which our Constitution does not authorize us to overthrow, says that each house of the general assembly shall be the judge of the elections, qualifications, and returns of its members.

Mr. HAMILTON, of Maryland. Has that constitution any more power than the common law, if it is against the Constitution of the United States?

Mr. THURMAN. It is not against the Constitution of the United States.

Mr. HAMILTON, of Maryland. You can inquire into it?

Mr. THURMAN. Inquire into what?

Mr. HAMILTON, of Maryland. Into the qualifications of members of the legislature of a State?

Mr. THURMAN. I say you cannot.

Mr. HAMILTON, of Maryland. I say so too.

Mr. CARPENTER. Then the power is not the same in the two Houses, because we all concede that the House can inquire into the qualifications of an elector.

Mr. THURMAN. The Senator understands me perfectly well. What we inquire here is, was that a legislature? That we can inquire into just as the House can inquire whether the men who voted for a member of Congress were the electors. If they were the legislature, then they are the electors of the Senator; but when you come to the question as to whether they were the electors of the Senator, you come to a rule of evidence, and it is simply a rule of evidence that the decision of each house of the State legislature, made pursuant to its constitution, is conclusive on that question.

Mr. CARPENTER. Does the Senator mean that we may judge of them, but are bound to judge as they judge?

Mr. THURMAN. The Senator ought not to put a question to me in that way. He is too good a lawyer to put a question in that *ad captandum* way. If we were on the stump it would do, but we are not on the stump. The Senator knows very well that the rule of evidence in one case may be very different from the rule of evidence in the other, but the substance of the thing is precisely the same.

Mr. CARPENTER. Suppose a Senator is elected by a majority of one in a legislature, and an offer is made here to show that that one man, who turned the scale in the legislature, got his seat by bribery at the polls?

Mr. THURMAN. You cannot prove it, and nobody ever pretended that you could; and it does not militate against my argument.

Mr. STEWART. Suppose he was not elected at all?

Mr. THURMAN. Suppose he was not, but was admitted by the body which had the sole right to judge.

Mr. CONKLING. May I inquire?

Mr. THURMAN. I suppose so.

Mr. CONKLING. I simply want the authority for that proposition. I want to know whether it is the Senator's assertion, or whether there is any authority for it?

Mr. THURMAN. What proposition?

Mr. CONKLING. The proposition that we cannot inquire whether ten men in the legislature of Kansas were mere intruders and usurpers, with no certificates at all.

Mr. THURMAN. Mr. President, I am not the teacher of a common school, to instruct my friend the A B C of the law. He knows just as well as I do, and he knew just as well before he asked the question as he knows now, that when either branch of a State legislature has passed upon the right of a man to a seat in that legislature, we have no right to go behind that decision.

Mr. MORTON. Will the Senator allow me to make a suggestion right there?

Mr. THURMAN. Yes, sir.

Mr. MORTON. Mr. President, by the Constitution—

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

The House of Representatives, in a contested election, must accept the electors as the State provides them for the most numerous branch of the State legislature, whatever that may be. Now, when you come to the Senate, the electors are those who compose the legislature, that legislature to be determined according to the law of the State. As the State gives us the legislature, so we have got to take it, each member of it; and as the State gives us the electors for members of the House, so we have got to take them. That is the whole question.

Mr. THURMAN. Now, Mr. President, I will proceed to call attention to another thing. The whole argument of my friend from New Jersey hinges on the word "chosen:"

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

What is the meaning of this word "chosen?" It means "elected;" that is all it means, and I will prove it to you in one moment. The very clause which I have already read says that we are judges of the elections. Is not that the choosing? When, therefore, it says that we are the judges of the election, it says we are the judge whether this man was chosen, and "chosen" and "elected" are used as convertible terms. Therefore, there is nothing in this word "chosen" at all, any more than if it had been "elected by the legislature thereof," instead of "chosen by the legislature thereof." We come back, then, to the proposition with which I set out; we are judges of the election, and no limitation is placed on our power to judge of the election, except that limitation which the law of the land places upon it. We have not an absolute discretion to say that this man was not elected for some fanciful reason which we may set up. There must be good cause why he is not elected. It is admitted on all hands that if it were duress, it would defeat the election. Why would it defeat the election? Let us see. The case has been put here by my friend from Delaware, [Mr. SAULSBURY.] Suppose that the Kansas legislature had been surrounded by a mob or by a military force, and that under menace of death those members had voted for Mr. CALDWELL, would you say that that was a valid election? I know the answer that is given, "There was no election; the men had no choice."

Mr. CASSERLY. It was not a legislature.

Mr. THURMAN. It was a legislature, but not a legislature exercising a free choice. The Senator might as well tell me that I had

not a tongue, if he threatened to knock me down if I spoke, and I submitted and said nothing.

Mr. CASSERLY. Allow me to ask the Senator a question.

Mr. THURMAN. I will give way once more.

Mr. CASSERLY. Does the Senator think that the Kellogg legislature in Louisiana, for instance, which was a legislature constituted by military selection at the door of the house in which it met, was a legislature? And now I should like to ask the Senator what difference he sees between the Kellogg legislature so constituted and a lgislature which, though lawful when it met, was captured by military force.

Mr. THURMAN. Mr. President, I hope to say something about the Louisiana legislature next winter, if I can get a chance to do it. I am not going into a discussion of Louisiana matters here. The Lord knows when I shall get done if I were to answer such questions as these.

I say that the legislature of Ohio, which is now in session in Columbus, is a legislature, and would be if you had ten thousand troops around it, and none the less a legislature, too, if it were menaced with violence in case it did not pass a particular bill or do a particular act, as in the case where Lord George Gordon's mob surrounded the House of Commons. It might have no free choice, and it would be right to say that a man who was chosen by it under those circumstances, that is, who had the forms of choice, was not the choice of the legislature. Certainly that would be a case of plain duress. And now I want to put to my friends: Suppose a legislature with a thousand bayonets around it, or with a mob like that of Lord George Gordon, crying out, "Elect CALDWELL, or die," had elected him, would you, if those members of the legislature should come here, and at your bar tell you, "We would have voted for CALDWELL anyhow, if there had been no bayonets, no mob there;" would you say that that was a valid election, or would you say it was no election at all? Would you, for one moment, think of allowing members of the legislature to say that, under circumstances like that, "that violence did not make any difference with us; we would have voted for him anyhow?" No, Senators, you would not do any such thing. You would say, "That election is void whether these members of the legislature voted according to their prepossessions or not; although every man of them preferred CALDWELL to anybody in the world, that election, under those menaces and with those bayonets around them, is a void election. We will not allow men to change around afterward, and, contradicting the plain truth, say that, under these circumstances, they had a free choice." No, sir; it is not simply a question whether the member had a free choice; you would say in such a case as that conclusively, and not allow it to be rebutted, that they had not free choice.

Mr. President, there is one case, then, in which it is admitted that you can go behind the formal vote. I think I can find others in which you could go behind it, and in which you would declare the election to be void. I think I can conceive of others in which you could do so. I can conceive of a case in which a legislature was imposed upon and made to vote for a man under a false personation or the like, and in which the Senate would declare his election void for the fraud. I think I can conceive of such a case as that, and it would be very easy. But we need not go on speculating about cases. Bribery was a crime at the common law, and bribery avoids elections in every civilized country on the globe. There is not a single one in which bribery does not avoid an election. In our own country it avoids it in every State legislature; it avoids it in the other House of this Congress; and if this Senate shall declare that bribery does not avoid an election to the Senate, it will have the unenviable dignity of being the only body on God's earth in which a man can buy a valid election with money. It militates nothing against this argument that the courts cannot declare a law invalid because its passage was procured by bribery. Of course they cannot, for the judicial power extends to no such inquiry. But our power, by the express terms of the Constitution, does extend to an inquiry into the validity of an election of a Senator.

Mr. President, perhaps it is not necessary to go into the question whether a legislature, in electing a Senator, acts as a body of electors or whether it acts as a legislature. But upon this subject one thing is very certain, namely, that unless you give to the word "legislature," in the clause of the Constitution under consideration, the interpretation given to it by the Senator from Georgia, [Mr. NORWOOD,] who spoke so ably this morning, that is, as descriptive of a body of persons, the mode of electing Senators from the foundation of the Government to this day in most of the States has been plainly unconstitutional, for in the great majority of the States, from the very beginning, Senators were elected in joint convention. It is unnecessary for me to say that a joint convention is not a legislature in the strict sense of the term. Everybody knows that it is not; everybody knows that it cannot be; that it would overthrow the very idea of the Government to say that that was a legislature. In all the United States the legislative power is partitioned between two chambers. The idea of a single chamber has no foot-hold in American institutions. Members are elected to a senate and members are elected to a house of representatives, and the house is usually much larger than the senate, and yet the senate has equal power in legislation with the house; but if they were thrown into a joint convention to pass a law the superior numbers of the house would perfectly override the senate, and the whole idea of the checks and balances and better consideration of measures derived from two chambers would be lost. Why, sir, nobody would pretend that the legislature of any State, or that this Senate and House of Representatives, could get together and enact a law.

Mr. BAYARD. I ask the Senator whether he considers it necessary for a republican form of government to have two houses of a legislature; whether you cannot have a republican government with a single house, and whether our own Confederacy, which was a republic, had not but a single house?

Mr. THURMAN. I was not dealing with what would be a republican government.

Mr. MORTON. Is that question involved in this case?

Mr. THURMAN. I have so much respect for my friend from Delaware that I am sure it must be or he would not have asked the question, because he is not given to asking impertinent questions. I therefore think it has some connection with this issue, but I confess I cannot see that it has.

Mr. BAYARD. If I may give the reason for my question, I will do so.

Mr. THURMAN. I shall be pleased to hear it.

Mr. BAYARD. I asked the question because the Senator from Ohio had stated that when the two houses met in joint assembly they no longer were a legislature; that the Constitution requiring that the legislature shall choose, and pointing out the method, yet the fusion of the two houses in the joint assembly, in his viewing, destroys the legislative character of the body and makes them a mere electoral body. Now it occurs to me that if it were true that they were a body of mere electors, directed by Congress for the purpose of performing this duty, then Congress would have the right to look into their qualifications. Why will you not look into their qualifications? It is because they are a legislature. It is because the constitution of the State makes them a legislature. It is because the constitution of the State alone determines their qualifications and puts it beyond the power of Congress to examine into them. Now, sir, if they are a mere body of electors, what prevents the Senate from testing their qualifications? If they are a legislature, you admit the Senate cannot. Therefore I say that my question had pertinency, because the Senator seemed to consider that because they were a single body they could not be a legislature. I conceive that a republic can perfectly exist with a single legislative body, although our form of republics, following in the framework of the country from which we chiefly derive our laws, has two houses, to act one as a check upon the other; and yet it is well known that the Confederate Congress was a single body, and we had republics in existence at that time.

Mr. THURMAN. I must confess that it proves the extreme sagacity and far-sightedness of my friend that he finds in the question he put to me, whether there might not be a republican form of government with one chamber, a pertinency to what I was speaking of. I was speaking of what constitutes a legislature, and not about the qualifications of its members. But I do not know that it makes much difference how this question is argued. We are all attempting to arrive at the truth, and I am perfectly willing to consider my friend's suggestion, although, if I speak longer than I intended to do, I hope the Senate will put to my credit the fact that interruptions have necessarily prolonged my discourse.

It does not make one particle of difference, as to our right to inquire into their qualifications, whether you call the legislature that elects a Senator, in the act of election, a body of electors, or whether they are, strictly speaking, a legislature. As to the question of our right to inquire into their qualifications, it makes not the least difference in the world. I will suppose them to be a body of electors. Who is it that constitutes that body of electors? The members of the legislature; and, as I said before, who are members of the legislature is determined by each house of the State legislature itself, and conclusively determined. So there is nothing in that argument that, if they are to be treated as simply a body of electors, we should have a right to inquire into their qualifications. We would have a right to inquire this far, have they been seated there, or are they recognized by each house as members of that house? That is all. There your inquiry stops. There you are met with a piece of conclusive evidence which you are not permitted to rebut.

I say once more that if the election of a Senator is a legislative act, then the Constitution has been violated from the first election down to this day; then your act of Congress regulating the time and manner of election is flagrantly unconstitutional. Why so? Because under this act of Congress (and one of the very reasons for enacting it, too, was this fact) if there is no selection of Senator on the first day, on Tuesday, then the two houses are required to meet in joint convention the next day, and a quorum to do business the next day and proceed to the election of a Senator is not a majority of each house, but is a majority of the whole number of the members of the legislature, of both houses together, who have been elected, and that majority of all the members of the legislature, of both houses, may proceed to the election of the Senator; and the consequence, therefore, is, that if on Tuesday there is no election and the next day the senate, being the smaller body, should refuse to go into joint convention at all, the house, according to your law, may elect a Senator, it having a majority of all the members elected. But is that a legislature in which there is no senate, when the State constitution declares that the legislature shall consist of a senate and house of representatives? No, sir; in accordance with the history of this Government, with the practice under this Gov-

ernment, and with the act of Congress, you cannot treat the election of a Senator as a legislative act.

But let me put another question to my friend. What will he do in those States in which every legislative act must receive the sanction of the governor before it takes effect? Must there be the sanction of the governor to the election of a member of the Senate of the United States? He will say it is foolish to ask such a question, because the Constitution of the United States provides that the Senator shall be elected by the legislature. Yes, sir; it does so provide, and it does so provide with full knowledge of the fact that at the time that Constitution was adopted there was scarcely a State in this whole Union in which the approval of the governor was not necessary in order to the creation of a law. The very fact that that is the case does most powerfully tend to show that by the word "legislature" as here used is meant that collective body of individuals who are members of the legislature, not the legislature in a technical sense as a law-making body.

Mr. STOCKTON. I should like to ask the Senator from Ohio a question.

Mr. THURMAN. Certainly.

Mr. STOCKTON. I should like to ask him to explain the Harlan case. I should like to hear him comment on that case in the view he has just expressed.

Mr. THURMAN. I think the Harlan case and I think the Indiana case would strengthen what I have said. I should think it would be pretty difficult to maintain that that body which elected Fitch and Bright was in a legal, technical sense the legislature of Indiana. It seems to me it would be very hard to maintain that proposition. As to Harlan's case, the facts are not fresh in my memory, and I beg my friend not to read a page from the *Globe* to tell me what they are, but to read it after I am through.

Mr. STOCKTON. I shall not read a page from the *Globe*, but I would like to explain——

Mr. THURMAN. I beg the Senator not to do it. I am tired. Senators do me too much honor. They seem to think I am able to explain everything, and I confess I am not. [Laughter.] I do not see very well how the Senate ever could have held that those Indiana gentlemen were elected, except upon the theory that the legislature spoken of in the Constitution that elects a Senator is a body of electors who are members of the legislature. That was a case in which the senate of Indiana refused to go into joint convention, and the house of representatives, or rather a majority of them and a minority of the senate, did go into joint convention and elected Senators, and as they constituted a majority of the whole body of members of both houses, the Senate held the election to be good. Those are briefly the facts as I now remember them.

Mr. STEWART. Everybody knows the decision was wrong.

Mr. THURMAN. Everybody does! I do not know it. There were wise men in Gotham at that day as well as there are now. It may be that all others knew it, but I was not aware of it.

Mr. STEWART. Either the State or the United States prescribed the method, and in that case they violated both.

Mr. THURMAN. The United States had not prescribed a method.

Mr. STEWART. The State had, and they violated it.

Mr. MORTON. The State had not, by law, but only by usage.

Mr. THURMAN. Congress had never prescribed any rule.

Mr. STEVENSON. Nor the State either.

Mr. THURMAN. Nor the State either.

But, Mr. President, it is said that expulsion is the remedy. Now, I want the attention of my friend from New York, [Mr. CONKLING,] who put Brother NORWOOD through the greater and lesser catechisms both. He says, suppose a legislature should elect a man guilty of murder to the Senate of the United States—that was the question of my friend from New York—would he hold the election void because they had elected a homicide? And, assuming that that must be answered in the negative, then he put the question, could we not expel that murderer? Would we allow him to sit here among us?

Mr. CONKLING. My friend will allow me to say that I did not put that question.

Mr. THURMAN. I thought that was the question.

Mr. CONKLING. If I can state the question without interrupting the Senator, I will do so.

Mr. THURMAN. I will yield, provided the Senator will state the question, and not make a speech.

Mr. CONKLING. Only the question. The Senator from Georgia put to us this case: suppose a man were indicted, after his election, for bribery, of which he had been guilty, and were convicted, and the record of his conviction were sent to us, would it not be absurd to hold that we must admit him and then expel him? In answer to that, I said, suppose, after his choice by the legislature, he had been, in the same way, by the same court, convicted of perjury, arson, or murder, and the record should be sent here, would it not be equally absurd to admit him and then expel him; and yet, could we say he was not elected?

Mr. THURMAN. That was exactly as I understood it, and I was just going to try to convince my friend that the two cases are not parallel, and that it would not be equally absurd. You might very well say that if a legislature saw fit to elect a pirate, or a perjurer, or the like, we could not say that that would avoid the election, because we do not find anywhere in the parliamentary law that that has avoided an election. That does not go to the election itself; it is not part of the *res gestæ* of the election. But now I put it to my friend if it would not look a little odd for us, (supposing the proof to be before us, when a man presents his credentials, that he obtained his seat by buying the legislature, by bribery—no question about the number: he bought enough, bought them all—and we have the undisputed facts before us, would it not look a little strange for us) to pass at twelve o'clock in the day a resolution that the election was valid, and that he be sworn in as a Senator, and at half past twelve o'clock expel him upon the ground that he had obtained his election by the very bribery of which the Senate had ample proof when, half an hour before, it permitted him to be sworn in? First, hold the election to be valid, notwithstanding the bribery, and, in the next breath, say although he may be sworn in, he shall be instantly expelled because of that bribery! It does seem to me that that would present a very odd state of case, and yet, if the Senate shall decide that bribery does not go to the election, we will be necessarily driven to that absurdity. I think it would require a good deal more metaphysics than common people possess to understand such a decision as that. I can understand why men who want to buy seats in this body may like a doctrine like that, which puts them under the protection of the rule requiring a two-thirds vote to expel; but why anybody who reasons simply according to logic and truth can find it consistent to declare in one breath that the election is perfectly valid, and in the next breath declare that, on account of the very *res gestæ* of that valid election, we should expel the man whom you have sworn in ten minutes before, I confess I cannot so easily understand. I can, indeed, comprehend it, but I cannot appreciate it.

Mr. President, I have occupied far more time than I expected, and far more than I should have done but for these pleasant little questions and interruptions that have taken place, and which so enliven a dull speech that I am always happy to be interrupted in order that I may not wear out the patience of the Senate. Having stated all that I deem it necessary to say in vindication of the vote that I shall give in favor of the resolution reported by the committee, I leave the subject.

Mr. CONKLING obtained the floor.

Mr. CARPENTER. Will my friend give way to a motion to proceed to the consideration of executive business?

Mr. CONKLING. Yes, sir.

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

The motion was agreed to.

COMMITTEE ON TRANSPORTATION ROUTES.

Mr. WINDOM. While the doors are being closed, I ask leave to offer a resolution, to be printed and laid on the table:

Resolved, That the Select Committee on Transportation Routes to the Sea-board be authorized to sit at such places as they may designate during the recess, and to investigate and report upon the subject of transportation between the interior and the sea-board; that they have power to employ a clerk and stenographer, and to send for persons and papers; and that the expenses attending such investigation be paid out of the contingent fund of the Senate upon vouchers approved by the chairman of said committee.

The resolution was ordered to lie upon the table and be printed.

PAPERS WITHDRAWN.

On motion of Mr. CLAYTON, it was

Ordered, That John L. Buck have leave to withdraw his petition and papers from the files of the Senate.

On motion of Mr. CONOVER, it was

Ordered, That Commodore Edward Middleton have leave to withdraw his petition and papers from the files of the Senate.

EXECUTIVE SESSION.

The Senate thereupon proceeded to the consideration of executive business.

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

IN THE SENATE.

WEDNESDAY, *March* 19, 1873.

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

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

PROGRESS OF BUSINESS.

Mr. WRIGHT. Mr. President, I desire to call up this morning, for consideration, the resolution offered day before yesterday by me, on the subject of rules.

The VICE-PRESIDENT. The question is on taking up the resolution indicated by the Senator from Iowa.

Mr. DAVIS. What resolution is it? Let it be read for information.

The VICE-PRESIDENT. It is a resolution offered by the Senator from Iowa, giving certain instructions to the Committee on Rules.

Mr. DAVIS. I suggest to the Senator not to call up that resolution until the Senate is fuller than it is now. It is an important resolution, and I suggest to the Senator from Iowa to call it up some time later in the morning, or to give notice that he will move to take it up at a certain time.

Mr. WRIGHT. If there is any objection to taking up the resolution at this time I shall not press it; but I supposed there would be no objection, as it is a mere resolution of inquiry. I do not propose to discuss it at all.

The VICE-PRESIDENT. The question is on taking up for consideration the resolution offered by the Senator from Iowa.

Mr. FENTON. Before the question is put, I should be glad to have the resolution read.

The VICE-PRESIDENT. The reading of the resolution is called for, and it will be reported.

The chief clerk read the resolution, as follows:

Resolved, That the Committee on the Revision of the Rules be instructed to inquire into the propriety of so amending the rules as to provide—

First. That debate shall be confined and be relevant to the subject-matter before the Senate.

Second. That the previous question may be demanded either by a majority vote, or in some modified form.

Third. For taking up bills in their regular order on the calendar; for their disposition in such order; prohibiting special orders, and requiring that bills not finally disposed of when thus called shall go to the foot of the calendar, unless otherwise directed.

Mr. THURMAN. Mr. President, I hope that resolution will not be taken up now. It ought not to be pressed in so thin a Senate as this. I know the Senator from Iowa says it is simply a resolution of inquiry; but it is a resolution to inquire about what the Senate itself knows just as much as any committee can know. It is an inquiry about matters entirely within our own knowledge. The only duty a committee could have would be to tell us what we know ourselves, and perhaps to draw some rule according to its own notions. I do not see that it alters the case in the least that this is a resolution of inquiry.

I hope it will not be taken up for another reason. It must necessarily give rise to a long discussion; it cannot be otherwise. It cannot be that the whole practice of the Senate, from the foundation of the Government to this day, is to be overturned without due consideration. For instance, if I am in order in speaking about the resolution itself, here is a proposition that debate is to be confined to remarks that are germane to the subject under consideration. Why, sir, it was decided more than sixty years ago that the Senate would not trust its Presiding Officer with the decision of the question whether a Senator's remarks were germane; and for this very plain reason, that the Presiding Officer of this body is not chosen by the Senate; he is chosen by the people, wholly independent of the Senate, under no control of the Senate whatsoever; and to give to an officer chosen in that way the right to decide whether a Senator's remarks are germane to the subject or not, to give him a control over the debates of this body, would be utterly indefensible. But I do not want to go into the merits of this resolution unless it is taken up. I hope that it will not be taken up now, but that we shall proceed with the matter that is properly under consideration before the Senate.

Mr. WRIGHT. I must confess my utter surprise that there should be any objection to the passage of this resolution. The Senator from Ohio says that the Senate understands this question just as well as a committee does. The same thing might be said of every resolution of inquiry that is introduced here, and the consequence would be that you never would get any matter to a committee for inquiry and report to this body.

I think that the fair way to dispose of this question is, that you shall get it to a committee, let them examine it, and it may be that they will not report in favor of a single proposition that I propose in this resolution. My object is simply to get it to a committee for inquiry; let them report it here, and then we can discuss it if discussion becomes necessary. How else can we get the question before the Senate legitimately, except through a committee?

I know the questions that are involved in this resolution have been spoken of frequently in the session just closed, and indeed ever since I have had the honor of a seat in this body: whether it were better that debate should be confined to the subject-matter before the Senate; whether it were better that we have a previous question in some form; whether it were better that we take up the calendar in its order and dispose of the cases upon the calendar, or to have special orders made from time to time and have all the unseemly scenes that we have in this body in reference to the taking up of bills out of order, and the constant struggle that we have on this floor for precedence in the hearing of bills. My object simply is that we shall have these matters reported on from a committee for the purpose of expediting the business of the Senate. If, when the committee come to investigate these matters, they find it better to adhere to the rules as they stand now, then well enough. If they deem it advisable to report some amendments on these subjects, then we can discuss those amendments and consider what is best to be done. But I confess I do not see how we are to get these matters legitimately before the Senate unless through a committee. As I have already said, in answer to the suggestion that the Senate understands this question as well as any committee, the same objection might be made to every proposition to refer any question in this body.

Now, Mr. President, I am not solicitous about having this resolution pressed at this time. It occurs to me, however, that the Senate is about as full now as we can expect to have it during the morning hour at any time. If it be deemed better to pass it over for a few moments, until more of the Senators come in, I shall have no objection.

Mr. DAVIS. Allow me to ask the Senator a question. When does he expect this report? At this session?

Mr. WRIGHT. Whenever the committee get ready. I understand that if this matter is referred to the committee, they can report at the next session, the subject being before them, without a re-reference at the next session. They will have the matter in the mean time in their hands, and they can investigate, consider, and deliberate upon it during the vacation.

Mr. DAVIS. I suggest to my friend if it would not be better to wait until the next session before he presses it. We cannot be expected to stay here now for a report at this session, and it will involve a long discussion. When we come here next winter it will be time enough to consider it.

Mr. WRIGHT. Most certainly I do not expect any long discussion upon this resolution. I confess I cannot understand the sensitiveness upon this subject, nor the objection to a mere reference of a resolution. I think it but fair that this resolution should be taken up. I think it will not be objected now that the Senate is not sufficiently full. I certainly can see no reason for delaying action on the resolution.

It is said in answer to one proposition contained in this resolution that the policy and practice of the Senate have been, for sixty years, so and so. A great many things are quite as old as the matter to which Senators have referred that were better changed. If by our practice and experience here we do not improve, we live to but little purpose. I think all experience shows that, in many respects, we might change our rules, and every day but confirms me in that experience.

Mr. SHERMAN. I am sorry that my colleague objects to the reference of this resolution. I was in hopes that the Senate would, by unanimous consent, take up the resolution and then refer it without instructions to the Committee on Rules. That we must change our rules is to me a matter of clear necessity. All I desire is simply to give the Committee on Rules jurisdiction of the subject-matter, not to debate at this session what ought to be the changes of the rules. I do not think we are prepared to prolong this session to debate what rules ought to be adopted at the next session, but I think it a wise thing to give the Committee on Rules jurisdiction of the subject, so that they may consider during the recess, and report to us early in the next session, such rules as may expedite the public business.

Now, sir, I am reasonably tenacious of old things, but I am not tenacious of a rule, or a privilege, or a power that enables a single man to obstruct the order of business, to prolong discussion unreasonably, and especially to talk about the man in the moon when the immediate business of our constituents is involved. The practice that has grown up in the Senate of engaging in desultory debate about everything in the world, when we have a specific proposition before us, is an abuse that ought to be corrected; and I think the best way to do it is to take up this resolution and refer it without debate to the Committee on Rules, and let them examine the subject and report at the next session of Congress. It is manifest that they ought not to report at this session, because it would protract the session longer than probably we should be willing to remain here; but let us direct the attention of the Committee on Rules, which is fairly constituted of old and experienced members, to the subject-matter, and let them report at the next session such modifications of our rules as, without creating any great changes, will enable us to transact in order the public business. I shall therefore vote to take up this resolution, and will then, if no one else does, move to refer it, without instructions or directions, to the Committee on Rules, merely to give them jurisdiction of the subject-matter.

Mr. BAYARD. Mr. President, I look with great disfavor upon this proposition; nor do I know of any justification for the charge that the public business has been obstructed by the forms of debate in this body. I do not mean to say that members may not at times have grown impatient, especially those whose power was assured, and who were therefore eager for the victory which was sure to come to them by force of numbers. As to the obstruction of public business, as I say, I know of none. I can think of no instance of it. Will it not be time enough to make this change in the rules of our debate when experience has shown the necessity for it?

Free speech is what was intended to be secured by the rules, as we now have them. Free speech is what we have had under them, and without meaning to make an issue of fact with the honorable Senator who has just taken his seat, or with any other Senator on this floor, I must declare that in my experience in this body I have known no abuse of the privilege of debate. On the contrary, I have known great advantage to come from it. The majority have it in their power to enact measures into laws. Leave, then, at least, to those who oppose you, the privilege of protest and the privilege of giving the reasons for their protest. "Strike, but hear;" and do not hasten so to strike without hearing.

I shall at all stages oppose any proposition that undertakes to limit debate beyond the just discretion of members here. There is a personal responsibility of men to their country and their constituency on this subject which ought to be sufficient, which, in the past, has proved sufficient, to protect the country. As I have said, I look with great disfavor upon the proposition of introducing any gag-law into the rule of debate in this body. There surely is no necessity for it upon the ground of public business, and no mere expediency will justify it. Gentlemen may be a little fatigued sometimes at hearing views opposed to their own in this chamber, but they should recollect that, after all, it is a poor privilege for men to speak when defeat certainly awaits them at the end of the debate. The minority know

that fact; and so long as it is possible to appeal to the reason, and by argument to produce a change in votes, the time is well spent, and I trust it will not be the disposition of the Senate to shorten it. It will be time enough to set on foot these rigorous measures when an abuse has occurred. I do not admit that it has occurred yet; I do not think it can be justly said to have occurred yet; and I therefore hope the Senate will indicate their unwillingness to take the first step, even, for referring for information a resolution of this character to a committee.

Mr. CARPENTER. Mr. President, I entirely concur with the Senator from Delaware who has just taken his seat. There ought to be one place in this Government where there can be, not only free debate, but full debates. There is another body of very honorable men, to which I cannot refer, but of which I have heard more or less, of whose doings I have seen some things, where a previous question obtains, and I certainly shall never vote nor give the slightest encouragement by any vote of mine to establish a previous question here.

When has this privilege of debate ever been abused? In the four years I have been here, never within my knowledge. On two or three exciting occasions we have "sat it out," as the phrase is; we have spent the night. Is it not far better for Senators to take that inconvenience once or twice in the course of a session than it is to establish a binding rule here, which substantially stops debate? In my judgment no time will be saved by it. A man is making a speech. Some one gets up and calls him to order, because he is wandering from the point. It is a very nice question to determine, until a man has got through, whether he has been wandering from the point or not. There is a great deal of collateral learning that may be at the end of a speech brought in and tacked on to the subject, which seems while it is progressing to be entirely irrelevant. Some man thinks the speaker has got over the line; he gets up and calls him to order; the Chair sustains the point of order; he appeals, and then we go off into a debate on the point of order, as to whether the man speaking is inside the rule or outside. In my judgment any attempt to establish such a rule here would waste the time of the Senate, for it cannot be expected that Senators who desire to discuss a measure, and who think they are within the rule, if they should be called to order, and ruled by the Chair to be out of order on that subject, would submit to it without a pretty full discussion. When you get to the question of the appeal from the decision of the point of order, then you are certain to hear the man say what he desired to say, for the purpose of showing that his speech was in order, and that would bring you right back where you were before, except that you would have had the row and ill-feeling that result from a point of order sustained and an appeal taken to the Senate.

My friend from New York [Mr. CONKLING] suggests that a row is always in order. I think it is. It tends to purify the atmosphere. I am for a row myself; but at the same time I prefer to have it out of the regular course of business rather than in it.

As the rule of free debate, in my judgment, since I have been here, which is a very short time, of course, has never been abused, I take it it never was before, or it would have been changed. I certainly shall not vote for a change, and I shall vote every time I can get a chance not to change it.

Mr. CASSERLY. Mr. President, I am in favor of a reference to the Committee on Rules with respect to the third division of this resolution. I agree that there should be some rule as to the orderly and convenient taking up of bills. The effort and contest frequently required here to enable a Senator to get the floor to call up a bill are such as ought to be remedied, if possible. This difficulty with a diffident person almost disables him from properly attending to the most necessary business committed to his care. We should have a rule by which every Senator should have his day, as of right, in getting a bill in his charge before the Senate. Hence, if this resolution shall be amended, as I shall ask the Senate to amend it, by striking out the first and second divisions, I should have no objection to it.

But, Mr. President, for one, I am not willing to leave to any committee the right to report, or even to consider, whether we shall have a previous question in this body or not. Of this I will speak again presently.

That debate should be confined to the subject-matter before the Senate I agree is desirable; yet, I say no rule is required on the subject. In my time here, more than four years, I call to mind but a single case where, by a deliberate act of a Senator, there was a discussion of an important subject entirely foreign to the question then before the Senate. I am reminded there was one other case of the same kind. It was where a Senator, about to leave this body, and unable to obtain any other opportunity to express his views on a subject which the Senate had charged him and others with in committee, was compelled to avail himself of that mode of addressing the Senate. Thus there were two cases in more than four years, one of them a case of absolute necessity, where the subject, the Louisiana case, was one of the utmost gravity; while the other and the earlier case was one of great gravity, in which a good many Senators were very desirous of hearing the Senator who spoke.

The Senator from Wisconsin [Mr. CARPENTER] never was more correct than when he said just now that the contests certain constantly to arise upon points of order made with respect to the real or supposed irrelevancy of a speaker, would consume more time than the speech if it went on. Yes, sir; they would consume a great deal more time in a single session of this body than has been consumed in my four years by all the irrelevant speeches and remarks I have heard here. Who is to judge of what is irrelevant? Some minds in debate operate in one way, some in another. One of the ablest men I ever knew among the many able men at the bar of San Francisco, a lawyer from Indiana, Mr. Lockwood, now dead, had a mind of that capacity that he approached his subject from its extremest verge, sweeping toward it in great circles, like the condor of the Andes, still contracting them as he moved, until with one swift swoop he rushed straight in triumph at his point. I have myself sat listening to him when I could not see what his argument had to do with his case, how the splendid march of his concentric circles was ever to reach the point; but he never failed to make it plain enough before I heard him out. Now, sir, Senators may discuss questions in the same way, and the great questions often before us are of that character that they may well be so discussed. Is such discussion to be ruled out of order, as irrelevant, because of the various mental vision of Senators?

The proposition for a previous question is still more objectionable. Such a rule is simply a power in the majority for the suppression of debate. To such a rule I never can consent. The Senate of the United States, at least, should have an unlimited freedom of debate. How wretched is the condition of a minority which has not the poor privilege of making its complaints to the country! I do not think, sir, the experience we have had of the workings of the previous question in the legislative history of this country is calculated to induce us to adopt it here. Why, sir, it is the destruction of all true parliamentary discussion. If it be true—though it is not I who say so—that parliamentary oratory in its best sense has almost disappeared from one House of Congress, as is said by many of our best thinkers on the subject, it is owing undoubtedly more to the previous question, with its natural ally, the one-hour rule, than to any other one cause. Such are my convictions on this part of the subject that I, for one, will never so much as vote to take up a resolution which implies that the previous question in the Senate is even open to consideration.

I do not wish to occupy time in discussing this motion to take up. My own judgment is that, instead of bringing forward matters now that can better be deferred or wholly omitted, we ought to confine ourselves to the special business which has kept us here thus far, and dispose of that, so that we may adjourn. In any view, the first and second divisions of this resolution should be struck out, and I now move to amend it by striking them out.

The VICE-PRESIDENT. The Chair would suggest to the Senator that the question is on taking up the resolution for consideration.

Mr. CASSERLY. I am happy to be corrected. I am opposed to taking it up, because I am not willing to vote that the Senate will consider or refer to a committee the possibility of the previous question.

Mr. THURMAN. Mr. President, I wish to say a few words more. The Senator from Iowa says that if this resolution is not referred to a committee, it is of no use to refer any resolution to a committee. I do not see the force of that reasoning at all. We can refer an inquiry to a committee very properly where we are not ourselves possessed of the facts. We can refer to a committee a question of law which we have not had time to investigate; that is all right enough; but in respect to the subject-matter of this resolution, no committee can enlighten the Senate at all. Let us see what it is:

> That the Committee on the Revision of the Rules be instructed to inquire into the propriety of so amending the rules as to provide—
> First. That debate shall be confined and be relevant to the subject-matter before the Senate.

Pray, what light can the committee give us by any inquiry it may make on that subject? Every Senator must act upon his own knowledge. The committee will not go outside of the Senate to furnish any fact whatsoever. It can only refer to the experience of the Senators themselves; so that it can shed not one particle of light upon the pathway of duty of the Senate in this particular.

Then what is the next?

> Second. That the previous question may be demanded either by a majority vote, or in some modified form.

They are to inquire into the propriety of a previous question. What light can they give us on this subject that we do not possess already? None whatsoever, absolutely none. What, then, is the necessity of making any such reference at all?

Then comes the third division:

> Third. For taking up bills in their regular order on the calendar; for their disposition in such order; prohibiting special orders; and requiring that bills not finally disposed of when thus called shall go to the foot of the calendar, unless otherwise directed.

There is nothing that any committee can report to us on that subject that we do not know already. No light can be thrown on that question by the report of a committee. All that a committee could do, if this resolution should be referred to it, would be to report against altering the rules, or, if it were in favor of altering the rules, then to report some new rule.

Now, if the Senator from Iowa wants the rules altered, why does he not proceed in the usual way? Why does he not introduce a new rule, and let it be referred to the Committee on Rules, as has been done again and again, and I believe in almost every instance in which the rules have been changed? He cannot be prevented from introducing such a resolution, altering the rules, and that must go to the

Committee on Rules, according to the practice of the Senate. He cannot be prevented from introducing such a resolution; and if he thinks there is a necessity for changing the rules, there is no reason whatsoever for referring this resolution to the committee. He could introduce his resolution to change the rule, or introduce some new rule, such as he supposes ought to exist, and then we should know what kind of thing it is he asks the Senate to adopt.

But, Mr. President, upon the general question, like the Senators who have spoken against taking up this resolution, I am opposed to any such rule as is provided for in the first and second clauses of this resolution, and for the present I do not see the necessity of such a rule as is provided for in the third clause. I say that this Senate has always transacted the most business, and transacted it in the best manner, when it had the fewest rules, and I say that the court that has the fewest rules always transacts the most business and transacts it in the most satisfactory manner; and I repeat what has been said by my brethren here, that there has been no culpable waste of time in debate in the Senate.

Why, Mr. President, let me say that this matter goes still further. The moment you adopt a previous question in the Senate—the moment you confine and limit debate as the first clause of this resolution does—from that moment the weight and power and influence of the Senate in this country will begin to decline. Sir, there was a time when the House of Representatives was the great power in this Government. Then the Senate sat with closed doors, and no word of its debates went to the country; but from the moment the Senate opened its doors and debated in public, the influence of the Senate began to increase, until its relative influence in the country became greater than that of the House of Representatives. But, sir, it would not have become greater than that of the House of Representatives, even with open debate, had it not been for the hour-rule which was adopted in the House of Representatives, and its previous question. That is the truth about it, and long-sighted men in that House saw it and predicted, when the hour-rule was adopted, that that was signing the death-warrant of the influence of the House of Representatives in this country; and it has proved to be true.

Sir, begin this in the Senate, curtail debate here in some impatient haste of a majority that cannot bear to hear even discussion of questions, in that spirit of despotism that would stop all debate whatsoever, in that spirit that says that deliberative bodies in which public measures are discussed are a nuisance, and that it is best to have no discussion at all—let this first step be taken, and from that very day the decline of the influence of the Senate in this country will begin.

Mr. President, there is no necessity whatever for this measure. I can speak for my friends on this side of the chamber. I can appeal to the record. Who have been here in greater proportion to their numbers, during the long and tedious and weary nights of the session that we often have, when there is no speaking against time, when there is no disposition whatever to waste time, but when we are compelled to sit here in order to discharge our public duties and do the public business? Look at your journals and see what party in this body is here in the greatest proportion of its numbers. I venture to say that, for the four years I have had a seat in this chamber, the democratic party has been the party that made a quorum in the Senate nine times out of ten. So far from stopping public business, so far from factious opposition to public business, the few democrats in this chamber, only ten of us when I took my seat here, have sat here night after night to make a quorum, when more than half of the republican Senators were out of their seats or in their beds.

No, sir; there has been no disposition to make factious opposition. I recollect three great occasions, in the four years I have been in the Senate, when the minority have made the majority sit a bill out all night long; but those were under circumstances that would justify any minority in taking that course in order that they might make the passage of those measures a thing of mark and of note, that the attention of the country might be called to them. There has been no such abuse as is here complained of. Sir, the fewer rules you have, and the more you trust to the honor of Senators, to their character, their reputation, their responsibility as gentlemen and as Senators, the more pleasantly and the more readily will you get through with the public business.

Mr. WRIGHT. If this debate has satisfied me of anything, it is as to the propriety of making the reference I ask. The simple proposition now before the body is, will you take up this resolution? And yet, in the face of the rules of this body, Senators have occupied time here in discussing the merits of the questions that are involved in the resolution itself. I say "in the face of the rules of this body;" and the necessity of having some rule by which we may be enabled to restrain debate, at least within the rules, is apparent from what has already occurred here.

Again, I confess my surprise that for the first time in my experience in this body, on a resolution of simple inquiry and a question of its reference to a committee, not to report at this session but to report at the next session, instantly the whole merits of matters that may come before the committee are brought before this body for discussion. Frequently we know it occurs here that we offer a resolution of inquiry for the very reason that we are not prepared to discuss the merits of the question, and it is accorded to the Senator who offers the resolution that the reference may be made and the inquiry had, for the reason that he is not then prepared to discuss the question, that it may go before a committee, the committee make its report, and he then be heard. I undertake to say it has not occurred here for two years that any Senator has offered a resolution of inquiry and it has been denied to him before. I say it is unfair that Senators shall discuss the merits of this question when I have offered a simple resolution of inquiry and ask that it go to a committee.

My distinguished friend from Ohio asks, why not offer a rule and have it referred? For the very reason that you would do just as you are doing now, insist that the Senate understands that question just as well before a reference as it would after a reference, and that therefore it ought not to be referred. If I had offered rules here in the spirit of the resolution I propose to refer to this committee, the Senator would have risen in his place and said, "We understand this question just as well now as we can after it comes from the committee, and why let this resolution go to the committee?" I think the fair, reasonable, and just way is that you shall refer those questions to a committee; let them consider them and bring them before the Senate, and then we shall discuss them if discussion becomes necessary.

I am not here to say whether debate has been improperly prolonged or not upon questions in this body. I am not prepared to gainsay the truth of what Senators have stated here. I know, however, if you take that grand jury who go to make up the people of this nation, they will differ very widely from Senators on this floor as to the range of debate here. I remember less than a month since, when we had the question of enlarging the endowments to agricultural colleges before us, for three days upon that bill we discussed the Louisiana question; and so it has occurred from time to time here in this chamber.

I say I do not enter into the question of the propriety of changing the rules in the direction I have indicated, nor is it necessary that I should do so. I do not know what the committee may report; I do not know, when they have reported, what I shall do upon the question; but I say it is but fair to me, it is but fair to the Senate, it is but fair to the sentiments which have been expressed here, that the question should go to the committee at least, and they consider what it were better to do, and when their report comes in, Senators can discuss the question as much as they please, and we shall arrive at a conclusion, I doubt not, that will be just and right.

But I have yet to find in my experience in this body that when a simple resolution of inquiry is offered, that binds no one, concludes nothing, when we are seeking for light from a properly constituted committee of this body, objections have been made to such a reference. All I ask is that this resolution be taken up and referred. That there are some matters in this resolution that strike Senators properly, no one pretends to deny. Whether I shall be in favor of the previous question, whether the Senator from Ohio shall be in favor of it, when the committee shall report it in some modified form, we cannot undertake to say now. It may be that it may be reported back in such a way that we could all agree upon it. It may be that the committee may report that it is not better to confine debate at all. Whatever their report is, we can consider it when it comes in. All I ask is, in fairness and in justice, that this resolution may be taken up and the reference made and time given to this committee to investigate, and when the report comes in we can consider it.

Mr. STEWART. I hope that this resolution will be referred to the Committee on Rules, and that the subject will be carefully examined. I do not know that we can so amend the rules as to avoid difficulties which now exist in the transaction of business; but it is manifest that there are serious difficulties, that important measures frequently are not considered for want of opportunity to get them before the body, measures to which there is no real objection. We have tried a rule which allowed one objection to carry a bill over, and under that rule objections were made frequently before the bill was read, before there was any consideration of it. Somebody wants to take up some other bill, and he objects merely because he wants the time for some other purpose, and will not allow any explanation as to its merits. I do not like the rule known as the ANTHONY rule, and shall never vote for it again, because I have seen a great deal of difficulty in its administration.

Then it is manifest that at the close of a session we do a great deal of business hurriedly, without time to properly consider it. The legislation of the last few days of the last session, if you will look it over now, will show clearly that we ought to have had more time to digest it. For instance, in the salary bill the President's salary is twice provided for. Would that have been done if we had had sufficient time to consider it? And in the case of a large number of officers, there are provisions for double salaries in your salary bill.

Mr. THURMAN. That was simply to make it sure. [Laughter.]

Mr. STEWART. It shows that there was not sufficient time given to consider the subject properly.

Mr. CASSERLY. If the Senator from Nevada will allow me, probably that may have been done with this intention—to give a choice, so that they might take the low salary if they felt so inclined. [Laughter.]

Mr. STEWART. It shows the hurried manner in which business is transacted near the end of the session. There ought to be some means devised whereby important legislation could be terminated before the last moments of the session. I hope this resolution will be referred to the Committee on Rules, and that they will consider the subject and see if there is not some way of giving all important legislation a fair opportunity to be considered, so that we may transact our business in some order. I think we do spend time in discussing

irrelevant questions which would be better devoted to the matters really under consideration.

I differ entirely with those who say that the debates in the House of Representatives are less pointed in consequence of the previous question. I think if you take up the *Congressional Globe*, and look at the index, you can find the subject-matter in the speeches there more readily than you can in the Senate. If you undertake to find the matter discussed in the Senate, when you look at the bill under consideration, and then attempt to trace it up, you will find the discussion was on some other subject altogether. The debates in the House of Representatives are more direct, more intelligent, throw more light on the subject under consideration, and are more easily found, and you can tell what was before the House more readily than you can in the Senate. I think the comparison of the debates of the House and the Senate speaks very favorably for the House, because there they economize their time more and speak more directly to the question, and there is not so much irrelevant debate. I undertake to say that the *Congressional Globe* will show that fact.

I do not know about a previous question. I think perhaps we ought not to have a previous question in the same way the House has it; but there ought to be some way of limiting debate, as the number of the Senate is now so large, and there ought to be some rule by which all important measures can be considered, and there ought to be some way by which the last days of the session shall be relieved from the great pressure of business. The whole business of the session should not, as it were, be forced in a funnel and crowded through without any consideration. Some rule ought to be adopted by which business can be considered in order, so that one man shall not have it in his power to prevent the consideration of an important measure, because he has charge of another that he desires to have considered.

If the committee could so modify the rules as to enable us to avoid some of these difficulties, it would be well. I should like to see the whole subject, without any indication as to what ought to be done, referred to the committee. I believe the Committee on Rules, composed as it is of experienced members, may bring forward something at the commencement of the next session that will remedy the difficulties under which we now labor. I do not want to see any rule adopted that will cut off any reasonable debate; but it would be a great gratification if you could take up the *Congressional Globe* when a bill was under consideration, and the subject under consideration, as indicated by the index, would have some reference to what was discussed, so that you could find it, and not discover that a Senator was discussing every other question except the one under consideration.

Mr. CARPENTER. Then it is a mere question of making an index. That is a remarkable reason for limiting debate in the Senate, merely that a proper index may be made!

Mr. STEWART. Does the Senator from Wisconsin believe that a man has been made, or ever will be made, by the newspapers, or by anybody else, who will be able to make an index to these rambling reports?

Mr. CARPENTER. My friend, I think, is the man who could do that to perfection. I should refer it to him, and not have the slightest doubt as to the result. Take the illustration put here: it is said that on an agricultural bill we spent two days discussing Louisiana matters. Is there not some way, in making up the digest, or index, of referring to the Louisiana matter, although its discussion came in on the agricultural bill, that bill being laid aside informally? I do not see the difficulty.

I want to say, in this connection, that I am for an index to our reports for the purpose of illustrating how debate can be prolonged here, and how it can be avoided. I give notice that on an early occasion I shall introduce a bill providing for an index and digest of all the congressional reports, which will obviate entirely the difficulty which my friend now has. [Laughter.]

Mr. STEWART. The Senator from Wisconsin has been my candidate for President for a long time, [laughter,] simply because I thought he had some executive capacity; but——

Mr. CARPENTER. Now the Senator objects to what I said about his capacity to make a digest.

Mr. STEWART. His selection of a person to make a digest shows me that he is unfit to be President. [Laughter.]

The VICE-PRESIDENT. The question is on taking up the resolution.

Mr. ANTHONY. I am not in favor of limiting debate in the Senate, but I am perfectly willing that this resolution shall go to the Committee on Rules; and, in voting to take it up, I do not wish to be misunderstood.

The VICE-PRESIDENT. The question is on taking up the resolution of the Senator from Iowa.

The question being put, there were, on a division—ayes 21, noes 24.

Mr. WRIGHT. I call for the yeas and nays on this question.

The yeas and nays were ordered; and, being taken, resulted—yeas 25, nays 30; as follows:

YEAS—Messrs. Allison, Ames, Anthony, Boreman, Buckingham, Clayton, Conkling, Conover, Ferry of Michigan, Hitchcock, Jones, Lewis, Mitchell, Morrill of Vermont, Pratt, Ramsey, Sargent, Scott, Sherman, Spencer, Sprague, Stewart, Wadleigh, Windom, and Wright—25.

NAYS—Messrs. Alcorn, Bayard, Boutwell, Cameron, Carpenter, Casserly, Cooper, Davis, Dennis, Fenton, Ferry of Connecticut, Gilbert, Goldthwaite, Gordon, Hamilton of Maryland, Hamilton of Texas, Ingalls, Kelly, McCreery, Merrimon, Morrill of Maine, Morton, Norwood, Oglesby, Patterson, Robertson, Schurz, Stevenson, Thurman, and West—30.

ABSENT—Messrs. Bogy, Brownlow, Caldwell, Chandler, Cragin, Dorsey, Edmunds, Flanagan, Frelinghuysen, Hamlin, Howe, Johnston, Logan, Ransom, Saulsbury, Stockton, Sumner, and Tipton—18.

So the motion to take up the resolution was not agreed to.

AGRICULTURAL REPORT.

Mr. ANTHONY. I offered a resolution yesterday, the object of which was to secure the printing of the usual number (and by "the usual number" I mean none for popular distribution) of the Agricultural Report. I should like to have that resolution taken up, so as to have the sense of the Senate upon it, because if it is the sense of the Senate to print the report it should be done at once, and, if not, the Commissioner should know it. It is proposed only to print the same number that we print of bills and reports, which gives one to each member of the Senate and one to each member of the House of Representatives, and the usual number to the Library and the document-room, &c. I think if that is done, then, under a general law, the Commissioner will have the right to print for his own use twenty-five hundred copies, and the Senate would have the right, by passing a resolution, to print about twelve hundred copies. That is all that the law allows.

Mr. FERRY, of Connecticut. Upon this question I must make the point of order. This is clearly legislative business, and I insist upon the point of order.

Mr. ANTHONY. The resolution is that the Commissioner of Agriculture be directed to present his report to the Senate. That is the resolution.

Mr. FERRY, of Connecticut. The law requires the Commissioner of Agriculture to make his report to Congress.

Mr. ANTHONY. But does not forbid him to make it to the Senate.

The VICE-PRESIDENT. The Chair is of opinion that the resolution is in order in the form in which it is presented. The question is on taking up the resolution of the Senator from Rhode Island.

Mr. BOREMAN. Will this resolution be subject to objection after it is taken up? If it elicits discussion, I am opposed to taking it up; but I have no objection to the resolution itself.

Mr. ANTHONY. I do not think it will elicit any discussion. I certainly should not press a discussion against the Senator from New York, [Mr. CONKLING,] who has the floor on the important matter that keeps us here, but really we ought to settle this matter before we go away.

Mr. MORTON. If there is to be any discussion, I shall call for the regular order.

Mr. ANTHONY. Certainly I shall not press it now if there is any discussion. I have no interest in the matter more than any other Senator. I only want it settled.

The VICE-PRESIDENT. The question is on taking up the resolution offered by the Senator from Rhode Island.

The motion was agreed to, there being, on a division—ayes 31, noes 11; and the Senate proceeded to the consideration of the following resolution, yesterday submitted by Mr. ANTHONY:

Resolved, That the Commissioner of Agriculture be directed to communicate to the Senate his last annual report, with the accompanying papers.

The resolution was agreed to.

The VICE-PRESIDENT subsequently laid before the Senate the annual report of the Commissioner of Agriculture.

Mr. ANTHONY. I move that the report be referred to the Committee on Agriculture and printed.

The motion was agreed to.

COMMITTEE ON LEVEES OF THE MISSISSIPPI.

Mr. WEST. With the permission of the Senator from New York, who, I believe, has the floor, and with the consent of the Senate, I should like to call up the resolution which I offered, directing the Committee on Levees of the Mississippi River to sit during the recess, and I ask the Secretary to read the resolution.

The VICE-PRESIDENT. The Senator from Louisiana moves to take up a resolution, which will be read for information.

The chief clerk read as follows:

Resolved, That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess, and to investigate and report upon the condition of the levees of the Mississippi River; also, upon the propriety of the Government of the United States assuming charge and control of the same, with a view to their completion and maintenance; and that they have power to employ a clerk, and that the expenses attending this investigation shall be paid out of the contingent fund of the Senate, upon vouchers approved by the chairman of the select committee aforesaid.

Mr. FERRY, of Connecticut. I make the point of order again on this resolution, for the purpose of ascertaining the rule of order, if we have any, as I supposed we had one decided a few days since. This is clearly and directly in the line of legislation.

The VICE-PRESIDENT. The Chair is of opinion that the point of order is well taken; that the resolution is not in order.

Mr. ALCORN. Does the Chair decide that the resolution offered by the Senator from Louisiana is out of order as being in the nature of legislative business?

The VICE-PRESIDENT. The Chair so decided.

Mr. ALCORN. The Senate has passed resolutions of a like character during its present session, and I have not heard of any question of order being made in regard to them.

Mr. FERRY, of Connecticut. I think no resolution of this character has been passed. Several have been introduced, but they are on the table.

Mr. ALCORN. I will inquire of the Secretary if the fact is not as I state.

Mr. FERRY, of Connecticut. If they have passed I did not observe it.

Mr. ALCORN. I ask the Secretary, with the permission of the Chair, if such resolutions have not been passed.

Mr. WEST. I can give the Senator the information. On the 10th of March, on motion of the Senator from Indiana, [Mr. MORTON,] the following resolution was considered and agreed to:

Resolved, That the Committee on Privileges and Elections be instructed to examine and report at the next session of Congress upon the best and most practicable mode of electing the President and Vice-President.

Giving them authority to act during the recess on a subject connected with the province of that committee.

Mr. FERRY, of Connecticut. The point of order was not taken at that time.

Mr. ALCORN. I desire that this resolution may share the fate of other resolutions of a similar nature; and, in order that the point of order may be discussed, I ask leave to enter an appeal from the decision of the Chair, and I shall call up the appeal at some other time.

The VICE-PRESIDENT. The appeal will be entered.

WITHDRAWAL OF PAPERS.

On motion of Mr. DORSEY, it was

Ordered, That H. L. Henry have leave to withdraw his petition and papers from the files of the Senate.

Mr. SCOTT. I ask that an order be made authorizing the Secretary of the Senate to deliver to the commissioners of claims the papers of Madame E. Bertinette, Charles A. Ware, Ware & Lacy, and William Bailey. In making this motion I wish to state that I have not examined the question whether the commissioners of claims have a right to grant a rehearing to parties, and I make this motion at their request, that they may decide that question, and, if they see proper, grant a rehearing in these four cases.

There being no objection, leave was so granted.

On motion of Mr. HOWE, it was

Ordered, That Anna E. Carroll have leave to withdraw her petition and papers from the files of the Senate.

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. CONKLING. Mr. President, among the evils of our times, few are so hurtful, few should be so odious, as the pollution of elections. Stuffing ballot-boxes, employing gangs of repeaters, falsifying counts, forging returns, belying and defiling elections, whether in legislatures or elsewhere, by bribery and other venal appliances—all these must be eradicated if free institutions are to be unsullied and secure. If the committee, in the case at bar, has shown us how to strike a lawful blow at this abuse in any of its forms, that blow ought to fall, crush whom it may. "More sinned against than sinning," though he be, the fate of an individual is but an incident, I had almost said a trivial incident, in the matter which proceeds to-day. But we must keep within the law. If we go beyond it, we ourselves become usurpers and ministers of wrong. If we trample on the law, we become enemies of order and of public right, be our purpose good or bad. We are not to do evil that good may come. We perform a grave, nay, a solemn, judicial duty. We are to steel our hearts against sympathy and emotion on the one side, and be deaf to applause and clamor on the other. We are to hold with unfevered hand the exact scales, knowing nothing, hearing nothing, seeing nothing but the law and the evidence. We are not to make the law, but only to administer it; we are so sworn.

What is the law of this case? What is the warrant which measures our action? Were the resolution one of expulsion, the question would be radically different. Our action then would appeal to that great right inherent in everybody, not in nations, masses, or parliaments alone, but in every human being, a right found in the first law of nature, the right of self-preservation and self-defense. Chief Justice Shaw, in the case cited from 3d Gray, has told us that there exists inherently in every legislative body the right to preserve, protect, and purge itself. Reason tells us so. The Constitution tells us so. Here is the text:

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

The majority of the committee has not invited or permitted us to proceed under this power. The discussion has been kept away from illustrating this right, and ascertaining whether the case at bar falls within it. We are summoned to interpret and exert a widely different power; and in order to adopt the resolution before us, we must interpret and exert a power as it was never interpreted before in either House of Congress, or elsewhere, in the life-time of the Republic. No word of history, judicial or parliamentary, no decision, no suggestion, no recorded authority, has been found in favor of the action now invoked.

In March, 1871, Mr. CALDWELL entered the Senate. He was regularly received and sworn in. He has ever since sat as a Senator, voted as a Senator, acted as a Senator, received the pay of a Senator, and exercised all the privileges of a Senator. His credentials are without flaw, and he possesses every qualification of a Senator known to the Constitution, and therefore every qualification which we have the right to exact. The legislature of Kansas, by a majority of twenty-five above the required number, and of fifty-one over all his competitors, elected Mr. CALDWELL Senator, at the time and place, and in the manner, required by law. Every one who voted had the right to vote, as a member of the legislature of Kansas, and to vote in time, place, and manner as he did vote. Every one voted intentionally; the votes were honestly counted and legally returned. And now, after more than two years, we are asked to declare that, in truth, Mr. CALDWELL was never elected at all; that no election took place in Kansas in 1871; and that in law the seat has been vacant all the time. Upon what ground are we asked to pronounce this tangled, incoherent, and repugnant judgment? Upon the ground that it is now believed by a majority of the committee that "some members of the legislature of Kansas" (these are the words of the report) were at heart actuated in giving their votes by impure and sordid motives. Such is the judgment we are asked to pronounce; such is the ground upon which it must rest. I cannot so pronounce; my oath, as I understand it, forbids me. This, after much serious reflection, is my conviction; a conviction held in abeyance until the discussion, day by day, established it; a conviction which will be surrendered whenever I am able to discover its error.

One of Rome's famous maxims was, "Let what each man thinks of the republic be written on his brow." In the spirit of this injunction, it is fitting for every Senator, in a proceeding like this, to avow his opinion and his reasons. And so I venture to state, more or less in full, the reasons which convince me.

The Constitution declares that the Senate shall be the judge of the elections, qualifications, and returns of its members. What does this mean? It means that the power to judge, is deposited here. It means nothing touching the scope or nature of the power to judge. It creates nothing; it invents nothing. It locates with us the judicial power in such cases; that is all. It lodges the power to judge, not elsewhere, but here. It withdraws from the judicial department a certain portion of judicial power, and reposes it with us. Suppose it had been ordained that "the Supreme Court shall be the judge of the elections, returns, and qualifications of Senators," would the power then be greater, or less, or different? The Constitution only names the depository of the power; it deals with an existing, known, and certain thing, and says it shall reside here. I say a known and certain thing, because that is certain in law which can be rendered certain, and that is known which can be ascertained and determined by the law. Must we not judge as a court would judge? Must not a court judge under the law—not under the law, as my learned friend from Ohio [Mr. THURMAN] intimated, as it happened to be at the moment of the adoption of the Constitution; but under the law as the law is at the time when the judgment is to be given? Is not this a court? The Constitution says:

The Senate shall have the sole power to try all impeachments.

Must we not try impeachments as any other so authorized tribunal would try them? Must we not ascertain the truth as any other court would ascertain it, and then pronounce it without fear or favor, as any other court would pronounce it? If an appeal would lie from our judgment in this case, must it not stand or fall on exactly the same grounds as if a court were acting in our stead? And should not a court of last resort be more circumspect and careful than any other? How many times have lawyers here heard a wise and pure judge, sitting in a court of first instance, say, "It matters little which way this question is ruled now; I will not stop to consider it, because both parties have the right of review;" but when sitting as a court of last resort, every pure tribunal must be cautious to the last degree. In proportion as a power is supreme and absolute, is the obligation to exert it carefully, supreme and absolute also. If a power be final, free from revision, high indeed is the duty not to transcend its limits and not to tread on uncertain ground.

Let us, then, banish the idea that the Senate of the United States, or any other creature of the Constitution, acting judicially, is a law unto itself. Let us see to it that we do no violence to the settled rules of evidence, nor to the established principles of law; for they are the last sanctuary of us all, Government and citizens alike. Burke said the object of all government was to put twelve honest men into the jury-box. The end cannot sanctify the means. We cannot plead in extenuation of exceeding our authority, that we have a laudable object in view. Error, is never so subtle or dangerous, as when it aims at good. The history of fanaticism is the history of error aiming at good; and the annals of fanaticism may be found in the blackest and bloodiest pictures in the book of time.

The honorable Senator from Ohio told us yesterday of the actual question before us as he understands it. As stated by the Senator, the question is, has the Senate the courage to pronounce guilt? Nay, Mr. President, I fear the question is rather, has the Senate the firmness and calmness to face popular impatience, which may charge us with approving bribery unless we declare that going back two years we can recall and reverse a political and legal event, although its nature be such as to put it beyond our reach? The question is rather, whether the Senate has the tranquillity to assert the law, unmoved by a confused and hasty, though conscientious, sentiment which may insist that we approve knavery unless we declare that we can undo and destroy an accomplished fact. The question is rather, has the Senate the high courage which can resist a strong temptation to take the shortest cut to correct a flagrant evil, if the Constitution says we must reach it by another road?

Can we determine coolly and aright the one matter of our jurisdiction? If we can, it must be by keeping in check indignation and feeling, and putting aside the aggravations of the case, and our inclination to resort to a summary remedy. Who that would determine by conscience and judgment, his right to do an act, appeals to his wish to do it? What wise and safe judge who sits down to measure the limits of his jurisdiction, inflames his impulses by dwelling upon the ulterior merits of the case? Jurisdiction is one thing; the judgment that should be rendered, in the proper proceeding before the proper tribunal, is another. In the State of New York no murder can be punished unless the indictment be found in the county in which the murder was done, or the homicide occur within five hundred yards of the county line. It was in such a case, the murder being proved, but proved on the farther side of a line not wider than a hair, that a judge said it might sometimes be the highest duty of a jury to pronounce a man innocent in law though they knew him to be guilty in fact. Such are the rugged landmarks, such the impassable barriers, separating jurisdiction and power, from the merits of the particular case in which action is invoked. Strong disposition breeds excess. Indignation, however laudable, disturbs the exact faculty of reason, as momentum displaces matter.

Every infraction of law is in itself a wrong, however praiseworthy the impulse which prompts it.

Whenever the Senate transcends its authority in order that some good may come to pass, the Senate but gilds with a new light the agonized exclamation of Roland, "O, Liberty, how many crimes are committed in thy name!" If you would recommend error, say that it will promote virtue. If you would make shipwreck of principles, show the hardship of their application in a present instance, and some advantage to flow from their violation. But if we would abide in the ancient ways of our fathers, we must watch ourselves, not when some bad end is to be gained by departing from them, but when some lofty or darling object appeals to us and dazes and captures the judgment. Wrong, is most to be dreaded when it crusades for right. Lotteries are baneful and forbidden, but you may rescue lotteries from public aversion, you may anoint them with public sanction, if you will make them lotteries in aid of churches, benefactions, or charity. Churches may be built by lotteries, but it were better they did not rise than rise on such foundations. One whose words I have double reason to remember, has said that "the endurance of a great present evil for the sake of a far-distant greater good, while it is one of the distinguishing characteristics, is also one of the most difficult achievements of the human mind." Should abstinence from unwarranted procedure stay the avenging hand uplifted now, we shall learn after many days that abstinence was wise. Socrates was a majority in Athens when Socrates was all alone with right.

There are many things which the individual States may do, and of which there is power somewhere to judge. The force and extent of the power to judge in this case, may be learned somewhat from kindred cases.

The States may enact laws, except as forbidden in the Constitution. There is power to judge of these laws and of their enactment. The field of inquiry is striking in its resemblance to the field in which we are. What are the tests by which a statute of a State may be tried? These are some of them: Was the enacting body a legislature? Did the alleged statute undergo the requisite legislative process? Were three-fifths or two-thirds present, as may be the requirement in the case? Was there fraud in the count of votes, or in the enrollment? Let me at this moment guard myself against a possible criticism. Speaking of the tests of a legislative act, I speak of fraud in the count of votes. I know it may be said that a court investigating such a question would be concluded by the record. Very likely; but that is a mere rule of evidence; nothing more. The court has power also to inquire whether the votes which are alleged to have enacted a statute were given and counted, and whether they did effect its enactment. So, too, the court has power to inquire, subject always to the rules of evidence, whether there was fraud in the enrollment of the act. I do not see the honorable Senator from New Jersey, usually seated on my left, [Mr. STOCKTON;] he has recently argued in his own State a cause of much gravity, in which one of the questions was, whether the chancellor of New Jersey could hear and decide that a certain provision which appeared in the statute as it was signed by the governor, was or was not there when the process of enactment was finished. I am informed a decision has been announced disposing of the case before reaching this particular question, but the indications were that had he decided the point, the chancellor would have asserted his right to inquire whether the disputed section was or was not in truth contained in the bill as it passed. Such a decision would have been supported by many thoroughly considered cases. I here refer the Senate to some of the authorities illustrating the power of courts to go behind statutes and explore their enactment at every stage: Gardner *vs.* The Collector, 6 Wallace, 499; Clare *vs.* State of Iowa, 5 Iowa Reports; Pond *vs.* Maddox, 38 California Reports; Fowler *vs.* Pierce, 2 California, 165; Jones *vs.* Hutchinson, 43 Alabama Reports, 721; People *vs.* Mahaney, 13 Michigan Reports; Illinois Central Railroad *vs.* Wren, 43 Illinois Reports; Cooley on Constitutional Limitations, pp. 135, 177; State *vs.* McBride, 4 Mississippi Reports, 302; Furgusson *vs.* Miners' Bank, Sneed, (Tennessee,) 609; People *vs.* Campbell, 3 Gilman, (Illinois,) 466; Spangler *vs.* Jacoby, 14 Illinois, 297; Hurley *vs.* Logan, 17 Illinois, 151; Prescott *vs.* Board of Trustees, 19 Illinois, 324; Supervisors *vs.* People, 25 Illinois, 181; Skinner *vs.* Demning, 2 Indiana, 560; Board of Supervisors *vs.* Heenan, 2 Minnesota, 330; DeBow *vs.* The People, 1 Denio, 9; Bank *vs.* Sparrow, 2 Denio, 97; People *vs.* Purdy, 2 Hill, 31; same case, 4 Hill, 384.

Doubtless a court may inquire, did violence intimidate the legislators, and coerce their action? And here I will notice the position imputed to me by my honorable friend from Indiana, [Mr. PRATT.] He misconceived me so far as to understand me to contend that we could not in any case go behind the return of a Senator in order to see whether his election was procured by fraud or duress. I instantly disclaimed the view he attributed to me. I disclaim it now. I maintain that we as to a Senator, and a court as to a statute, may inquire whether duress compelled an act to be done, and clothed it with the mockery of legal formalities. Does the Senator from Indiana doubt that if a squadron of cavalry should surround the legislature of his State and, sword in hand, force from a majority a railway-grant or other statute, judicial authority could annul and disown it as no statute at all? So I might ask of other cases confounded by the Senator, as it seemed to me, with the case now before the Senate. His illustrations of duress and deceit or fraud, differ widely from bribery in the principles and remedies applicable to them. Suppose a number of legislators great enough to make a majority were stupefied by drugs until reason, will, and sense were utterly obliterated, and then they were made to appear to give the form of assent to a bill or resolution, does the Senator doubt that the proceeding would be as baseless and unsubstantial as the fumes of the intoxication from which it was evolved?

I say then, speaking of tests to which a statute may be subjected, one of them is, did unlawful violence compel the act? Was it duly signed and authenticated, which is equivalent to "returned" in the case of a Senator? Is the statute in itself valid? Has it the constitutional "qualifications," comparing it again to the case of a Senator? All these things may be judged; but can any authority dissolve a statute, or deny its enactment, because of the inward motives of the units which made up the legislative body? You may deal with the statute; you may repeal it; you may see if it lacks any quality essential to its validity; you may punish every corrupt author of it; but you cannot ignore or deny its existence. Why? Because it is the act of a competent body. Such was the view of the Supreme Court in Fletcher *vs.* Peck, 6 Cranch, 87, and such must be regarded as the established law in this country. A like limit to the right to challenge acts and votes of counties, has been fixed by the Supreme Court in the case of Virginia *vs.* West Virginia, 11 Wallace, 39. Where does the analogy fail between the case of an act of the legislature for which bribed votes were given, and a Senator chosen by the same legislature who received bribed votes? The honorable Senator from Indiana [Mr. MORTON] points us to the distinction. He says:

> It is contrary to the policy of the law to permit a court to inquire whether a statute properly certified was enacted through bribery, but such an inquiry bears no analogy to the question whether the Senate may inquire as to the election of its members, for which purpose it is vested with express power.

There is the distinction. The court cannot inquire of a statute, but the Senate may inquire of the election of a Senator, because the Senate is "vested with express power." Are not courts "vested with express power" to judge of the enactment and validity of legislative acts? The constitutions of the States vest them with this power. The Constitution of the United States empowers the Federal judiciary expressly so to judge. But, says the honorable Senator from Ohio, [Mr. THURMAN,] the Constitution does not say that, in judging of the election of Senators, we are to judge "*quoad* this or *quoad* that." No, sir; it says we shall "judge." Does the Constitution of the United States say that the Supreme Court, in judging of statutes, shall judge "*quoad* this or *quoad* that?" Far from it. As it stands in the text of the Constitution, the power is unbridled; it is a power regulated only as every power delegated by the Constitution is regulated—regulated as it shall appear to be when it is read in the light of the gathered precepts and maxims of the law. I know it may be said—I surmise the Senator from Ohio not in his seat, were he present, would be moved to say—"A court cannot challenge the existence or authority of the sovereign whose creature it is." True, sir; the Supreme Court so said in the case of Luther *vs.* Borden. Nobody doubts it. But may not a court decide whether in law and in fact an alleged act is the act of the sovereign whose creature it is? Read the Constitution endowing the Supreme Court with original and appellate jurisdiction, and tell me where, in its powers to judge of statutes, you find mete or bound not in reason obligatory on us when engaged in the proceeding now before us. Yet the courts, with a power as unlimited as ours in terms, have imposed their own limits on themselves.

The act of a State in choosing a Senator, is one of a family of acts so identical in their attributes that it is hard to see how they can differ essentially in the tests of their validity. Let us consider some of them.

Amendments to the Constitution of the United States are ratified by States. The proceeding, Senators will observe, is not even legislative in its nature. The Supreme Court has decided, that even the concurrent resolution of the two Houses of Congress proposing amendments to the Constitution, is not a legislative proceeding. The Supreme Court deems it a proceeding *sui generis*, having, in the case of Holingsworth *vs.* Virginia, held that the resolution proposing amendments to the Constitution need not be signed by the President. Surely the ratification of an amendment by a State is not a legislative proceeding. The Constitution provides that amendments may be rati-

fied either by the legislatures of the several States, or by conventions. That a convention may do it, proves that the act is not legislative in character, and this fact is important, because it divests the case of peculiarities supposed to attach to legislative power. Lawyers and laymen will alike admit that it is no legislative act when the State of New York, not through her legislature but through a convention, places the seal of her approbation upon a proposed amendment. And who has the courage to say in this presence that if a member of a State convention be bribed to vote for a constitutional amendment, the amendment would fail if the assent of that State were necessary to make the required three-quarters? Where is the distinction in the power to judge between that case and this? A case arises under the enforcement act; it hinges on the fourteenth and fifteenth amendments, and the fact of their being part of the Constitution is denied. The court must pass upon the fact that the amendments are or are not in the Constitution; but what would be thought of an offer to prove that, a given number of States being necessary to adopt the amendments, "some members" of the legislature or convention of one State voted from venal motives? Let it not be said there is no power to judge whether a ratification of an amendment is valid and complete: the executive, the legislative, the judicial departments, each one of them, may and must judge.

The Senator from Ohio yesterday said the governor of a State must sign a statute, and is therefore part of the legislative department, but the governor takes no part in the choice of a Senator; *ergo*, it cannot be the legislature, as a legislature, that chooses Senators, and there is no identity in principle between the two cases. What will the Senator from Ohio do with the case of ratifying a constitutional amendment? Must the governor participate in its ratification? Not at all. That case is upon all fours with this. Take another case: "Each State shall appoint"—observe the word—not "choose" as in the case of a Senator, not "ratify" as in the case of an amendment, but "appoint, in such manner as the legislature thereof may direct, a number of electors" of President and Vice-President, &c. These electors need not be elected by the people; they may be appointed by the legislature, or by the governor of a State, the mode of appointment being optional with the State itself. South Carolina for many years appointed electors through her legislature, not by the votes of the people; and who ever dreamed that it could be even argued that electors were not appointed, that no appointment had taken place, whenever it might be discovered afterward that a member of the legislature had received a bribe? I speak of electors partly for the answer their case affords to a remark made by the honorable Senator from Missouri, [Mr. SCHURZ.] He reminded the Senator from Delaware [Mr. BAYARD] of a distinction fatal, as he seemed to think, to the argument drawn from the limited range of inquiry tolerated in going behind statutes to avoid them. The idea in substance was that Senators are not chosen, as laws are enacted, by the States of their own mere right without permission of the Constitution.

Mr. SCHURZ. The Senator must be mistaken. It was somebody else who made that remark, I suppose. I did not speak of it at all.

Mr. CONKLING. Mr. President, one of my infirmities is a somewhat tenacious memory, and, under favor, I insist that the Senator from Missouri brought forward this distinction, in substance: Though the statute of a State is evolved from the power of a State—I do not stop to recall his expression—the right to elect a Senator is a creation of the Constitution of the United States, the Senate itself being a creation of the Constitution.

Mr. SCHURZ. If the Senator will permit me, I will read my remark.

Mr. CONKLING. Certainly.

Mr. SCHURZ. This is what occurred:

Mr. SCHURZ. Will the Senator permit me to ask him a question?

Mr. BAYARD. Certainly.

Mr. SCHURZ. I do not think that I agree with the Senator from Indiana on a great many questions concerning State rights; but is it not true, after all, that the Senate of the United States is a creation of the Constitution of the United States? Would the Senate of the United States have existed without the Constitution of the United States?

Mr. BAYARD. No doubt the Senate of the United States is part of the framework of the Constitution.

Mr. SCHURZ. The Senate, then, being a creation of the Constitution——

Mr. BAYARD. Certainly, as a means by which the States were to be represented here.

Mr. SCHURZ. Precisely; the Senate being a creation of the Constitution of the United States, not established for the purpose of giving the States, one sovereignty, diplomatic representatives near another sovereignty, but for the purpose of forming a distinct branch of the legislative department of the Government, is not, in so far, a member who becomes part of that body also a creation of the Constitution of the United States in his political existence?

When I said that the Senator disremembered, I referred to that sentence which he attributed to me concerning the creation of a statute passed by the State legislature. I have read all that I said on the matter referred to.

Mr. CONKLING. Mr. President, love of offspring is a pervading instinct of animated nature, and pride of paternity, satisfied with nothing but exact quotation of his words, is pardonable in a master of diction like the Senator from Missouri. My mind is not microscopic enough, however, to discover wherein I injuriously or materially mistook the position of the Senator.

Mr. SCHURZ. If the Senator has no objection——

Mr. CONKLING. None.

Mr. SCHURZ. The Senator will observe that I did not contradict him as to what he said subsequently, but only in attributing language to me with reference to statutes enacted by State legislatures. I did not refer to that at all, but simply to the Senate of the United States as being a creation of the Constitution.

Mr. CONKLING. The Senator from Delaware was at the time speaking of the modes of impeaching statutes, and it will be plain to the Senator in a moment that the purpose for which I refer to his remark is not affected by the precise terms he employed. The Senator from Missouri saw, or thought he saw, a legal or philosophical distinction between the power to revise the enactment of a statute, which the Senator from Delaware was stating, and the power to revise the choosing of a Senator, because, although a statute rests upon the foundation of inherent State power, the election of a Senator is permitted or authorized by the Constitution of the United States. I inquire now whether the President and Vice-President of the United States are not both creations of the Constitution? I inquire whether the States appoint electors for President and Vice-President of their own right and motion, or whether, like the right to elect a Senator, it is derived from the Constitution of the United States? These offices are part of the frame of government. The Senator must now see my purpose in referring to his remarks, and, I think, it will be as difficult for him as for me to find a distinction, the minutest, between appointing electors and choosing Senators, in respect of the origin and source of the power in the States.

Let me present still other illustrations.

Appointments to office, are by the advice and consent of the Senate. A *quo warranto* brings into the sunlight of judicial investigation every element of virtue or vice in the tenure by which one claims an office. Brought into court to establish the right by which one claims to exercise an office, he is vulnerable through every avenue of attack known to the law. Will it be said that a commission could be vitiated, and a confirmation by the Senate avoided, by proving that one member of this body had been bribed to vote for the confirmation, even if that vote gave the requisite majority? You may expel the member who was bribed, you may indict and impeach the man who bribed him, but can you say that the appointment was not made?

The President and the Senate together make treaties. The President without the Senate, is as powerless as a private citizen to conclude a treaty. The Senate, as much as the President, makes a treaty. If the President be bribed to make a treaty, the House may impeach him; if Senators be bribed to make a treaty, they may be expelled; they may be punished. But would Christendom scream with laughter, or be grim with contempt, if a nation were to say "We refuse to observe this treaty because it was carried by bribery in the Senate, and therefore it was never made, and is no treaty?" Yet such a denial of the validity of a treaty, might summon to its aid all the sovereign attributes and faculties, all the ethics untrammeled by technical modes and forms, to be found in the unmeasured realms of natural law.

Courts, and heads of Departments, appoint officers; courts, commissioners and registers in bankruptcy; heads of Departments, clerks and postmasters. Was it ever conceived that reason or law would brook an attempt to make out that an appointment was not made because the appointing power was bribed to make it?

Pardons are granted and vetoes are imposed by presidents and governors and councils. May they be canceled for bribery? A pardon is often subjected to every test of which a paper is susceptible. The statute of a State declares that a man convicted of certain felonies shall never be heard more as a witness in court. The life of a citizen being at stake, such a convict offers himself to testify, but the record of conviction is read and he stands mute; he draws forth a pardon, however, issued, perhaps, by the governor of Massachusetts, where a council recommends pardons to the governor, and reads it, and though his sins were scarlet, if the pardon be valid, instantly he is white as snow. The pardon in such a case becomes the pivot upon which everything may turn. It is in issue. It may be assailed and destroyed in any way known to the law. It may be proved that it was obtained by fraud—just such fraud as the Senator from Ohio referred to yesterday, not, I suppose, to darken counsel by words, but to administer a tonic to the courage of the Senate, when he asked if it was contended that if a man were elected Senator by false personation the Senate could not inquire into the fact. Let me apply the Senator's question to a pardon. Is it contended if a blank paper be laid before the President and he asked for his autograph, and writes it, and afterward a pardon is written above the signature, that the facts being proven in court the pardon would not fall? If one by personating another procures a signature, or if one induces the governor of a State to sign a pardon, he not knowing what he signs, and not meaning to sign it, the paper could not stand. The Senator from Ohio yesterday told us of something older than Christopher Columbus; has any discoverer before or since the daring Genoese, ever found on the seas or the shores of jurisprudence, that you may dissolve a pardon, and prove that it was not issued, by showing that the pardoning power received a bribe to grant it, or a bribe to one of the executive council from which it came? How will Senators draw a distinction between a pardon given by a governor, or given by a council or legislature, and the case at bar, as regards the question of the effect of motive, be it bribery, glory, or shame?

Let me put another case. The supreme law of the land imposes disabilities upon those who unsheathed the sword against the Republic when oaths had bound them to defend it. By the Constitution these disabilities may be removed by two-thirds of both Houses of

Congress. The late Senator from Kentucky, (Mr. Davis,) whose integrity, courage, and learning always won respect, argued strenuously, and so others have done, that the proceeding removing disabilities, is not legislative in character; that such a resolution does not, like a bill, require the signature of the President. Be that as it may, I ask Senators to ponder this position. On the statute-book are two oaths, without taking one of which no man can enter here as a member. One is a modified oath, which those who were disabled, and they only, may take when and only when their disabilities have been legally removed. These oaths are among "the rules of its proceedings" established by the Senate under the express warrant of the Constitution—rules which the Senate is especially armed with power to enforce, aside from the fact that a statute creates and enforces them. As often as one comes here with uplifted hand to enter the membership of the Senate, we upon our oaths judge of his election, qualifications, and returns, and also, under another mandate of the Constitution, decide whether he may forego the general oath and take the modified oath merely. Suppose in such a case, an objection raises the question whether the disabilities have been removed; the inquiry would go beyond the question which oath must be required; it would go to the election itself under the argument we have heard, for we are told the ancient law of Parliament is the rule of our conduct, and that ancient law declared that where votes were given for one who could not hold the office, majority though they were, such votes were blank and null, and the minority candidate who could hold the place was elected, no matter how few the votes he received. A Senator rises and says, "I object to those credentials; they are the credentials of one who cannot be a Senator; I say his competitor was chosen; but I especially object to his taking the oath, because his disabilities have not been removed; I ask a reference of the question to a committee to examine it;" and a cloud of witnesses stand ready to prove that the vote by which in the House of Representatives the disabilities were removed, was bought with money. The offer might be to show that a bare two-thirds voted, and of that two-thirds five were paid for the votes they gave.

In such a case, Mr. President, I submit we would have full possession of the whole question touching the votes and motives of individual members. It is not a statute of a State, it is not a constitutional amendment, it is not presidential electors, which must then be judged; but a proceeding invoking the power to judge of the elections, qualifications, and returns of our members, and to execute the "rules of proceedings" of the Senate. What is the answer to this analogy? Yet who would argue that we could decide the disabilities, not to have been removed, because the motives of members of the House who voted to remove them were begotten of bribery? To state such a proposition is to refute it; to argue it would insult the understandings of men trained in the maxims and methods of the law.

Some of these illustrations suggest the distinction between bribery and fraud, duress or deceit. If a signature be obtained to a pardon, or a commission, or a bill, or a treaty, by duress, or by substituting one name for another or one paper for another, so that he who signs does not mean to sign, or does not know what he signs, the assent is wanting, and therefore the act is not done. But if he signs knowingly and intentionally, his reason for doing so is matter of motive merely. It may be love or hate, lucre or ambition, sinful or innocent, but the act is done. This distinction, founded in reason, is inwrought in the law; it may be hard to apply it exactly to all cases; it may fall short sometimes of absolute right in the abstract, but such is the infirmity and short-coming of all general rules.

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

I have already inquired, in what legal quality does the act of choosing a Senator differ from the act of appointing electors, or ratifying amendments to the Constitution? All are the acts of a body-politic, a corporate entity, a political sovereignty. Upon this ground, the act in either case being done, and done intentionally, when the right to do it existed, and by those authorized to do it, it is a fact accomplished, as finally accomplished in law as soon as it is completed as after it has lain in the sepulcher of buried epochs.

This position is not without authority to support it. Turning to the volumes which preserve the judgments of the Senate, we find plain expressions upon the question now before us. In one instance especially, we find a record copious in instruction and persuasive in illustrious names. I refer to the contest for a seat in the Senate in 1834, between Potter and Robbins, cited at large in Clarke's Contested-Election Cases, pp. 887 *et seq.* When reference was made to this authority, the Senator from Indiana [Mr. MORTON] twice insisted that bribery was not necessarily considered, because the Senate could have decided the right to the seat without referring to the legal effect of bribery entering into the choice of a Senator. Why does the Senator so sedulously keep before us that the committee and the Senate in that case might have abstained from expressing an opinion upon their right to treat as a nullity the action of a legislature in connection with which members received bribes? Manifestly the object is to prove that the opinions given are not to be regarded as authority. Why not? Because, in the phrase of lawyers, everything said in denial of the power to judge of the votes and the motives of the individuals composing a legislature, was *obiter dictum*. Surely this criticism has little force. Had the effect of bribery, been the very point in judgment, and the only one, the opinion of a committee, or of the Senate, would not be binding on us; it would not bind us as the judgment of a judicial court binds the parties and inferior tribunals, nor would it settle the rule of our judgment upon the doctrine of *stare decisis*. Precedents are authority only from convenience, and because of their moral influence in aid of the conscience and judgment of the Senate.

I maintain that the opinions expressed in the case of Potter *vs.* Robbins, have all the weight, all the application to the present case, and deserve all the respect from us, to be ascribed to them had their authors pronounced them on any other occasion upon their responsibility as Senators and lawyers. They are to be referred to, as we refer to the Federalist, the Commentaries of Blackstone, of Kent, or of Story. If we may rely only upon utterances technically needed in the actual decision of a naked issue, we may dismiss the wisdom of publicists and commentators, and write *obiter dictum* against the sayings of the apostles and sceptred sages with whose words the sacred leaves are filled. When Israel's thoughtful King said "Better is a dinner of herbs where love is, than a stalled ox and hatred therewith," the justness of the observation was not impaired, nor does it impart less instruction to us, because the precise question was not pending before him at the time. He need not have decided the point—he might have held, as he no doubt believed, that the democrats and other opponents of his administration deserved no dinner at all; and that the republicans should have such a dinner, every one as he pleased, and there the matter would have ended. He chose, however, to state the result of his reflections, and to make it matter of record.

But, Mr. President, it so happens that the opinions from which I am about to read are not liable to the remark that they transcended the needful limits of the case. The right and power of the Senate to explore the elections of its members—the question for what reasons an election might and for what reasons it might not be disputed and denied—was the very subject to be considered. This subject, in its various ramifications, was the very matter discussed in the report of the committee, and in the "views of the minority." The case occupies more than a hundred crowded pages. It was elaborately considered, and tenaciously contested at every step. It encountered all the forms of parliamentary scrutiny, and all the doubts conflicting minds could start. The committee which had charge of it consisted of Mr. Poindexter; Mr. Rives; Mr. Frelinghuysen, the ancestor of a Senator who, holding now one of New Jersey's seats, illustrates one of New Jersey's greatest names; Mr. Wright—Silas Wright, of New York; in the shadow of whose massive name I am willing to stand on a constitutional question; and Mr. Sprague. Two reports came from the committee—reports conflicting upon certain points, but concurring upon the question which occupies the Senate now. Who sanctioned these reports? They were approved by Calhoun, Clay, Clayton, Ewing, Leigh, Mangum, Preston, Southard, Webster, and the rest. After full discussion in committee, after debate in the Senate, this group of almost matchless men concurred in fixing the bounds of the Senate's power under a clause of the Constitution; and now we are told that it is hardly worth while to read what they thought, because neither Mr. CALDWELL nor the facts of Mr. CALDWELL'S case were before them.

I ask the Senate to listen to a few passages—first from the majority report:

The Senators from each State are equal in number, and cannot be increased or diminished, even by an amendment of the Constitution, without the consent of the States respectively. They are chosen by the States as political sovereignties without regard to their representative population, and form the Federal branch of the national legislature. *The same body of men which possesses the powers of legislation in each State is alone competent to appoint Senators to Congress for the term prescribed in the Constitution.*

In the performance of this duty, the State acts in the highest sovereign capacity, and the causes which would render the election of a Senator void must be such as would destroy the validity of all laws enacted by the body by which the Senator was chosen. Other causes might exist to render the election *voidable*, and these are enumerated in the Constitution, beyond which the Senate cannot interpose its authority to disturb or control the sovereign powers of the States, vested in their legislatures by the Constitution of the United States. We might inquire, was the person elected thirty years of age at the time of his election? Had he been nine years a citizen of the United States? Was he, at the time of his election, a citizen of the State for which he shall have been chosen? Was the election held at the time and place directed by the laws of the State? These are facts capable of clear demonstration by proofs; and in the absence of the requisite qualifications in either of the specified cases, or if the existing laws of the State regulating the time and place for holding the election were violated, the Senate, acting under the power to judge of "the elections, returns, and qualifications of its own members," might adjudge the commission of the person elected void, although in all other respects it was legal and constitutional. But where the sovereign will of the State is made known through its legislature, and consummated by its proper official functionaries in due form, it would be a dangerous exertion of power to look behind the commission *for defects in the component parts of the legislature*, or into the peculiar organization of the body, for reasons to justify the Senate in declaring its acts absolutely null and void. *Such a power, if carried to its legitimate extent, would subject the entire scope of State legislation to be overruled by our decision, and even the right of suffrage of individual members of the legislature, whose elections were contested, might be set aside. It would also lead to investigations into the motives of members in casting their votes, for the purpose of establishing a charge of bribery or corruption in particular cases. These matters, your committee think, properly belong to the tribunals of the State, and cannot constitute the basis on which the Senate could, without an infringement of State sovereignty, claim the right to declare the election of a Senator void, who possessed the requisite qualifications, and was chosen according to the forms of law and the Constitution.*

These general views are offered to show that contested elections in the popular branch of Congress, where the people exert, in their primary capacity, the right of suffrage under various limitations and restrictions in the choice of Representatives from certain prescribed districts, *open a much wider field of inquiry and investigation than a like contest for a seat in the Senate, which is a body wholly federative in its character and organization, and whose members hold their appointments from and represent the States as political sovereignties.*

The report, further on, proceeds:

Your committee having regard to these rules—

Those just read among others—

as applicable to all contested elections in the Senate, proceed to apply them to the case now under consideration.

The Senate will see that, instead of regarding the matter treated of as foreign to the case before it, the committee plainly says that the case depends upon the "rules" enunciated.

Silas Wright and Mr. Rives dissented, not from the principles or doctrines I have read, but from their application and result in the case then in hand, and, in his dissent, Silas Wright, speaking for himself and for Mr. Rives, says:

So, also, in the case supposed by the majority of the committee, of alleged bribery and corruption. The undersigned has always supposed that a member of a legislative body who should accept a bribe was punishable for the crime, but he has never understood, nor does he now understand, that the vote of the member given under the corrupt influence vitiated the proceeding voted upon, or rendered either void or voidable by legal adjudication such proceeding. The member bribed is still constitutionally and legally a member of the body notwithstanding his corruption, and retains all his rights and all his powers as a member, until conviction for the crime ousts him from his seat.

Mr. President, where is the authority, where is the argument to refute the principles there laid down and affirmed by a weight of authority more than respectable, more than persuasive?

But we are asked, "Is there no remedy for bribery; does no storm slumber anywhere with power to burst upon the heads of those who profane elections and buy seats in the Senate? Shall we fold our arms and sit quietly by, while corruption stalks high-headed in the public way?" The honorable Senator from Indiana mused in this hopeless strain:

If there be no power either in the Senate or in the State legislature to inquire whether an election has been procured by bribery or fraud, then the evil would be irremediable, however gross and wicked the instance; and if such be the position of the Senate, it is perhaps the only legislative body in the civilized world in such a helpless condition—

a lament, the refrain of which came back yesterday from the honorable Senator from Ohio, [Mr. THURMAN.] This is gloomy, to be sure; but let us cheer up; the case is not so sad after all.

Remedies are not wanting. First, the States may and should enact laws to indict and punish, nay, they may execute, the man who gives or takes a bribe. Is there anything in the Constitution to prevent capital punishment from being inflicted in such cases?

Mr. HOWE. Nothing that I know.

Mr. CONKLING. The Senator from Wisconsin says that nothing that he knows; and what he does not know I will not try to find out. [Laughter.]

We are appealed to for remedies. First, I repeat, the State has power to deal with and punish every actor in a transaction of bribery, not more the member of its own legislature who accepts the bribe, than the expectant member of the Senate of the United States who offers it. Secondly, Congress may do the same thing, and Congress may disable the briber, too. The two Houses of Congress have power, under the Constitution, to enact a statute under which every man who in a senatorial election offers a bribe (whether he succeeds in buying a Senatorship or not) may be punished; a statute which shall disable a briber to sit in this chamber, though he be crowned with election piled upon election as long as his life lasts. Thirdly, the Senate may expel a member guilty of bribery, the facts bringing the case within the jurisdiction of the Senate. All, or either of these three remedies, will remove the offending member. Either of them will vacate the seat.

Mr. FERRY, of Connecticut. May I ask the Senator a question?

Mr. CONKLING. Certainly.

Mr. FERRY, of Connecticut. There is one point, in regard to which I should like to hear the opinion of the Senator from New York. Suppose that the Senator-elect at the time of his election was abroad, knew nothing of the election, but that parties in his State, having purposes of their own which they believed him best qualified to subserve in the Senate, bribe a controlling majority of the legislature, and thus secure his election; as the law now stands, is there any mode of depriving him of the right of taking his seat and maintaining it in the Senate?

Mr. CONKLING. A pregnant question—a question which sifts and tests some of the arguments we have heard; arguments which strangely insist that in dealing, not with the offender but with the election itself, and judging whether the action of the legislature was valid or void, our judgment must stand or fall with the privity or complicity of the candidate himself.

If we can inquire into the election on the ground of alleged bribery in the State legislature, it is, upon that question, matter of legal indifference whether the money was paid by the candidate himself, or whether, he being beyond seas, some officious and corrupt partisan employed money for him. When we deal with the Senator-elect, and try or expel him, the all-important question is, was he *particeps criminis*? But when we are dealing with the election alone, it matters not, in my view, in the absence of a statute vitiating it, whether the bribery was with money paid by a candidate, or by a railway or ferry company, a free-trade league, or drawn from the contribution-box of the poor.

It follows from this that the question of the Senator but presents in another form the case before us.

This branch of the inquiry embraces the power of the Senate to inquire into the motives of members of a State legislature, be the case the enactment of a law, the choice of a Senator, or the ratification of a constitutional amendment; and if the power cannot be found in the case of Mr. CALDWELL, it cannot be found in the case put by the Senator, unless the supposition of a larger number of votes being cast from venal inducement alters the question.

Mr. FERRY, of Connecticut. Then the Senator will answer my question in the negative—that there is no mode under existing law in the circumstances which I have supposed by which the member thus elected would be prevented from occupying his seat in the Senate.

Mr. CONKLING. I answer that if there be no constitutional provision or statute in the State affecting the case; if there be no statute of the United States providing for it; if the member elected so stands that the expulsion clause of the Constitution does not touch him; it is not easy to see how judicial power could mend the matter.

I will tell the Senator from Connecticut of the only absolutely effectual remedy for such dire debauchery—it is public virtue. You may multiply statutes until you have piled Pelion on Ossa; Paul may plant and Apollos may water; we may rend our garments and rend the Constitution; but unless the effort is rooted in the public conscience, it will fail and perish. Look at England, honeycombed with bribery, every parliamentary election a carnival of fraud and venality from Cornwall to Northumberland; and then look at her jurisprudence, bristling with fierce and sweeping statutes.

I turn now to an idea advanced by the Senator from Georgia, [Mr. NORWOOD,] who yesterday delivered his views so clearly and so well. He said, and the Senator from Ohio [Mr. THURMAN] afterward strove to add force to the suggestion, "Is it not absurd to hold that a man who has been guilty of buying votes to elect him to the Senate, shall be admitted as a Senator, and then shall be expelled? Why not keep keep him out, instead of putting him out after letting him in?"

Can such an argument be really intended for lawyers? Is it to instruct the court, or to amuse and daze the spectators? The astute Senator from Ohio seemed not to have his mind or his eye on the Senate, for he said that the people were not metaphysical enough to understand such a doctrine. He underrates the people, I think. Is the Senator himself so metaphysical as to understand how, sitting upon the bench, he might adjudge a man and woman to be man and wife, in law and in fact, and afterward proceed to divorce them? Why not say they are not married, and done with it? Why say they are married, and then say they shall not remain man and wife? The absurdity charged is in admitting that an election of a Senator took place in Kansas, and then proceeding to consider whether Mr. CALDWELL shall be expelled or not. I would do just this. If it be absurd, make the most of it.

I call no argument made in the Senate absurd, but one thing I do know: it is not true, it cannot legally be true, both that Mr. CALDWELL was not elected, and that we may expel Mr. CALDWELL. The two things cannot exist together; they deny and destroy each other.

Mr. NORWOOD. Will the honorable Senator pardon me for one moment?

Mr. CONKLING. Certainly.

Mr. NORWOOD. The answer to the case of marriage which he suggests, in my judgment, is this: No divorce is ever granted by a court, as the honorable Senator knows, as a question of law, until the fact of marriage is established; and when that fact is established, then the court proceeds to adjudge whether a divorce will be granted. But it seems to me that is not the case of Mr. CALDWELL at all. We are to judge of the fact as to whether Mr. CALDWELL was entitled to his seat, having been guilty of bribery. I say we could judge of it before he was admitted. The honorable Senator says we cannot judge of it until after he is admitted; that we must admit him to his seat, and then decide the question of bribery, and, if he is guilty, expel him. Suppose a member presented himself here who was under a disqualification under the Constitution, and that fact was brought to the knowledge of the Senate, should we have to admit him, and then vacate his seat? Suppose there was any other act for which you would expel him, and that was brought to the knowledge of the Senate, I ask, does it comport with reason that you are first to admit him to his seat in order to get jurisdiction over him to expel him?

Mr. CONKLING. The Senator from Indiana, the chairman of the committee, informed us in a carefully written speech with which the discussion began, that in his opinion this case is cognizable in two ways—that we can either hold Mr. CALDWELL's election void because he never was elected, or we can expel Mr. CALDWELL.

Mr. HOWE. Because he had not been.

Mr. CONKLING. Let me deal with this claim of duplex jurisdiction for a moment. Do the States nominate Senators for us to confirm or not as we choose, or do the States themselves choose Senators? If the States choose Senators, how can we at our option in one and the same case say that a Senator was elected, or, if we please, that he was not elected? Such a doctrine commits the election absolutely to the will and caprice of the Senate; it does more, it does worse, for it affirms that, in the exercise of our will and caprice, we need have no reverence for truth, or even for consistency in error. Is not this amazing? With the facts and the law before us, we may, if we please, decide that Mr. CALDWELL was not elected, or, if we please, we may decide that he was elected, or we may decide both ways at the same time! Such, in effect, is the position maintained.

The Senator from Indiana says, first, that Mr. CALDWELL never was elected. If that be true, can we expel him? No, sir; the case is then at an end. The Constitution ordains that the Senate may,

"with the concurrence of two-thirds, expel a *member*"—a member, not a page, not the Sergeant-at-Arms, not an intruder, visitor, or stranger; you can expel no man unless he is a member. He is not a member unless he has been elected. There is but one way known among men in which a man can become "a member" of the Senate, and that is, being chosen by the legislature of a State.

If Mr. CALDWELL was not elected, can we elect him; can we ratify or validate his election if it is not good in law or in fact? Can we say, he was not duly or legally elected, but we will treat him as elected for the purpose of expelling him; we will hold him up while we knock him down? No, sir; one of two things is true: either Mr. CALDWELL was elected to the Senate, or else we have no power to expel him. Instead, therefore, of its being absurd to admit a man on the ground that he is elected, and then to turn around and expel him, his admission is a condition-precedent to his expulsion, and indispensable to it. Is this absurdity?

It has been said, further, suppose a man, after his election to the Senate, be convicted of bribery, alleged to have occurred in his own election, and the record of conviction be laid before us, would it not be absurd to admit him to his seat, and then consider his expulsion? The Senator from Ohio promised—a promise he has never found time to redeem—to show us that in expelling a man for bribery, if the bribery took place in his own election, we must investigate the motives of the members of the legislature, and impute the bribery to them. It is a great loss not to have heard this argument; as a feat of logic, it must have been past praise.

The grounds on which a Senator convicted of felony might be expelled, seem easily visible. Conviction of infamous crime, establishes the guilt of the convict, and attaints and disgraces him; if he be a Senator, his disgrace affects the Senate, and the Senate may perform a lustration by expelling him. If a record of a competent court informs us that one chosen to the Senate has been found guilty of bribery, how does it matter, in respect of the power to expel him, whether the bribery occurred in one proceeding or another? Suppose he bribed the speaker of the house to make some decision that would aid him; suppose he bribed a judge to render a judgment, having no reference to any election—would not the record of conviction in either case sustain a resolution of expulsion as well as if it attested the bribery of a member to vote for the briber? Suppose the claimant of a seat in the Senate had been indicted and convicted of murder after his election; would our right to expel him hinge upon the question whether his motive in the murder was to get rid of a rival who might stand in the way of his senatorial aspirations?

Mr. NORWOOD. If the honorable Senator will pardon me, that was not my position. I suppose he is referring now to the remarks of the Senator from Ohio.

Mr. CONKLING. Yes; to the Senator from Ohio, in part.

Mr. NORWOOD. I ask the honorable Senator, in the case he supposes, if the murder was committed after the election, and the party was convicted, and we had the record here when he presented himself to the Senate, would he hold that that man was entitled to a seat, and then, after he was seated, expel him for the murder?

Mr. CONKLING. No; I should not hold he "was entitled to a seat;" I should hold he was elected, and could be expelled from his seat.

The Senator's question but caricatures a little more broadly than anything has yet done, the argument necessary to support the resolution now on our table.

Have we drifted so far from our moorings, are we so lost to legal sense, that two opinions can be found among lawyers upon such a case as the Senator proposes? Let me state the case: A record of conviction comes to the Senate, showing that a man who has been elected a Senator has committed murder, and the Senator from Georgia wants to know whether it would not be right for the Senate to declare that the Senator was not elected rather than to expel the convict. This is only the logical climax of the arguments required by the resolution before us. Would not the pages of the Senate laugh, if we should hold that, because a man was convicted of a murder three months after his election, therefore he never was elected at all? What have the two things to do with each other? You might as well say if a Senator comes here with the small-pox or the delirium-tremens, we shall not expel him, but we must decide that he never was elected. I dismiss as fallacious the doctrine that the power to deny or avoid an election, and the power to expel, are alternative or convertible powers, optional with the Senate, and applicable to the same case at the same time.

Mr. NORWOOD. I hope the honorable Senator will not——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Georgia?

Mr. CONKLING. The Senator was so courteous yesterday in yielding to a question from me, that I cannot refuse to yield to him; but my remarks are already so wearisome in length, that I will thank him to be brief.

Mr. NORWOOD. I simply wish to explain to the Senator what my position is on the question he is now discussing. I tried to make it clear, if I did not do so, yesterday. I understand his position to be this: that if Mr. CALDWELL procured his seat here by bribery, he cannot be prevented from taking his seat, notwithstanding that fact were known to the Senate just as well when he presented himself as it would be known by the report of an investigating committee after he was sworn in. Now, the case of murder may be applicable as well as bribery; but we will go back to the case of bribery; in other words, we have a case upon which the Senate would feel itself justified in law in expelling——

Mr. CONKLING. May I interrupt the Senator? Would it not be equally agreeable to him to allow me to conclude, and then submit his argument? The Senator will see that if he injects an argument into my remarks, tedious already, they may become unpardonable. I would not misstate the position of the Senator, and if I have misconceived him, I beg him to set me right hereafter.

I question the argument which insists that the crime for which a member may be expelled, need be part of the *res gestæ* of his election. Had Mr. CALDWELL shot down a man in Kansas last year, had he been indicted for homicide and convicted, had that record been laid before us, our power to deal with him would, I think, begin and end at the same point, whether the homicide grew out of his election or not. If we could expel Mr. CALDWELL for shooting a rival, we could expel him for slaying any human being whom the law had in its keeping. In either case, his turpitude would be the ground of his expulsion, and the effect of the record would be to fasten the turpitude upon him. The connection of the act with his election, could, at most, be material only upon the question of our jurisdiction of it and of him.

I proceed now to inquire how and of what the Senate may judge in respect of the admission of its members.

First, of the "return:" Is it from the authorized source? Is it genuine? Is it sufficient in form and substance? Was it obtained by fraud or duress? Of all these it is our right to judge.

Secondly, "qualifications:" what are they? They are residence, age, and nine years' citizenship, and they are nothing more. This is so stated by the Senator from Indiana, [Mr. MORTON,] the Senator from Ohio, [Mr. THURMAN,] the Senator from Missouri, [Mr. SCHURZ;] but the Senator from Vermont, [Mr. MORRILL,] some days ago read us a written opinion, in which he says he is going to vote to declare that Mr. CALDWELL was not elected, because Mr. CALDWELL has not, as he thinks, the "qualifications" of a Senator. To do the Senator from Vermont no injustice, I read from his opinion. He says:

> To assert that the Senate cannot judge of any qualifications save those particularly mentioned in the Constitution—of age and citizenship—would force the admission and retention of lunatics and idiots.

Mr. President, the choice of a lunatic to the Presidency of the United States, should it ever happen, may try the strength and flexibility of our Government. If men shall ever succeed in putting off upon the American people, a candidate for the Presidency insane before the election takes place, a serious juncture will be reached in the nation's life. Being elected, a madman could not take the oath of office; he would have no legal will or mind. He could not resign the office. It was held, in a learned and able opinion given by Mr. Cushing when Attorney-General, and has been generally accepted, that a lunatic, or one *non compos*, cannot resign an office. He could not sign laws, or veto them. He could not act. The House of Representatives could not impeach him, because insanity is not a crime or misdemeanor. It would be impossible to appoint a regency, as England did for George III, because our Constitution knows no regency. The Constitution declares that—

> In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President.

Passion, folly, blindness, or concealment and imposition practiced upon the nation, may yet name a madman for the presidential chair; and then shall he be seated, and who, with the acquiescence of grappling parties and factions, shall settle all the questions to arise?

But no such danger lies in wait for us. Under the power to expel, we can remove from the Senate any member smitten with physical or moral infection, or who cannot or does not observe the rules of the Senate, and act as a member. A man who enters this body with delirium-tremens, constitutionally "qualified" though he be, is the subject of expulsion. He who comes with small-pox, he who comes a raving maniac or a driveling idiot, though elected and qualified, and because elected and qualified, and so a member of the Senate, may, with the concurrence of two-thirds, be expelled. And yet the Senator from Vermont is going to vote for the resolution to deny and unsay an election, grounding his vote upon the belief that Mr. CALDWELL is lacking in the "qualifications" of a Senator.

Jacob Collamer, the predecessor of the Senator, standing just where I do now, delivered an argument not yet forgotten by those who heard it, vindicating the power of Congress to enact the "iron-clad oath." The purpose of his argument was to show that to prescribe an oath to be taken by Senators, was not to require any "qualification," or to add a jot or tittle to the qualifications set down in the Constitution. It has always been admitted that if the test-oath could be deemed a qualification to be exacted of members of either House, it would conflict plainly with the Constitution. The only argument on which it stands is, that it imposes no qualification whatever. The honorable Senator from Ohio [Mr. THURMAN] holds that the iron-clad oath violates the Constitution, and he will confirm me in saying that he so holds because he thinks it attempts to prescribe or add a qualification. He nods assent. Every lawyer will agree that the test-oath statute is void if it goes to the question, who is eligible to be elected to a seat or to be returned to the Senate.

It may have been forgotten that the late Senator from Illinois, the predecessor of my distinguished friend before me, [Mr. OGLESBY,] came here followed by a protest, signed by nearly half the legislature of

the State, against his being admitted as a Senator, because Illinois had imbedded in its fundamental law that no man who had been elected judge, should, during the judicial term, be chosen Senator, and that all votes given for him should be absolutely null and void. The Senate brushed aside the protest, because the Constitution of the United States, the sole authority, states the qualifications, and all the qualifications, to be exacted of a Senator. The same thing happened, I think, in the case of Mr. Doolittle, who came from the State of Wisconsin. Still, despite the indisputable reasons to the contrary, at least one Senator will, as he declares, vote for the pending resolution, upon the ground that Mr. CALDWELL, for deficiency in "qualification," is not a member of the Senate. Such a vote will, perhaps, best accord with the challenge of the Senator from Ohio to so vote as to display courage.

Thirdly, the Senate is the judge of the "election." What matters may this judgment embrace? Is there a State "in proper practical relations with the Union?" The latter words, are Mr. Lincoln's. Is there a legislature? This is one of the questions touching the credentials from Louisiana, now lying on the table. Was the act done? Was the choice made? And here we may inquire for fraud and duress. If, as the Senator from Indiana [Mr. PRATT] suggested, a file of soldiers marched into the legislative hall in Kansas, and, at the point of the bayonet, demanded and coerced the election for Mr. CALDWELL, I agree with him, we can inquire into it; and the fact being found, it would follow that no election took place; there was no act, because no consent and no will. I need not tell my friend from Indiana the difference between that case and one in which there was will and consent, and the act done, and nothing left to inquire about except the motive for the act.

Mr. PRATT. Will my friend from New York allow me to ask a single question?

Mr. CONKLING. Certainly.

Mr. PRATT. If the election is void in the case that I put, of violence of a squad of soldiers overruling the judgment and will of the members of the legislature, it is because their will was led astray by the employment of that violence.

Mr. CONKLING. I beg my friend's pardon; just there the road forks. It is void for a different reason. If my friend offers a deed in court, and I attack it by showing the signature to be the signature of a raving madman—mad when he signed it—will the Senator say that the court should decide the deed void or voidable because the will of the grantor was led astray? No, sir; the court would avoid it because the grantor had no will to be led astray. Will the Senator say if the man who signed the deed was under the influence of chloroform or drink, if something had been put into his mouth which took away his brains, and he knew not what he did, that the act would be avoided because his will was led astray? It would be void because no will was exerted. So, when my friend puts the case of a man, upon pain of death, casting a vote or signing a deed with a halter round his neck, or a dagger at his breast, or a pistol at his head, the act is void; the surrender by my friend of his money to a foot-pad or a robber, who demands it revolver in hand, is void in law, not because his will is led astray, but because he gives up his will to save his life. In such cases no alternative is presented to the mind; there is no free agency, no exercise of judgment, will, or choice; there can be none. Volition is wholly absent, and the act is in law and in reason not done.

In exploring the legality of the action of the legislature, we may inquire, did intruders and usurpers participate and control the election? If intruders acted under color of membership, the Senator from Indiana and the Senator from Ohio hold that we cannot inquire into it, no matter how bald or brazen their pretension. How, Mr. President, can this right to inquire be denied upon the argument of this report? I read from the speech of the Senator from Indiana:

> The Senate has no power to inquire whether individual members of the legislature have been lawfully elected, because each house of the legislature is invested with like power to judge of the elections and qualifications of its own members.

The Senate has no power, he says, because the State legislature has the power! Is that the reason? Is concurrent jurisdiction impossible? Our jurisprudence is full of instances of concurrent jurisdiction between the General Government and the States; the fact that the States may do a thing, *ipso facto* proves nothing against the right of the Federal authority to do it also. Take counterfeiting the coin: has not the State of Indiana power to punish it; has not the United States the power also? This argument will not do. The State may punish Mr. CALDWELL for the acts charged against him now, but it does not follow that our right to deal with him is thereby lessened.

Suppose the State legislature does not and will not inquire who participates in its proceedings, enough members being bribed to refuse inquiry, although they know that seats are held upon forged certificates or upon no certificates at all, and suppose the man sent here by such a legislature were waist-deep in the proceeding, we cannot, we are told, inquire and judge the election void, though twenty men took part, with no more right to do so than you, sir, have to occupy the British throne. Why may we not inquire? Where is the authority for it? I asked the Senator from Ohio, and he replied that I knew as well as he. I ask again where is the authority holding that we may not inquire whether intruders sat in the legislature of Kansas, and dominated and debauched it? I, too, must admit that we cannot inquire of the intruders seated under color of membership; but I admit it only in submission to reasons and principles equally fatal to the action proposed in the present case. What authority says that we may not inquire into the membership of the legislature, and yet says that we may inquire whether members of the legislature were influenced by one motive or another? Show me authority for one, and I will show you authority for the other.

In the recorded sayings of those who have treated these subjects, we find classified together in the same breath, as identical in the rules which govern them and place them beyond our reach, the tenure by which the individuals composing a legislature hold their seats, and the motive, pure or impure, by which they are influenced. Whoever insists upon these authorities, must accept them as they are, and as they weave together in one web the limitations they impose. If we regard these teachings, the right of a member of a legislature to vote, and his reason for voting, are alike sealed books to us. Dismissing the authorities, if we admit that we may go into the legislature of a State, and ask whether one man voted from passion, another from hope, and a third for gain, why may we not ask also whether other men in the same legislature who cast the die of the election, sat there with no semblance of right, mere shameless pretenders and usurpers? If one chosen to the Senate, bribed ten members of the legislature to absent themselves and allow intruders to sit in their seats and wield their powers; if he also bribed yet other members to refuse to inquire into this wrong, and thus won his election, we are told we must accept all this; we cannot enter the sacred portals, because we cannot pass the boundary between State and Federal power. Is this reason, or is it sophistry?

But when we enter the labyrinth of motive, with its whited sepulchers, its blasted effigies, its false inscriptions, its backward footprints, its solemn mockeries, its weird glamour—what Ariadne shall give us the clew? Motive! Will mistake or surprise do? A candidate is pledged to be a tariff man in a State where the tariff question overtops all others; he is elected upon a direct promise given to the members who vote for him that he will favor a high protective tariff in every emergency; being elected, he throws off the mask, and reveals himself as an open free-trader. Will that avoid his election? A candidate is represented to be safe, sensible, and wise, but after the election it turns out that he was incurably insane, and known to be so by those who for pay and promise of office urged members to vote for him; is he not elected if he received the requisite votes? Suppose a candidate at heart a traitor, and there are traitors in the legislature, and they plot together that, when elected Senator, he shall assassinate the President and blow up the Capitol, with all its statues and unique treasures of art, and he is elected because of this conspiracy, would his election dissolve when looked at by the Senate, or must we deal with him, if at all, under our power to expel a member?

"The will of the member must be corrupted," we are told. Let us see. If a member is threatened with revenge or ruin, and his vote is so controlled, will that do? If a mortgage or judgment is brandished over him, until he sees bankruptcy for himself and starvation for his family, will that "corrupt his will," or will he still be an anointed free agent, exercising the delegated power of his State, whose vote is conclusive upon us? Lenity upon a debt is promised, when lenity upon a debt may be the difference between prosperity and ruin. A note is indorsed, or a loan of money made; will these "corrupt the will?" A man seeking votes for the Senate, hints darkly to a member of the legislature some secret of his family, something which would mildew the reputation of the living and murder the memory of the dead, and the member says, "I dare not brave you; I would rather surrender my preference than that you should soil my name;" would such an approach "corrupt his will?" A man seeking his vote, threatens to contest a member's seat, to charge him with bribery, and to disgrace him, unless he gives him his suffrage; would that "corrupt the will?" A candidate who has established a newspaper—and we are told it is proper for even an unfit candidate to pay $5,000 to a newspaper to magnify and puff him—a candidate, with a newspaper or newspapers in his interest, promises a member to write him up and make him famous and immortal, or threatens to write him down and blast his character—to procure newspaper correspondents to associate him with crimes of which he never heard, and the member says, "Rather than face a hurricane of filth, rather than such a storm should whelm me, I will vote;" would that "corrupt his will?" Hope of advantage in politics, or business, or matrimony; hope of getting a bill through Congress, or a pension, or an appropriation for the improvement of a harbor; would these "corrupt the will?" Log-rolling, as it has come to be called, a proceeding in which a member of the legislature might say to another, "I will vote for your candidate for Senator, if you will vote for my bill;" would that "corrupt the will?"

In all these instances, if we go to the root of the question, the will is controlled, the mind is warped, the consent is trammeled, the vote is captured, the point is gained, as much as if so many pieces of silver were counted down.

Such causes, operating upon the mind, are as many as the leaves of the forest or the sands of the sea. Which of them is worse? In each instance the member would vote selfishly; but the measure of his fault, is known only to the absolute intelligence, which, penetrating the sordid heart of man, can analyze that black drop there locked up, called Motive.

To see a subject thoroughly, it must be turned in different lights. Let me present in another aspect the question whether the legislature of Kansas elected ALEXANDER CALDWELL.

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

English Parliament; and what rule is there to prevent me? How can you say that that is immaterial to the question whether Mr. CALDWELL should go out or not, or to the question whether we ought to have the previous question or not?

All these things show the absurdity of clinging now to the old ideas that prevailed at the beginning of this Government, when the Senate of the United States was a little company of twenty-six men, a cabinet of States, holding secret sessions, without rules, called upon to participate with the President in the discharge of the executive functions of the Government. Is it not absurd to apply the ideas which governed such a body in its conduct of the public business to a body of seventy-four members, sitting in open session, debating all the measures of the Government, and exercising a controlling influence upon legislation in every respect?

While I heartily sympathize with my friend from Iowa in the endeavor to get some restraint or regulation of debate, something that will enable the business of this country to be transacted instead of being obstructed by unnecessary and pertinacious debate, I do not expect any action at this session, and I think it is hopeless to look for any now. I do not think my friend accomplishes much by attempting to do it at this session. I say this with due deference to his judgment, because I do not believe we can hold this session in permanence. Although the rules are continuous, yet the committees fall with the session and have to be renewed at the beginning of every session. This contest must be brought up at the next session of Congress, and then the question will have to be determined.

I repeat that, under the present rules of the Senate, it is impossible for the Senate to attend properly to the business of this country. I have thought of three modes in which we can bring this matter to the test. First, we can commence at the beginning of the next session of Congress and introduce some restrictive rules and stand by them until a majority of the Senate determine either to adopt some restraint on debate or to reject all propositions having that tendency. If they shall be rejected, it will be in the power of any six members of this body to put an end to the transaction of the public business by the Senate. I do not wish to say anything unkind in regard to this matter or about Senators, but take the average of the time allowed for debate with seventy-four Senators, and give to the whole seventy-four the time that any one of half a dozen whom I could name generally occupies in debate, and you would not be able to pass a single bill. If you give an equal quantity of time to each Senator of the seventy-four Senators, and each one should occupy the time that some do, what chance would there be for the public business?

I again repeat what I said some days ago, during the last session of Congress, that there is no parliamentary body in the world that has not some limitation of debate.

Mr. THURMAN. The House of Lords has not.

Mr. SHERMAN. It has; my colleague is mistaken. They have no previous question in the House of Lords, it is true, but the ministry say, "We wish a division on this question to-night," and it is had. They have a rule which is more arbitrary than I would like to see adopted here. I do not want any unreasonable limitation of debate. I do not want anything that will prevent free speech. I do not want any limitation as to time, or any strict rule of relevancy, but there must be some mode by which a reasonable majority in this body, either one-half or two-thirds, shall be enabled to say that at such a time the public interests demand that debate on a pending proposition shall cease and that the vote be had. That ought to be done. There ought to be some rule, not harsh and arbitrary, not unreasonable, that should confine members in debate, not within very narrow limits, but which should compel them to talk at least about or relevant to the subject-matter in controversy before the Senate.

Why, sir, take the case of Louisiana. During the last session, near its close, when we had up a bill about the agricultural colleges, a bill to which, it is true, I was very much opposed, an honorable Senator on this floor, one of the most able and distinguished members of this body at that time, got up and led off in a debate on the Louisiana question, and it was continued for three days. When he was called to order, or rather when I politely suggested to him that he was not talking about the matter before the Senate, he wanted to know what difference that made; what rule there was in the Senate that required him to talk to the subject-matter? So for two days he went on with a debate in regard to Louisiana that had nothing to do with the agricultural colleges, or the grant of lands, or the topic that was under consideration.

My colleague seems to think, and so does my friend from California, that this is a blow at the minority. The honorable Senator from Delaware seemed to think that any limitation by rules was a blow at the minority. Why, sir, the minority always have more rights on this floor than the majority. I would not take away from them any right, but I would not allow a minority of the people of this country to subvert the Government, nor would I allow the minority in this body to control the majority in the ordinary and necessary legislation for the country. There never has been a night session during my twelve years' experience in the Senate but that was totally unnecessary and a wasteful expenditure of time and patience. During the time I have been here I never have seen an occasion where the fullest latitude of debate was not allowed in the day-time and in reasonable hours. Where the majority had settled itself down upon the conviction that a particular measure in a particular form ought to pass, it was only able to pass it by holding us here in night sessions, wearying us, unfitting us for the discharge of business, creating confusion, strife, and contention, which ought not to have been necessary after the deliberate judgment of the Senate had been settled in favor of a particular measure. Was it necessary, to preserve the rights of the minority, that that should be done? Is it supposable that the Senate would arbitrarily arrest free and fair debate by the minority? Not at all.

But, sir, this rule is necessary, not only for the minority, but it is necessary for the majority also, because sometimes debate goes on to an unreasonable length. If we had a rule that allowed two-thirds of the Senate to say when debate should stop, do you suppose that rule would be abused? Under the Constitution two-thirds can expel a member for any cause they deem proper. Is it to be supposed that under a rule which required two-thirds for its application, anything harsh or arbitrary would be done? Not at all.

I say, therefore, that while probably it is useless for my friend from Iowa to press this matter at this session, the public interest demands that some new rules in regard to debate and the order of business should be made.

Mr. MORTON. Mr. President, have I the right to call for the regular order?

Mr. THURMAN. I hope my friend will allow me a single remark personal to myself.

The VICE-PRESIDENT. The question is on the motion of the Senator from Iowa to take up his resolution.

Mr. SCOTT. Mr. President, whatever may be our opinions as to the propriety of adopting these rules, it is perfectly obvious that no action can be had upon them at this session, and I rise in the interest of the dispatch of business, intending to make a motion, if it be in order, which will test the sense of the Senate upon the propriety of taking up further time in discussing this question about the rules.

Now, suppose the rules as offered be referred to the committee; if they take no action at this session, the whole subject dies. If they do take action and report upon them, it is perfectly evident that the debate which will ensue will be of such length that the Senate will not stay here to consider the subject at this session. So that in no point of view do we make anything by either referring this resolution or having a report upon it.

Now, sir, in view of what was said by the Senator from Indiana who, as chairman of the committee reporting the resolution now regularly before us, has charge of it, I think it is due to him that we shall waste no further time in discussing questions upon which there can be no action at this session. I think it is due to him that every hour of time should be taken up in discussing the question now before us; and with that view, if it is in order, I move to lay upon the table the motion to take up these rules.

Mr. THURMAN. I ask my friend to withdraw that motion for one moment until I can notice a remark made by my colleague.

Mr. SCOTT. Will the Senator renew it?

Mr. THURMAN. Yes, sir.

Mr. SCOTT. Very well.

Mr. THURMAN. My colleague seemed to rebuke me, (I am sure he did it in no unkind spirit,) because I moved to lay the finance bill, if it may be so called, on the table. My colleague must recollect that we debated that bill, I think, more than a week. I may be mistaken; but that is my impression. But one thing he certainly will remember: that before making that motion, on the morning of the day on which it was made, I went to him and asked him if he had any objection to my making it. He said, "Do not make it now; let the debate run on this day." Then in the afternoon I went to him again and asked him if he had any objection to my making it, and he said not after he had addressed the Senate. Thereupon he did address the Senate with great force, and great power, and great earnestness; and it was not until he had closed his remarks that I made the motion as a test motion.

I do not think there was in that any cutting off of debate, or any injustice to my colleague, or to the committee, or to the country. The Senator from New York who sits nearest me [Mr. CONKLING] declared afterward that the fate of that bill had been perfectly well known for two days in the Senate, and yet we had gone on and debated the bill after it was known for two days that it could not pass. I did not know that two days before the vote was taken on the bill. I thought the debate was a very instructive debate. Leaving out what I said, it was very instructive to me, and I listened to my colleague's views with the greatest interest and pleasure, as I did to those of all others who spoke on that subject; and I think, so far as I am concerned, I was very much benefited by what I heard on both sides of that bill. But I am sure there was no intention on my part to cut off debate, nor did I think anybody wanted to debate the bill further at the time I made the motion to lay on the table.

This is all I desire to say now, because, although I should like to reply to the views of my colleague on this resolution and the proposed rules, I do not wish to take up time. I concur with what the Senator from Pennsylvania says, that we ought not to take up a matter which we cannot dispose of, and therefore, according to my promise, I renew the motion to lay the motion to take up the resolution on the table.

Mr. WRIGHT. I do not wish to make a speech, but I ask the Senator to withdraw the motion for a moment, in order that I may make a suggestion.

Mr. THURMAN. If the Senator from Pennsylvania says so, I will withdraw it.

Mr. WRIGHT. Having offered these rules, I think it is due to me that I should be allowed to say a word.

Mr. SCOTT. Perhaps my friend will not renew the motion.

Mr. WRIGHT. I simply wish to make a suggestion.

The VICE-PRESIDENT. The Chair wishes to state to the Senate that he cannot recognize any conditional withdrawal of a motion to lay upon the table. No Senator has any right to make any bargain of that kind.

Mr. SCOTT. In justice to the Senator who offered these rules, I will withdraw the motion for the present, but will renew it after he shall have concluded.

Mr. WRIGHT. I was about to suggest that I very much doubt whether a motion to lay on the table be in order, for I understand the motion is to lay the motion to take up on the table, and I understand also that the resolution came up as a matter of course, without any motion to take it up. However that may be, I wish to inquire whether a motion to postpone the further consideration of this subject until the first day of the next session would be in order.

The VICE-PRESIDENT. That would be in order.

Mr. WRIGHT. Then I make that motion. Instead of the motion to lay upon the table, I move to postpone the further consideration of this subject until the first day of the next session.

Mr. DAVIS. Will not that be in the nature of a special order?

The VICE-PRESIDENT. The Chair thinks not. The question is on the motion of the Senator from Iowa.

The motion was agreed to.

REPORTING AND PRINTING OF THE DEBATES.

Mr. ANTHONY. I ask permission to make a report. At the last session of Congress the Committee on Printing on the part of the Senate were instructed, in the absence of any contract, which there is no authority now to make, to provide for the publication of the debates of Congress. The committee have made an arrangement with Mr. Dennis F. Murphy, who has long been the head of the corps of reporters of the Senate, to continue the debates in the way in which you see they are now published; and, in order that the Senate may know what the committee have done, I ask the Secretary to read the resolutions which the committee adopted, and under which Mr. Murphy is acting.

The VICE-PRESIDENT. The resolutions will be reported.

The chief clerk read as follows:

Resolved, That D. F. Murphy is hereby appointed Official Reporter of the Senate.

Resolved, That the Secretary of the Senate be directed to pay to the Official Reporter of the Senate for reporting the proceedings at the present session, out of any money that may hereafter be appropriated therefor, at the rate of $1.04 per thousand ems, printers' measurement, and twenty per cent. thereon in addition, (being the same compensation heretofore paid for reporting the proceedings of the Senate for publication in the *Daily Globe*;) the accounts to be made up from the published debates in the CONGRESSIONAL RECORD, and certified by the Congressional Printer.

Mr. ANTHONY. This is the precise compensation that has heretofore been paid. It has always been customary ever since I have been in Congress, I think, and it has now acquired the force of law, to pay an additional compensation per session of $800 to each of the reporters. The appropriation for that has been made for the coming year, but it is made to the "reporters for the *Congressional Globe*." The committee, as part of the contract, have stated to the Reporter that this additional amount will be included in the compensation of himself and the usual number of assistants who have heretofore received it.

The committee have also instructed Mr. Murphy to be prepared at the opening of the next session with his reporters to go on with the debates until further orders shall be issued, if at all.

With regard to the publication of the RECORD, the committee have embodied in the resolution which I ask the Secretary to read their instructions to the Congressional Printer.

The chief clerk read as follows:

Resolved, That the Congressional Printer be directed to have the same number of the CONGRESSIONAL RECORD for the present session printed as was printed of the *Globe* for the last session, with a suitable index, to be prepared under the direction of the Committee on Printing, and that they be distributed as the *Globe* for the last session was distributed.

Mr. ANTHONY. The only variation from that is the file copy, which the committee have instructed the Congressional Printer to place on the desk of each Senator.

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.

The VICE-PRESIDENT. On this question the Senator from New Jersey [Mr. FRELINGHUYSEN] is entitled to the floor.

Mr. FERRY, of Connecticut. If the Senator from New Jersey will allow me one moment, I have an amendment to offer to the pending resolution, which I think should be offered before the debate proceeds further. It is to strike out all of the resolution after the name "ALEXANDER CALDWELL," and insert, "be, and he hereby is, expelled from the Senate of the United States," so that, if amended, the resolution will read:

Resolved, That ALEXANDER CALDWELL be, and he hereby is, expelled from the Senate of the United States.

Mr. FRELINGHUYSEN. Mr. President, I do not rise to make a speech, but to submit a few suggestions in reference to the pending measure, which is one of the most important and the most delicate that has been before the Senate since I have been a member. If it were not my purpose to abstain from a speech, I certainly would have sought another occasion than this, following the exhaustive and eloquent disquisition of the Senator from New York, [Mr. CONKLING,] the impressions of which are still fresh in our memories.

And first I want to say a few words relative to this and other investigations with which we have been engaged, and to those that are looming up before us in the future. In my opinion this is, in its organization, the best legislative body in the world, and it will continue to be such until we adopt the previous question, as just suggested, and then I fear its power will begin to wane. While that is so, it is also true that, except when the Senate acts as a court of impeachment, it is the poorest judicial tribunal in the land. When acting as a court of impeachment, the charges against the accused are presented, and he knows to what he is to make answer, and knows that he is to be called upon to answer nothing but what is charged. The trial takes place; the witnesses are examined by the managers on the part of the House and by the counsel of the accused before the court. Our consultations are with closed doors, with no reporters present, so that there is no pride of opinion to prevent the correction of a hastily adopted error.

But in investigations like that before us the case is widely different. A Senator is put on trial without specific charges or presentment. He may enter the ordeal to try the question of fact whether he did or did not own Credit Mobilier stock, and the judgment may be, without any fault of the committee, and to their pain, and by mere force of the nature of the investigation, expulsion for a crime which must send an iron through the heart of an honorable man.

Another Senator enters the ordeal to try the question whether he has or has not given a bribe of $7,000 to a man specifically named, and while that question is undetermined, he is, on the application of one individual out of the forty millions in this land, and he an enemy, called upon to answer thirteen distinct charges of bribery, with his witnesses eighteen hundred miles away, and this, too, in a land that boasts a Constitution providing that no person, not even a Senator, shall be held to answer for an infamous crime except on a presentment or indictment of a grand jury, and which also provides that trials of all crimes, except in cases of impeachment, shall be held in the State where the crimes shall have been committed.

It may be said that these investigations are at the instance of the party accused. That matters not. The maxim of the law is not that consent does not give jurisdiction, but that consent cannot give jurisdiction. Suppose two Senators consent that we shall try an ejectment case; does that give us jurisdiction? I think it is time that the Senate consider before entering so freely upon these investigations.

But further, Mr. President, the tribunal does not see nor hear the witnesses, so as to judge of their credibility or capacity, and are thus deprived of the one consideration that makes trial by jury valuable. All witnesses stand before us on a dead level; and this is done, with a Constitution providing that all trials of crimes, except impeachment, shall be by a jury! And the consultations of this court, if such you may call the earnest appeals of counsel, are before the public, with reporters present heralding the slightest suggestion of an opinion that is made, so that when the intimation of one's views is once made, it is considered indecision or pusillanimity ever to waver or part from it; and those rules of evidence, the crystallization of the wisdom of centuries, are disregarded by counsel and by committee, because they both know that any objection to evidence, or any ruling that it is incompetent, is looked upon as a *suppressio veri;* and they fear the quick and ready verdict of the country against the party by whom the objection is interposed. A worthless witness testifies to some hearsay allegation, which, perhaps, some one equally worthless has whispered in his ear, and perhaps not; and unless the Senator takes the stand and on his oath swears that the allegation is untrue, it is accepted as admitted; and if he does take the stand to swear to its untruth, he lays his whole life, his business, his private affairs open before the country. Why, Mr. President, if you should attempt in this land to establish an inquisition that should pinch a man's thumb to make him disclose his private business, before it would be submitted to the streets would run with blood; and yet this mode of investigation applies the thumbscrew to the reputation, not to exact evidence, but to compel one to contradict that which is no evidence, and should never have been admitted; and then the occasion is improved by an adversary to pry into affairs that are private, and this, too, in a country that boasts of a constitution which declares that a man shall not be deprived of his liberty except by due process of law. Sir, there is no liberty where privacy is unduly or unlawfully invaded. It is the poorest tribunal in the land, and yet, Mr. President, is it not good enough for all the purposes for which it was intended?

The legislative, executive, and judicial powers are vested in distinct departments. Maintaining the majesty of the law by the administration of justice is not intrusted to us. That belongs to the judicial power. If a Senator is charged with murder, forgery, or conspiracy, and, while out on bail, takes his seat here, may we, without presentment, away from the vicinage where the offense was committed, without jury, without seeing or hearing a witness, try him? No one will say so. May we under the same circumstances, then, try him for the infamous crime of bribery? Are we to do this under the simple power of judging of the election of a Senator? Would not that amount to a usurpation of judicial functions? May we try these offenses under the

authority given us "by a vote of two-thirds to expel a member?" Shall we, under this provision, try in the manner we necessarily must, if we try at all, infamous crimes involving the severest of penalties, and determine issues so nicely balanced that the committee which we have substituted for the grand jury stand three to four? Does not the provision of the Constitution rather mean that when disreputable conduct or crime is so patent or acknowledged, or judicially established, that fifty men out of seventy-four so plainly see it that a trial would be a mere farce, that then the Senate may by a vote of two to one purify itself by cutting off the polluting member? I think so.

Mr. BAYARD. May I ask the honorable Senator from New Jersey, does he hold that it is not within the power of the Senate or the House of Representatives to expel a man for any other offense than that of which he shall have been judicially convicted?

Mr. FRELINGHUYSEN. Mr. President, I will give my friend my views on that subject presently. I will come to it in the course of my remarks.

Mr. BAYARD. The honorable Senator had said as much just now, and I almost doubted my ears when I heard it. That was the reason I put the question for information.

Mr. FRELINGHUYSEN. What I said was that the Constitution, when it said that the Senate may expel a member, did not intend that we should enter into these trials and assume judicial functions; but it meant that where the disreputable conduct or crime was patent, admitted, so judicially established, and was so clear that fifty men out of seventy-four, or two-thirds, saw it, then they might by a vote exclude that member.

Mr. BAYARD. That was the reason I asked. Hearing the learned Senator state that the facts should be patent or admitted, or judicially determined, I thought I would ask him whether he considered that a judicial determination was necessary to give the Senate powerto expel.

Mr. FRELINGHUYSEN. Mr. President, an intelligent judge with twelve plain men as jurors would in three days have determined this question in the State of Kansas, the laws of which State, rather than those of the United States, Mr. CALDWELL has violated if he be guilty, better than we can ever determine it; and let me add that when the record of that conviction should have been presented here, it would have established a *prima-facie* case against him invoking and demanding our action.

But, sir, there are other national considerations why this should not be the forum for these trials. The trickery and fraud and corruption of every nook and corner of this land—and iniquity does prevail here, as it will in every land until the millennium—are dragged here to the Capitol, and paraded and flaunted and magnified by the exaggerations of eloquence, and laid before the public as its daily food, until it is strange if the people are not taught to despise their law-makers and contemn their laws. This is done until these proceedings become a stench in the nostrils of the people, until the key-note of public morals is lowered, and until the great Republic becomes a reproach among the nations of the earth.

I submit that the broad escutcheon of the nation should not be stained and soiled, polluted by the despicable trickery and practices of every little locality. Let them bear alone their disgrace, until in deep humiliation they shall learn that the paths of virtue are alone the paths of pleasantness and of peace. Not only is the nation charged with the local misdeeds that actually happen, but with all the false charges that malignity and disappointed ambition may concoct. In one of the cases to which I have alluded, there were thirteen distinct charges of bribery, which your committee unanimously reported were clearly unsustained. I claim, sir, that we are bound out of regard to the good name of our country, while not screening the vicious, to see that the nation is not unjustly condemned, and even to cast the mantle of patriotism over faults the parade of which does no service.

Again, sir, by perverting the Senate of the United States into a court of general jail-delivery, we seriously interfere with the discharge of those duties relating to great national questions which the welfare of the country demands. And further, I remark that the position of Senator of the United States is one which heretofore has been coveted. Six years is a long time for ambition to keep itself waiting. Let it be understood that the Senate is always open and ready to entertain any charge that may be made by any one, and that we are to try the question in the manner we know these investigations must be conducted, and, I think, we are courting such a condition of things as will destroy that independence and that security which it was the great care of the Constitution, by its various provisions directed to that end, to confer upon the Senate. Better, far better than imperil that independence and security, let the wheat grow with the tares until the harvest, when the States shall enforce their laws, shall come, than to destroy both wheat and tares by this unskillful husbandry.

Let no one think that the propriety of his conduct has been such that he is impregnably secure when the rules of evidence and the proper organization of judicial tribunals are broken down. Those agencies were created as much for the protection of the innocent as for the conviction of the guilty. As another has said, one may be so popular to-day that the people cast garments and garlands before him, and to-morrow he is the victim for the cross: "Crucify him! crucify him!" I object to the breaking down of the barriers of rules of evidence, a justly organized judicial tribunal, and the safeguards which our Constitution has cast around the trial of its citizens for crimes; and I claim for a Senator of the United States only the rights that belong to the humblest citizen of this land; but I claim them all.

Again, Mr. President, there is no limitation to these charges; there is no statute of fence. Away from their witnesses, without the advantage of the constitutional tribunals of the country, the rules of evidence unenforced, long after the event is charged to have occurred, when the evidence is lost or memory become indistinct, and under circumstances in which you could try no one else, the impression seems to prevail that Senators may be tried.

I have said this much to call the attention of the Senate to the general subject of investigation. What I have suggested may have little to do with the case before us, for in that case the Senator admits the paying of $15,000 to induce a candidate to withdraw from the canvass. That fact needs no investigation. Permit a few words as to this particular case.

I do not believe that we are an assemblage of embassadors from the States, but we are a co-ordinate branch of the national legislature. Under the old Confederation a State might send from one to seven delegates, and each State had but one vote. That was State representation. Now, it is true that, in order that the State may have a representation in the national councils without regard to population, each State has the same number of representatives in the Senate; but when here we vote as individuals, as much so as do the Representatives in the House. We are not Senators of Pennsylvania or Rhode Island, but we are, when elected and sworn, Senators of the United States. For the purpose of removing the election a little further from popular influence, Senators are elected, not by the legislative power, for that consists of the legislature and the governor, but are elected by the legislature. When a Senator presents his certificate here, signed by the governor, to the fact of his election, he is, *prima facie*, entitled to his seat. That has been frequently decided. Being seated, he is entirely beyond the control of his State, but can be unseated for any cause that makes his election void, as a discovery of the miscount of votes, fraud in counting them, duress, possibly deception, or discovering a want of the constitutional qualifications.

Can his election be declared void for bribery?

Before I listened to the exhaustive argument of the Senator from New York, [Mr. CONKLING,] I for my own purposes wrote this short sentence, and I believe it true and shall act upon it: "If the electors were legal voters, and voted freely and understandingly, the election is valid." I am not likely to change this conclusion after listening to the argument to which I have alluded. You cannot render an election void by attacking the motives of the legislators. You cannot prove that one legislator voted for a Senator because he was his cousin, and that another voted for him in order to get him out of the way, that he might have his law-practice, and that another voted for him because he was satisfied he would aid in obtaining a bounty for his railroad. It does not follow that the legislator would not have voted for the Senator without any of these considerations. The question of motive is beyond our reach.

Can you declare the election void for bribery? I do not know that I have anything to add to the argument which has been made on that point. I can only state the one consideration upon which I made up my own conclusion on this subject. Suppose a Senator, elected in joint convention by one majority, and it is clearly proven that one member who voted for him was bribed so to vote by an enemy of the Senator elected. That might readily be. That enemy might bribe a legislator so to vote, in order that the Senator would be out of the way as a candidate for governor. He might bribe a legislator to vote for the Senator for the very purpose of eventually defeating him; for if the doctrine be true that the bribery of the majority renders the election void, this would be a very effectual mode of defeat. It seems to me that to hold such an election void would be placing a premium on bribery; that it would be giving it the reward of sure success; and I cannot conceive that any Senator can hold that such an election would be void.

If, however, that election would not be void, then bribery *per se* does not render an election void, for it makes no difference from whom the bribe comes, so far as relates to the influence of the bribe on the vote of the legislator. Do I, then, mean to say that a Senator, if he is the one that gives the bribe, can in this manner secure his election? What I mean is, that it is perfectly clear that his being guilty of bribery is a question that goes to his character, and not to the fact of election, and is to be treated under the power of expulsion.

If, then, bribery does not render an election void any more than it renders a charter or a law void, is corruption to continue to run riot in our legislatures? No, sir; it is the law of the State that the legislator violates, and the States must vindicate their laws; must indict and punish; and, if they do not, then let the General Government, if it has the constitutional power, as perhaps it has so far as bribery relates to a United States Senator, enact laws and enforce them in the Federal courts of the judicial districts of the country. If the Federal Government has no such power, it certainly has not power to reach bribery by declaring the authorized acts of independent States to be void. Again, the question is asked whether the guilty Senator is to go unpunished? No; he is subject to the criminal code of his State, and is subject, too, in the manner I shall indicate, to the power of the Senate on the question of expulsion.

The Senate "by a vote of two-thirds may expel a member." Such is the brief constitutional charter of our power. There is no constitutional limit whatever to our discretion, and we naturally seek for direction. Let us, then, remember that we are not charged with the administration of justice. If a crime is brought to the attention of a

grand jury, they must act. If a case is presented to a court, it must acquit or condemn. We have no such imperative duty. If there be a case that is patent, acknowledged, or judicially determined, so as to convince two-thirds of the Senators, we may expel, if we think the purity and dignity of the body demand it. We do not by any means give our sanction to the conduct of every Senator we do not expel.

For what may we expel? There is no sure chart or compass, in answering that question, to bring us to the safe haven of truth. The best that we can do is to suggest rules to guide our uncontrolled discretion.

First. We may expel for disreputable conduct during the period one is a Senator, whether such conduct is connected with his senatorial duty or not. But when, while Senator, this disreputable conduct is not connected with his senatorial duty, the ground for expulsion should be laid by a record of conviction. There are many offenses that might be suggested for which Senators would freely give a vote for expulsion, yet they are offenses for which they would hesitate long before subjecting the accused to such trial as can be here given. When the offense, be it homicide, forgery, or bribery, is once judicially established, then the Senate will take action as to it.

Secondly. One may be expelled for disreputable conduct in the act of obtaining an election. But if that conduct is a crime, and the Senator asserts his innocence, he is, as other men, entitled to a constitutional trial in the State where the crime is alleged to have been committed, and this, because the Constitution declares in effect that every person shall have that right. I am aware that we are not bound by these constitutional provisions. I know that when we are exercising the power of expulsion, then we are putting forth a high prerogative power. We should, however, in the exercise of this discretion, extend the same protection to Senators as to other men, and be guided by the provisions of the Constitution. Let us do to others as we would that they should do to us. I now ask these Senators individually whether if you, or you, or you, were charged with bribery in your respective States, you would be willing to have your cause tried, involving a reputation dearer to you than life, and involving, too, the good name of your children—you would be willing to have that cause tried in the State of Kansas, eighteen hundred miles and more away from your home and from the vicinage where the crime is alleged to have been committed—away from the locality where the character of the witnesses is known—and this without an issue being formed and without court or jury? No; there is no Senator that would not cry out against such an injustice being brought to his door. By my vote, sir, I shall administer to others, whether there is a storm of public sentiment or a calm, the same law and the same justice that I claim for myself.

Thirdly. It may be that a Senator is so clearly guilty of misconduct connected with the obtaining of his office that it would be a mere farce to require a trial. Mallory, Davis, Toombs, Clement C. Clay, and others left their places in the Senate to join the rebellion, and their seats were declared vacant.

Mr. CALDWELL admits that in the act of gaining his seat he paid $15,000 to Carney, a candidate, to induce him to withdraw. Of this fact there is no doubt. There is no need of a trial. This act, as stated in the memorandum relating to what occurred between CALDWELL and Carney, was not a crime, and the national legislature, consisting of the Senate, the House of Representatives, the President, cannot now make it a crime, because the Constitution provides that Congress shall pass no *ex post facto* law, and, further, because the Supreme Court of the United States, in the case of Cummings *vs.* The State of Missouri, 4 Wallace, 277, in treating of a test-oath enacted after the war, and providing that one who had been engaged in that war for the rebels should not hold certain offices, decided that law to be *ex post facto* and to be void. But CALDWELL'S paying his money to Carney for him to retire is an admitted fact, and it is connected with his obtaining his senatorial office. Mr. President, I cannot reconcile it, notwithstanding the able argument of the Senator from New York, with my sense of the dignity of this Senate that we should in any manner approve of that transaction.

The question is, whether this transaction, not being a crime, is such a disputable act and so connected with his senatorial office that it should be followed in the middle of the Senator's term by expulsion. It is to my mind a highly disreputable act and is connected with his senatorial office. The committee to whom this subject was referred, not for the purpose of making the passage of their resolution more easy by requiring a mere majority instead of a two-thirds vote, (for to suggest that would be attributing to them an unjust and unworthy motive,) but the committee to whom this subject was referred, four out of seven, have told the Senate that they thought a much milder punishment than expulsion was all that was demanded by this case, while three out of the seven thought that even the recommendation of the committee as made was too severe.

The real question, then, that we are called upon to determine is, whether this is such an offense as demands expulsion.

The conclusion, then, to which I have come in brief is this:

First. I shall not vote to declare the election void, because I do not believe it void.

Secondly. I shall not vote that he is guilty of bribery, because, as the Senator denies the charge, I believe that he is entitled to a constitutional trial. If the law does not make provision for such trial, pass a statute making it the duty of the district attorney to institute proceedings in the district where the offense was committed, and try the question of criminality. Let a Senator, as other men, have a fair trial.

Thirdly. Mr. CALDWELL admits the paying of $15,000 to a candidate to withdraw, which, while it was not a crime, and cannot be made a crime by any *ex post facto* proceedings, still was, in my opinion, highly disreputable and was connected with his senatorial office. Whether it is in that degree disreputable as to require expulsion, I will signify by my vote.

Mr. HOWE. Mr. President, I did not, until a very late day, intend to say anything on this case. I do not now intend to say more than a very few words. It has been very much my habit to have my colleague explain my votes; but, for some unexplained reason, he has, on this occasion, neglected that duty.

Mr. CARPENTER. I want to say to my colleague that that is because he does not always follow the explanation; he does not need the disposition.

Mr. HOWE. And I am not sure but that I ought to make an effort to explain my own vote.

I agree with what was said the other day by the Senator from Ohio, [Mr. THURMAN,] that not alone the Senator from Kansas, but that we all are on trial. The Senator from Kansas alone stands at the bar of the Senate; but the Senate stands at the bar of history. We must pass judgment on him; posterity will pass judgment on us.

The question, and the onlp question, I propose to comment upon is that presented in the pending resolution. That resolution declares that ALEXANDER CALDWELL was not legally and duly elected. Now, I cannot persuade myself to assent to that proposition. I have not yet been persuaded to consent to it. To my mind the evidence is overwhelming that he was legally and duly elected. No one denies that Kansas was a State competent to elect a Senator. Nobody denies that she had a legislature duly commissioned to make that election. Nobody denies that her legislature, at the proper time and in the proper place, proceeded to do that precise thing. Nobody denies that in that legislature, at that time, and at that place, a large majority of all the votes given were given for Mr. CALDWELL. Nobody denies that the State supplied him with the ordinary and usual muniments of his title.

All these concurring facts seem to argue very strongly an election. Perhaps it cannot be said that they are conclusive of an election. Under the Constitution I suppose the Senate is the final and supreme arbiter of such elections. But even that assurance, in my judgment, even that last assurance, the Senator from Kansas holds as much as any Senator on this floor. When he laid his credentials before the Senate the Senate promptly recognized him. The Senate administered to him its oath; the Senate awarded to him his seat. For two years, in the face of the Senate, of the country, of the world, he has worn the prerogatives of a Senator, and if he has done this without election, by the permission of the Senate, as he has done it, it seems to me that the Senate itself is not without sin in this regard.

And yet the Committee on Privileges and Elections ask the Senate to revise the decision made two years ago and to reverse it, to declare that the man who was then acknowledged by the Senate to be elected was not elected. As Luther appealed from the Pope uninformed to the Pope informed, so the Committee on Privileges and Elections seem now to appeal from the judgment of the last Senate, darkened, I suppose, for want of Kansas counsels, to the judgment of this Senate, illuminated by the corruscations of political and personal malignity found in this volume, [holding up the report of the committee with the testimony.]

Mr. President, when we consider how harmonious the Senate was on this question of election two years ago, when it was ignorant, and how distracted it is to-day on this same question, when it is supposed to be informed, it suggests a painful doubt as to whether information is really a good thing to have.

Mr. MORTON. What case does the Senator refer to?

Mr. HOWE. The case when Mr. CALDWELL was admitted to his seat by the Senate. I think that was the judgment of the Senate. I think it ought not to be reviewed; it ought not to be reversed. All that is known to-day was known then. All may not have been known to the Senate two years ago that is known to the Senate to-day, but all was known two years ago which is known now.

Mr. MORTON. What does the Senator mean by saying it was "known?" Known to whom?

Mr. HOWE. Known to those who tell it now.

Mr. MORTON. To the witnesses?

Mr. HOWE. Known to the witnesses. I do not remember exactly what the synonym of "known" is, and therefore I cannot very well explain what I mean by that word "known." I do not think the Senator really needs an explanation. This, however, perhaps I may say by way of interpretation: that those who reveal facts to-day upon which we are asked to say that Mr. CALDWELL was not elected are those who concealed the same facts two years ago, when the Senate did say Mr. CALDWELL was elected. Is it so, then, that that aggregation of spite which seems to constitute the politics of Kansas in a great measure is the volcanic fire by whose light the Senate must be guided? Can we only walk when that mountain belches? When it smolders must we grope and stumble?

Mr. President, suppose we now retry the question of Mr. CALDWELL'S election, and suppose we again affirm it; we must retry it again next December, I suppose, if anybody else assails it, if anybody else comes here with a new suggestion, or a new fact, or a new

allegation which impeaches it. So often as the fact of an election is assailed, so often under this rule we must try the question, and so often as we try it we must decide it by a majority vote of the Senate. Where then sleeps, what has become of that article in your Constitution which says that a Senator shall be elected for six years?

Mr. MORTON. Suppose he dies, does that break the Constitution?

Mr. HOWE. No, sir; that would not violate the Constitution. Or, if it would, death is not subject to the Constitution of the United States. It does not follow, because death may shorten a senatorial term, that a majority of the Senate may. [Laughter.] But I ask again, in spite of the suggestion, what has become of that command in your Constitution which says a Senator shall be elected for six years? It is breath, and nothing but breath, if the fact be that he holds only until a majority of the Senate can be found to say that he was not elected. He holds during the pleasure of the Senate. That is the duration of his term.

Mr. President, this resolution declares that Mr. CALDWELL was not elected. If the form of the resolution had been that he shall be expelled, we all understand that his seat would not be vacated unless the resolution in that form should receive two votes to every vote given against it. In its present form we understand that the resolution will pass if one vote more than a majority be given for it. And, if it shall receive one vote more than a majority, and shall be enforced, what will become of the Senator from Kansas? He will be excluded from his seat; he will be thenceforth "cut off from all connection with the body." That is precisely the definition which the lexicographers give of "expel." He will be in fact expelled. The Constitution has undertaken—the men who framed it I believe made an honest attempt—to reserve that power of expulsion, not to a majority of the Senate, but to two-thirds of the Senate. It seems to me it was a most idle effort, a vain effort on their part, if precisely the same thing could be done by a majority, simply by changing the form of a resolution.

I do not deny that the Senate is the judge of the election of its members. I admit that. But I think that is a power by which the Senate regulates the admission of its members, not a power by which it controls the continuance of members in the body. It seems to me that, when that power is once exerted upon an individual, it is exhausted upon that individual. It is a power, as I think, over one who seeks membership, and not a power over one who has obtained membership.

In the House of Representatives this same power conferred in the same words must of necessity be a different thing, and for this reason: the House of Representatives once in two years ceases to exist. Membership is awarded in the House, not by the House, but by an officer of the House. That admission to a seat, conferred not by the House, but by an officer of the House, cannot deprive the House of its constitutional power to judge of the election of the man so admitted. And since the House of Representatives has no power, or exerts none, in seating its members, when it exerts the power to judge of the election, the effect of that judgment, if adverse, must be to unseat the member.

But the Senate never fails. Whoever comes here and demands a seat in this body demands it of the body, and takes it, not in spite of the body, but with the assent of the body; and it seems to me that, when a seat is so by the body awarded, it is the judgment of the Senate. By that judgment all the world outside the Senate is unquestionably bound; and I do think, whatever the rule may have been heretofore, the Senate itself and all future Senates ought to be bound by that same judgment.

But, sir, although my first reason for saying that Mr. CALDWELL was legally electedis that I think a previous Senate which had full jurisdiction of the question has so decided, yet I am far from saying that that is the only reason.

Mr. SCHURZ. The Senator is aware that a few weeks ago the case of Mr. SPENCER was before this body. The question was whether the legislature which had elected Mr. SPENCER was the legal legislature of the State of Alabama. He was admitted to his seat, as I understood, and I think as the majority of Senators understood, with the understanding that it should be afterward ascertained upon a contest (and for that reason his credentials were referred, I believe, to the Committee on Privileges and Elections) whether the legislature which had elected him was the legal legislature of Alabama or not. Now, according to the argument of the Senator from Wisconsin, would not the admission of Mr. SPENCER to his seat, that question being pending, be final and conclusive as to his case?

Mr. HOWE. Mr. President, the question put by the Senator from Missouri is a very fair one to try the theory I was endeavoring to uphold. But, after all, it does not, in my view, militate against that theory. I was not unmindful of this view of the law when the SPENCER case was before the Senate. I am not prepared to say the Senate may not have the power to admit a Senator provisionally. Since a clerk of the House can admit a member there provisionally, I do not know but that the Senate may have as much authority. But that right to admit provisionally in the House is not conferred in terms by the Constitution. It is a power which is forged out of the necessities of the case. But that necessity has created the usage in the House to do so. I think that usage has been borrowed by the Senate from the House. What I wish to say is, that whether the Senate may or may not admit a member provisionally, in my judgment the Senate never ought to admit a man to a seat here of whose election there is any cause for doubt. This I said when the question of the admission of Mr. SPENCER was before the Senate

Mr. MORRILL, of Vermont. I desire to make a single suggestion to the Senator from Wisconsin. The House has heretofore, on different occasions, regulated the action of the Clerk as to what members should be admitted.

Mr. HOWE. By statute.

Mr. MORRILL, of Vermont. And whenever any contested case arises, and the admission of a member on the first day of the session is objected to, that member is excluded.

Mr. CONKLING. That is a statute regulating the making up of the roll, in order to organize the House.

Mr. HOWE. I am aware of those different regulations—some by statute and some by rule of the House. They are mere directions given to the Clerk of the House for his guidance in making up a roll of members. How far they are valid under the Constitution it is not necessary for me to inquire now; it is not pertinent to this debate; but I think the Senator from Vermont and every lawyer on the floor will agree that there are very grave reasons for questioning the validity of all those provisions.

I was about to say, when interrupted by the honorable Senator from Missouri, that I had other reasons for believing that Mr. CALDWELL was elected. If the question were before the Senate for the first time, if it were presented to us as it was presented to the Senate two years ago, or, in other words, if it had been presented to the Senate two years ago as it is presented to us to-day, how could the decision have been different? With all we know to-day, and all we suspect, what reasons can we assign for not adjudicating the question of his election precisely as the Senate adjudicated it two years ago? I have said the legislature was competent to elect; Kansas was entitled to a Senator; he received a large majority of all the votes given. Why was he not elected? What reasons do the Committee on Privileges and Elections assign for the judgment which they ask of us? There are but two. One is, that two of his rivals in that senatorial contest withdrew from the struggle before the struggle ended—one of them for a sum of money which was paid, and the other for a sum of money which was not paid. The other reason is, that the votes of some of the members of that legislature were controlled by money, and not by reason.

One word as to each of these reasons. How does the fact that two of Mr. CALDWELL'S rivals in that struggle withdrew from the struggle render improbable in any way the election, the triumph of Mr. CALDWELL? Nobody denies that the legislature of Kansas were just as competent to choose after Clarke and Carney withdrew as they were before. Nobody denies, not even the Committee on Privileges and Elections suggest, but that CALDWELL was just as capable of being elected after Clarke and Carney withdrew as before. And if the legislature was as competent to choose and CALDWELL was as competent to be chosen after their withdrawal as before, an uneducated man would think it much more probable that he was elected; nay, before the event was determined, an uneducated man would suppose it altogether more probable that he would be elected. There would be a good deal of plausibility in saying that Mr. CALDWELL was elected because Clarke and Carney withdrew; but it seems to me very irrational for us to say that he was not elected because Clarke and Carney withdrew from the struggle.

But it is not a question of probabilities at all. There is the record. In that legislature eighty-seven votes were given for Mr. CALDWELL; thirty-six were given against him. How many of those eighty-seven votes do the committee want us to discount because Clarke and Carney withdrew? Which one of them do they want us to discount because those men withdrew? I think, on the whole, we will agree to do what the legislature of Kansas did—count all the votes in spite of Clarke's and Carney's declinations.

Nor, Mr. President, can I find any authority for concluding that Mr. CALDWELL was not elected because some of the votes given to him in that legislature were paid for. I admit that money is a very poor equivalent to return for an election to the Senate of the United States. I have not any doubt at all on that point; but I think I have known men returned to the Senate of the United States who did not return any equivalent half so good as that. [Laughter.] Mr. CALDWELL received eighty-seven votes in that legislature; but sixty-two votes were necessary to his election. I think the Committee on Privileges and Elections will agree that if sixty-two good, honest votes were given to Mr. CALDWELL, we ought to say that he was elected, notwithstanding a great many bad votes were added to the number. If sixty-two honest and unpurchased representatives of Kansas said that Mr. CALDWELL was the man to represent Kansas here, why should their suffrages be impeached, their free will be defeated, because a good many scoundrels in the same body took money and voted for CALDWELL also? I do not understand the committee to deny that there were sixty-two honest, unpurchased, unbought votes given for Mr. CALDWELL. Until the Senator from Ohio [Mr. THURMAN] spoke the other day, I did not suppose there was any one who believed for a moment that twenty-five members of that legislature were purchased. I do not understand the Senator from Ohio to insist upon that. He did express the belief that thirteen, at least, were purchased, and he thought invalidating the votes of thirteen of the members of the legislature would defeat the election of Mr. CALDWELL. That was clearly a mistake in his mathematics. Thirteen of those votes might have been thrown away and it would not have affected Mr. CALDWELL'S election. Unless twenty-five votes at least were

purchased, Mr. CALDWELL had a majority of unpurchased votes. If you look at the record of that election, no Senator can believe that bribery extended to twenty-five of the votes given to Mr. CALDWELL. Recollect, the day before he received those eighty-seven votes in joint convention, when a large portion of his effort, and I take it a large portion of his money, had been exhausted, the legislature voted in the separate houses, and on that day in the senate, if I remember aright, Mr. CALDWELL received but eight votes out of twenty-five, and he received but thirty votes out of ninety-eight in the house.

Mr. SAULSBURY. Will the Senator from Wisconsin permit me to call his attention to one fact?

Mr. HOWE. Yes, sir.

Mr. SAULSBURY. I ask him what he will do with the fact which appears from the testimony of Mr. Clarke. The Senator is now speaking, I understand, of the number of votes that were purchased, if any were purchased, by the Senator from Kansas. I call his attention to the testimony of Mr. Clarke, who states that, while his influence was being negotiated for by Mr. CALDWELL, he stated to Mr. CALDWELL that all the strength, or nearly all the strength, he had developed had been purchased, and that CALDWELL virtually admitted it by saying that success would do away with the stigma. Was not that an admission, I ask, on the part of Mr. CALDWELL, that the votes and the strength which he posssessed in that legislature were purchased?

Mr. HOWE. I confess, Mr. President, I should be a little reluctant to find so grave a fact as that upon so loose a statement as that of Mr. Clarke's. I was about to say I should be a little reluctant to find so grave a fact upon any statement Mr. Clarke might make in the temper in which he was when he testified before the committee. No, Mr. President, the testimony shows that in Kansas everything was not dishonest; all were not corrupt. The testimony shows that in that very legislature there was an effort, a resolute effort, made to stem the tide of corruption, and there was a party—I do not know, the record does not disclose, how large a party, but a party—and I would shake hands with them if I could meet them—which earned and wore for a time the nickname of Purifiers, because of their effort to resist what they considered to be the tendencies to corruption in the State of Kansas. I think on the whole there is no safe, no satisfactory reason for believing—I do not think even the Senator from Delaware would conclude, on the whole—that there were enough members of the legislature bribed to vote to have used up Mr. CALDWELL'S whole majority.

When the question shall arise, when one shall come here claiming a seat in the Senate of whom it shall be said and shown, not merely that he bought votes, but that he bought his election—that he bought votes without which he could not have been declared elected a member of the Senate—I shall be ready, if I am here in that sad day, to consider and determine that very grave question, whether the Senate may or may not inquire into the motives which influence members of the legislature in voting for a Senator. I shall not jump to meet that responsibility. It is not, in my judgment, here forced upon me. We know that the evil of that day will be sufficient unto the day. Let us hope that that day will be sufficient unto that evil. That question I do not propose to discuss to-day. I do not propose to-day to say one word, if I can help it, which shall hereafter be quoted as a restriction on the freedom of a State in choosing her Senators; and I shall not to-day, except by accident, utter a word which can be construed as an opinion that the legislature of a State may dispose of a seat in this body by sale as well as by election.

For these reasons, Mr. President, I shall not be able to vote for the resolution of the committee.

There is another question threatened—and when that comes, I shall be prepared to meet it, I hope—the question of expulsion. I would not allude to it now but for one thing. It has been repeatedly said during this debate, not in so many words, but in effect, that the power to judge of an election and the power to determine an expulsion were cumulative remedies for the same evil. Even the Senator from Ohio I thought the other day seemed to ridicule the idea that the Senate, being clothed with full power to judge of the election of a member, should not exert that power to exclude an obnoxious member, and not wait to have the power of expulsion invoked. The Senator from New York [Mr. CONKLING] said in reply to that that the two proceedings, if I understood him, the two questions, were as distinct from each other as the question whether two persons had been married was distinct from the question whether the same two persons should be divorced. I think the Senator from New York was entirely justified in that illustration, and I think he might have gone a good deal further. I think the distinction between the question of an election and that of an expulsion is much broader than that between marriage and divorce. The distinction is as broad, I think, as the question whether the Senator from New York may maintain in equity a suit against me to enforce the conveyance of a piece of land, and the question whether in a court of law he may maintain an action of trespass against my colleague for entering upon the land. The question of marriage and the question of divorce may and ordinarily do arise in the same proceeding, are settled upon the same testimony between the same parties, and in the same tribunal. Now this question of election is tried between entirely different parties, so to speak, from those who are interested in the question of expulsion. When you are trying the question of election, your testimony and your judgment are brought to bear upon the legislature of a State or upon a State. No matter though the candidate for the Senate may be the purest man ever created, yet, if you find some defective quality, some act of omission or some act of commission in the State which avoids or forbids his election, you must so declare. When you are trying the question of expulsion, you have not the slightest reference to the conduct of the State, but you have sole reference to the character of the man. The State may have piled upon him election upon election; they may have been ever so unanimous in declaring that they want him for their representative; yet, if you find the man to be unfit for a Senator, then you proceed to expel him.

Mr. CARPENTER. Will my colleague allow me to make a suggestion at that point?

Mr. HOWE. Let me add one word, and then I will hear my colleague.

I want to say, furthermore, that the tribunal which tries the question of expulsion is radically different from that which tries the question of election. The question of election is submitted to a majority of the Senate. The question of expulsion is submitted to two-thirds of the Senate and two-thirds alone.

I will now hear my colleague.

Mr. CARPENTER. I wish to make a suggestion in aid of the analogy which my colleague has made here between the case of marriage and divorce and the case of membership and expulsion. The analogy goes a step further. In every action of divorce there is involved and must first be settled the question of whether the parties were married or not. It is a necessary allegation to a bill in chancery for a divorce that the parties were at a time and place married, and that must be proved; and the court has no jurisdiction to divorce, unless the fact of marriage be first established. So here the fact of election must be established before you have got a member to expel, and you can expel nobody but a member.

Mr. THURMAN. Will my friend allow me? I dislike very much to interrupt a speaker, but I want to ask my friend a legal question. I understand him to take the ground that in no case whatsoever can a Senator be expelled unless that Senator has been guilty of some wrongful act; unless you can impute crime, or misdemeanor, or offense to him personally. Am I right in that?

Mr. HOWE. The Senator does not understand me; at least if he understood me to say so. I have not said it. What I said was, that in determining the question of expulsion we have not the slightest occasion to refer to the legislature. No matter what their will might have been—they might have been unanimous in the selection of the individual—yet if we found the individual himself unsuited to the work of the Senate, by reason of crime or by reason of some other defect—if we found him unsuited to the work of the Senate, two-thirds of the body could send him out of the Senate.

Mr. THURMAN. Now if it does not interrupt the Senator——

Mr. HOWE. Certainly not.

Mr. THURMAN. If I understand his argument, he hesitates to say whether we can declare an election void because members of the legislature were bribed. If we cannot declare an election void because the majority that elected that man were purchased, what will he do with this case? Suppose the majority were purchased, but the person elected had no hand whatever in the purchase? In a case like that, if we cannot go to the election; if that cannot be set aside; if we cannot expel except where there has been personal misconduct on the part of the member, what is the remedy? So in the case supposed, although every member of the legislature had been bought, yet the person elected not having been the purchaser, he would be entitled to his seat. Does the Senator intend to maintain such a proposition as that?

Mr. HOWE. It is precisely that proposition which I said I did not maintain. It is precisely that question on which I said I did not mean to express an opinion. I did say that I did not think we could find a legislature had not elected, simply because some of its members had been bribed; but I also said that I did not mean to discuss the question now whether, if we found that the majority which returned the member was influenced by bribes, we could not declare an election void. That question I postpone very gladly until the consideration of it is forced upon me.

Mr. President, that I may not be mistaken at all on this question of the power to expel, I want to say that I think that power is vested in two-thirds of the Senate just as broadly as any power is vested in this body or as any power is vested in the Congress of the United States. I mean to say, in spite of what I heard from the lips of the Senator from Ohio the other day, and as I thought from the Senator from New York also, that the Constitution says to two-thirds of the Senate "You may expel a member" just as explicitly and just as unconditionally as it says to Congress "You may levy taxes." I heard the Senator from Ohio say that this power was vested in the discretion of two-thirds of the Senate, but that it was a legal discretion; and I thought the Senator from New York assented to that when he said of course we could expel, but we could not expel for throwing sand on the carpet.

Mr. CONKLING. Unless it violated some order of the Senate.

Mr. HOWE. He said we could not expel for throwing sand on the carpet, and he adds now "unless it violates an order of the Senate." Mr. President, I ought perhaps not to make the admission, but I must make it; I do not know what legal discretion is. I understand what you mean when you say conduct is under the control of law, and I understand what you mean when you say that conduct is under the control of discretion. But I cannot understand what this legal dis-

cretion is. It seems to me a contradiction in terms. It seems to me that where law is, there is no discretion; and where discretion is, it seems to me the law is silent.

Mr. THURMAN. Will my friend allow me to put a question to him right there?

Mr. HOWE. Yes, sir.

Mr. THURMAN. He understands it very well, I think. He has been an eminent judge. It is said to be within the discretion of a court whether it will grant a new trial. That is a matter within the discretion of a court, and so much so that no writ of error, according to the course of the common law, will lie from a decision of a court granting or refusing a new trial; but is not that discretion a purely legal discretion? If a judge were, without any cause whatsoever, and against the right and the justice of the case, to grant a new trial, and he were impeached for it, and brought before the Senate, would not my friend vote that he was guilty? I think I should.

Mr. HOWE. I would vote to impeach a judge if I thought he acted corruptly, dishonestly, irrationally, insanely, in granting a new trial, or in granting a continuance, or doing any other official act. But does the Senator mean to insist that, after all, the judge, in granting a continuance, is guided by a legal discretion?

Mr. THURMAN. Yes, sir.

Mr. HOWE. If he grants it in an improper case, or refuses it in a proper case, his decision is final. It cannot be reversed. Nothing happens except that he may be impeached. If that is what is meant by legal discretion, I understand it. In that sense I understand the law which controls us in voting on expulsion. I admit that, if in an improper case I vote to expel a man from this body, that constituency which sent me here, when they get jurisdiction of me again, may discipline me. And if I vote to keep him here when he ought to leave, that constituency can rehear the question and pass judgment on me. If the Senator means that by speaking of legal discretion, I agree that he is entirely right. But still I insist that discretion is not and cannot be controlled by law. The illustrations show only that the discretion vested in the court which tries the impeachment is as lawless as that of the judge who grants or denies the motion for a new trial. And the discretion of the constituency which reviews the record of a representative is as lawless as that of the representative himself while in the exercise of his office. If two-thirds of the Senate should expel the Senator from New York for throwing sand upon the carpet, who is to redress that wrong? I do not know of any such power.

Mr. CONKLING. Would that be cause for expulsion?

Mr. HOWE. Upon that precise question I do not want to give an opinion. I do not want to say a word which can be construed into an encouragement of that kind of conduct. I should rather have my faith tested by reference to some other act, though, since the question is put to me, I will say that for myself—I want to be frank—if the Senator was on trial for that specific act, and for that alone, I should, I admit it, vote to acquit him; but I beg him not to conclude that, because I should vote for acquittal, there would be more than one-third of the Senate who would agree to acquit him. And unless one more than one-third should acquit, the Senator would be compelled to vacate the seat he adorns so much.

Mr. President, I have indulged in this one reference to the power of expulsion merely by way of indicating that, when that question comes before me, the Senate may understand that I shall not feel that I am under any constitutional limitations or restrictions whatever. When we come to deal with that question, if we shall come to it, I want to say that for myself I know of no learning anywhere, no law, no rules behind which I can take shelter. I must stand face to face with the case, with the man, with the evidence, and I must say for myself whether I believe the public welfare demands his expulsion or permits his continuance here. It does not matter what others may have said; they have given no law to me. It does not matter what two-thirds of the Senate may think; I must speak for myself, upon my individual responsibility, accountable only to that constituency which sent me here, and, perhaps I may be allowed to add, to that Being who gave me existence.

Mr. MORRILL, of Maine. Mr. President, I have listened attentively during these ten days of consideration that are now behind us. I do not rise now for a speech to the Senate. It is not my purpose to do more than to submit a few observations touching a few principal facts and a few propositions of law which I understand to be involved in these considerations, and to my mind they all lie within such a narrow compass that I feel myself quite at liberty to promise the Senate that I shall not tax their patience at any great length.

Among the things that are obvious, and to which I invite attention as among the first to be considered, is the great fact, not doubted, not denied—it seems to have been conceded on all hands, deplored by all, condemned by all, and denounced by all—that great fact which comes to us from history, and the report of the committee combined, that in Kansas, in 1871, on the occasion of the election of Senator, there was a state of things disreputable to the people of that State, disreputable to the country at large, and which in its legitimate tendencies and consequences does affect the public welfare, and impinges upon that great fundamental principle in our system which, if we are to live and not perish as a people, we must see to it, so far as we are concerned, that by our countenance or forbearance it is not repeated again in any of the commonwealths that claim the right to be represented here. From the beginning to the end, let it be remarked—for I am not to pause to go into the details of this testimony—from the time this report was made, from the moment it was laid upon our tables, we were advised of the general facts. We have been here under the shadow these last thirty or forty days, consciously under the shadow of a great political enormity. So, sir, it has been treated; so the honorable Senator who sits by my side [Mr. MORTON] characterized it; so it has been treated by every Senator who has spoken upon the subject on either side, and on all hands, for there is no side here; it is the Senate, and only the Senate. There is no partisan consideration here, and, from the nature of the case, there can be none, unless all of us be so far gone out of the way that we have made up our minds willfully to be false to the great duties of this occasion and this hour. Let it be said to the honor and credit of the Senate of the United States that in this great discussion it has exhibited no partisan character at all; it is the American Senate to-day, God be praised, in spirit and in purpose as I believe, and as I believe the result will show.

So, sir, we stand in the presence of a great political enormity consummated. It is so by the finding of your committee; it is so by the judgment of every Senator who has spoken upon this subject; and he who spoke eloquently and elaborately and exhaustively, did not close that speech on yesterday until he had added his denunciation in the same strain and in the same spirit, as I understood him, and with the same appreciation of what we are standing face to face with.

Now, Mr. President, I am not going to detain the Senate by an analysis of this evidence, although I have been pretty attentive to it. It is not necessary for my purposes. It does not stand in the way of anything that I shall have occasion to say, or of anything that troubles me. We do not divide on this. Obviously, on the occasion of the election in 1871, the capital of Kansas had become a sort of ballot-exchange, where the ballot-brokers, their retainers and runners, met to transact the business of supplying the American Senate with a member. Sir, if the facts of this report are not greatly misstated and distorted, what took place on that occasion in Kansas is a grotesque sarcasm on the constitutional method of providing members to the American Senate.

I shall assume, for the purpose of the argument, what the committee report, that an election which took place in Kansas in 1871 was controlled by bribery—bribery of a candidate by the payment of large sums of money to retire and to give his support and to carry in his followers; bribery of another candidate by the promise of another large sum of money to retire and to carry in his supporters; bribery of electors directly by the payment of money; and attempt at bribery of other electors by the offer of money not accepted.

That being the case, Mr. President, the question arises whether, in the Senate of the United States, there is any remedy; and I come directly to that question. Has the Senate of the United States any concern with or power over that matter? Does it belong somewhere else? Must the Senate of the United States say to Kansas, "Heal yourself?" May the Senate of the United States content itself by saying to Kansas, "This is all wrong; we deplore it; we denounce it; we hold it criminal; we hold that your conduct is vicious and subversive of the principles of free government; but the responsibility is with you?"

What is this defense? What is the defense from the sitting member who admits the payment of $15,000? Substantially that that is no concern of ours; that it was a private transaction, although it had relation to a singularly public event; that, being a private transaction, it is supposed (although it related to a public event and that public event was the transfer of a private citizen to the Senate of the United States) to be no concern of ours. Of course, I do not stop to remark upon that. But the legal position taken here, a position framed by counsel as astute and as subtile as any in the land, counsel subtile enough and astute enough to get a judgment at Geneva so magnificent in its proportions, for actual and direct damages, that we have not yet been able to find equitable and *bona-fide* claimants for a moiety of it, is, in substance, that we cannot consider the question at all. The defense is a general demurrer to our jurisdiction. The defense is, "What of all that? Suppose there were frauds in Kansas; suppose, for the benefit of the argument, we concede that this election was brought about by bribery, just as you say, what of it? Here is the certificate of the election; here is the certificate of the governor, certifying that all was done that the Constitution requires to be done; and it is under the broad seal of the State, and you can go no further." That is, that this act, the election of a Senator of the United States by the State of Kansas, is the supreme act of the State; that it is a sovereign act; that it is an act of unqualified authority; that we cannot inquire into it; that it springs from the Constitution of the United States, which provides that—

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

Looking at that particular clause of the Constitution, and shutting your eyes to everything else, that would be so. The State is entitled to two Senators, and the legislature shall choose them; that makes it sovereign; that makes it an absolute act, to be sure; that proves the case beyond all question; and, if it rested there, what would the State have a right to do? Choose whom it pleases, when it pleases, as it pleases, and you would have no right to make inquiries into the proceedings. The State, of course, under that provision of the Constitution, might choose without regard to qualifications, or age, or nativity; it might choose to be represented on the floor of the Senate

by an alien; it might choose to elect somebody not an inhabitant of the State, and, resting on that provision of the Constitution, it would be sound; it might also choose when and as it pleased.

But it so happens that there are two or three respects in which this is not the sovereign act of the State. It so happens that in interpreting the Constitution, as in interpreting everything else, you must take a broader view of things; you must look to the whole instrument. In the first place, I have to say that this is in no just sense the act of the State at all as a sovereign State. Perhaps, Mr. President, no one on this floor is in a general sense a greater "stickler," so to speak, for State rights, and those rights of the people and of the States which are reserved in the Constitution, than I am myself; but in this proposition I fail to see State sovereignty or State rights at all. It is the act of the State in the Union, acting through the Constitution, and not acting in the right of its reserved powers as a State. Outside of the Constitution of the United States it has no right to send a Senator here at all. If it sends a Senator here, it is in obedience to the Constitution of the United States; and when it chooses, it must choose as the Constitution directs. What does the Constitution direct?

In the first place, the Constitution directs whom it shall send—the style of man it shall send. He must be thirty years old; he must be an American citizen; and he must be an inhabitant of the State.

Then its power is qualified still further by subjecting it, under the Constitution, to the authority of Congress as to the manner. How must it choose? It must choose as we direct. How have we directed? We have directed that it must choose by a majority of its legislature. In order that its choice shall be legitimate under the Constitution, it must conform to all the principles of the Constitution, first as to the qualifications of the person, next as to the requirements of Congress as to the election.

And, Mr. President, all these limitations and qualifications come finally under another provision of the Constitution, to be subjected to the judgment of the Senate; and that raises the principal question in this case. Have we the right to judge? It is conceded that we have to some extent. How is that power restricted in the Constitution, or what is the scope of our authority to judge?

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

How? I will read from the defense drawn up as I have stated. It is in these words:

> I come here, a Senator of the United States, duly certified as such by the competent authorities, and elected in all the forms of the Constitution and of the statute laws, whether of the United States or of my State. What right have my fellow-Senators to go behind my commission, to inquire into the *motives* of the members of the legislature in electing me to the Senate of the United States? On what text or pretext of law will the committee justify any action against me on the part of the Senate?

He then goes on to say that there is no law of Kansas that requires it; there is no law of Congress that requires it; there is no absolute provision of the Constitution of the United States that requires it; and adds:

> On the provision of any article of the Constitution of the United States? No. It is true, the Constitution empowers each House to be "the judge of the elections, returns, and qualifications of its own members." Nobody calls in question my legal qualifications.

If any one did so call in question, the inference is that it can be inquired into, as it can unquestionably.

Mr. MORTON. In the cases of Gallatin and Shields, long after their admission.

Mr. MORRILL, of Maine. And further:

> Nobody impeaches my return—

If it was impeached, it is conceded it could be inquired into—

> and if the inquiry have any basis whatever in the Constitution of the United States, it is in the word "elections," in the cited clause of the Constitution.

Now, sir, it will be seen how gingerly this power to judge is approached: "if" it has any application anywhere, "if" there is any power anywhere to inquire into the great injury in this case, it is in the word "elections." So it is. That is what I suspect. Well, how does he get over that? Why there he drops it.

> But the question recurs, and I again demand, on what law do you proceed? You may inquire, in virtue of the Constitution, into the fact of my election; but the Constitution does not say you may inquire into the *motives* of the members of the legislature.

That is the point. It is conceded that you may inquire into the *fact* of an election, but not the motives of the electors, because the Constitution does not say that. Mr. President, there are two sorts of constitutions in this country. There is the written compact, out of which springs the Senate of the United States and the Government of the United States, limited in its capacity and authority. There is the unwritten constitution of the American people that lies back of it, out of which the Constitution itself sprang, and by which we constantly interpret the text of the written Constitution. It is the constitution of society; it is the constitution of American communities; it is the great, solemn compact of history, on which society is built up, and by which society interprets itself—interprets all legislative acts and constitutions.

Mr. President, if there is nothing to be found in the Constitution that you may inquire into the motives, there is nothing found in the Constitution that you may not, while on the other hand everywhere, among all civilized people, it is proclaimed that you may inquire into the character of an election. You may inquire whether an election has taken place or not, and if you find that the electors have been purchased, you have a right to infer by the teachings of common sense and common morality, by the principles of the common law back of all constitutions, as well as the practice of all civilized nations, that an election controlled by bribery or purchase is not a valid election. That is what it comes to. It is in the nature of things. An election, to be an election in law, must be free. Is it free when it is purchased?

It has been said here in this chamber this morning that if a man votes according to his intent, if he puts in his ballot free, it is an election, although it was a purchased vote. I deny it. It is an absurdity. A man who votes on a bribe does not, in law, vote at all in the nature of things; he is not an elector, but a vender. To be an elector and to carry a vote he must be a free man, and it must be a free vote; it must be an unpurchased and an unbribed vote, else he ceases to be an elector; and, sir, search the history of the earth and you will find no instance where an election brought about by fraud, when brought before the competent authority, has not been declared invalid.

Does anybody deny that? Of course not. The only question is, whether this is the body with the power to examine it and decide it. That is all there is of it, all there ever was of it. Does anybody believe that there is an American community, from a town up through the cities, counties, States, and up to this Senate, where bribery at an election would not be held to vitiate it, and where it would not be declared to be void? Of course not. Then here, and here alone, in the Senate of the United States, bribery in elections is to take shelter and be safe. It may be so; but if it should be determined so, alas for the Senate, and alas for the country!

Mr. President, this brings me to consider, conceding that this election, as the committee say, was brought about by bribery, by the purchase of votes enough to control it, was it valid? I have suggested that that could not be so. If it were not, can we judge? That is the only question. Can we determine that question? Let us come back to the text, "Each House shall be the judge of the elections." Does anybody doubt that the House of Representatives could examine into the question of bribery through a committee, and if they found that an election in a given case was absolutely controlled by bribery, that they could declare it null and void? Of course not. But it is said the analogies fail altogether when you come to the Senate; that the Senate stands in a very different relation to this question from what the House does. Let us see. The Houses are differently organized: the Representatives are chosen by the people direct; we are chosen by the people's representatives. Does that change the principal fact? Does that change our power to judge? It only limits the scope of our judgment; that is all. They go back to their sources of power; so do we to ours. They go back to the people; we go back to the people's representatives. That is all the difference. They inquire exactly how the people themselves conducted; we inquire how the people's representatives conducted; and therein I think the analogy is perfect, and to that extent I submit that the power of both branches is the same and must be the same. Very well; that being so, it follows that we are the judges to look not only at the returns and see whether they are proper, but we are to look at the qualifications; we are to inquire, if you choose, into the qualifications. As has been done oftentimes, more than once certainly, in this body, we may inquire whether the man is qualified in relation to citizenship, as I think was done in the case of Shields, from Illinois. We may inquire also as to the age and as to the inhabitancy, as I remember we did on an occasion so recent that it is within the memory of all of us.

Now, sir, if we can inquire into those things which are not patent on the face of the instrument, shall it be said that when you come to the question of ascertaining whether a majority voted you are estopped? That is the argument here—that you are estopped; and you are estopped because of what? Because, if you go one step back to inquire how a man voted, you are in danger of looking into his motives. Well, now, Mr. President, I do not choose to speak on the question of motives at all. It is not a question of motive; it is simply a question of fact. You inquire into the fact—how did the man vote on that occasion; was he bribed; was his vote a voluntary, free, unbought suffrage, or was it a purchased and bribed suffrage? You find that fact. The motives are quite another affair. If anybody is troubled about the motives he can moralize upon it as he pleases; but as to the fact whether that majority or that election was controlled by bribery, whether there were brokers there, and those men were bought up and paid a certain sum of money, and received it and voted accordingly and for that reason, is a fact open to the Senate of the United States under the right to judge of the election.

Now, on this point in the case I conceive that these two things are apparent: first, that this election was effected by bribery; in the second place, it seems to me most obvious that we are the judges in the sense that we may inquire into that fact, and if we find that to be the fact, then I submit that the election is invalid, although it is not so declared in the Constitution, although it is not so declared by the laws of the State of Kansas, or by any law of the Congress of the United States, but it is so in the inherent nature of things, by the principles of common law and the usual practices of civilized nations. The man did not receive the votes of a majority of the electors, in the sense of free and unbiased and unpurchased electors, and, therefore, for that reason, he failed of having a majority.

Mr. President, there is another power in the Constitution, which it is said is the safer power for us on which to rely, and that is the

power of expulsion. But I am admonished by this same authority that that provision of the Constitution furnishes us no authority to inquire into this proceeding at all. First, you have no authority to inquire into this proceeding, because it was the supreme act of the State; secondly, you cannot inquire into it, and if you do you cannot act upon it, because all these transactions antedate the advent of the Senator to this chamber.

I agree with what has been said, that the Constitution provides for two distinct prerogatives; first, that which I have named in regard to the inspection of the election and to the right to inquire and judge of the election in the particulars I have stated. The next is that supervision which the Senate of the United States has over the member while he is here—that supervision which it has over his behavior—in the language of the Constitution, that it may punish him for misbehavior, and, further, two-thirds concurring, may expel. This argument seems to put it upon the ground that there is no power to expel except for misbehavior of the member after he becomes a member of the Senate, but my own judgment about it is that the power to expel is an unqualified and absolute power, resting entirely in the discretion of the Senate of the United States, dependent only upon the exercise of a discretion, a sound discretion, which my honorable friend from Ohio denominated a legal discretion, which I suppose most lawyers understand to be a sound discretion in law.

Mr. President, I shall vote for the first resolution—for the resolution of the committee—for the reasons I have stated. I shall vote for it because I believe it is a wholesome exercise of authority. I shall vote for it because I think it is not a dangerous exercise of authority. I shall vote for it, superadded to all that, because it is a duty devolved upon us to exercise that power. We are the judges of the elections, and we may not shirk it. If it comes to our knowledge that an election has been carried by fraud and by bribery, it is our business to examine into it and to declare it. It will be a wholesome thing for the community and for the Senate if we do it, and I am not to be intimidated at all by the idea that if we undertake to exercise the duties which are devolved upon us here by this discretionary power given in the Constitution, somebody will be rash. So that we are not rash, we have done our duty, and we must trust that the American people in the future will have the good judgment to send men here as discreet as we are at least.

Sir, it is said that there is more danger and more peril in the exercise of this power than there is in the forbearance of it; that even if this evil exist, even if this great enormity to this whole extent is true, it is better to forbear than to tread upon doubtful ground. Mr. President, if we cannot do that, who can? If the Senate of the United States cannot correct this evil, is there any power under the Constitution and the laws, either of the United States or the State of Kansas, that can? Certainly not. Kansas has made her election good or bad. She cannot revise it; she cannot reverse it. She appeals to us. I think we have the power. If we decline to do it, in my judgment it is the refusal of the exercise of a clear and undoubted power, and the refusal to perform a clear and unquestioned duty; and therefore, sir, painful as it is in many aspects of the case, personal and otherwise, for myself, I have made up my mind to perform that duty as I understand it.

Mr. STEWART. Mr. President, I did not think, when this discussion commenced, that I would say a word; but having listened and reflected for several days, I feel called upon to state a few reasons for the votes I shall give in this case. I feel as much as any one the responsibility of those votes and of what I shall say; and in the outset I beg leave to remark that I feel bound by the Constitution of the United States, and the laws made in pursuance thereof, and the laws of the various States not in conflict therewith.

The Constitution has made us judges, and my idea of the duty of a judge has always been that he was bound by the law; that he could not look behind constitutions and laws; he could not say there were principles lying deeper than the constitutions and laws that were written, and exercise a discretion in a case where the law had pointed out the road. I have mistaken the duty of judges if they are at liberty to enact laws, find facts, render judgment, and carry that judgment into execution when there is a road pointed out by laws enacted for their guidance. The very law by which we exist as a body says we shall judge of the election of members of the Senate. The language is, that each House shall judge of the election, &c.; but judging of the election is the only point to which I now desire to call attention.

Each House shall judge of the election of its members. Under what laws must they judge? I undertake to say that the character of jurisdiction conferred upon the House and upon the Senate is the same. The Senate are equally judges of the election with the House, and in determining the question they are governed by the same principles. If, in the same language, a court is given jurisdiction of common law and in equity, or is given jurisdiction of a dozen different things, the judge, when he comes to determine each particular case, must be governed by the law of that case.

In the first place the Constitution declares that the members of the House of Representatives shall be elected by the same body of electors that elect the most numerous branch of the State legislature. Does anybody doubt that the State has the authority to pass a law saying who shall vote for the most numerous branch of the State legislature? Does anybody pretend that the lower House can go behind such a law? In many of the States it is provided that aliens who have declared their intention to become citizens may vote. Is not the House of Representatives, in judging of the election of member from such States, bound by that law? In every State, I think, it is provided that votes procured by bribery shall not be counted. Can the House of Representatives go behind that law and count bribed votes? No. Suppose a State should become so degraded and immoral as to pass a law that votes should be counted notwithstanding the parties had been bribed, and Congress, having concurrent jurisdiction to legislate as to the manner of the election, had passed no law on the subject, and that the State law was the only law on the subject, would not that bind the lower House in determining the question, if they were disposed to be governed by the law? Is it not within the jurisdiction of the States to pass such a law? If it is, it is not in the jurisdiction of any other body unless there be concurrent jurisdiction, and if there be concurrent jurisdiction, and if Congress and the State shall concur in saying that a bribed vote shall be counted, what can the House of Representatives say? Would they not be bound by that law? Everybody must admit that they would be bound by such a law, and that they must administer it as they find it.

Now comes the case of a Senator, which is precisely similar. I find that in the constitution of the State of Kansas it is provided that—

> Each house shall be the judge of the election, return, and qualifications of its own members.

Is anybody prepared to say that that provision of the constitution of Kansas is in conflict with the Constitution of the United States? Is anybody prepared to say that any part of that jurisdiction given to each house of that legislature to judge of the qualifications of its own members has been conferred by the Constitution of the United States upon Congress, or the Senate, or anybody else? Is not that an exclusive jurisdiction, to judge of the election and qualifications of its own members? Must it not be respected? Such a provision is in every State constitution in the United States. It was in the State constitutions before the Federal Government was formed; it was in the State constitutions at the time the Government was formed, that each house of the legislature should have that power. It is coutained in the constitution of every State which has been admitted since the formation of the Government. We have furthermore the tenth amendment to the Constitution, which says that the powers which have not been expressly granted to the United States are reserved to the States or to the people. This was a prominent provision, a prominent power retained in these State constitutions which has been recognized from the foundation of the Government. Then will you say that each house of a State legislature shall no longer exercise that power?

If each house of the legislature of Kansas has the right to judge of the election and qualifications of its members, what follows? It will be remembered that the judgment of a legislative body upon the election and qualification of its members is a continuing judgment, because it is provided in this very constitution that when a member ceases to have the right to act he may be expelled. If he has committed such acts as disqualify him, it is provided in the same constitution that he may be expelled. But, while he is there, it is the judgment of the house that he has the right to be there and has the right to act, and that judgment is conclusive. If, in any law, in any report made to Congress or either House until this case came here, if anywhere in any written document or speech it can be found that the jurisdiction of each house of a State legislature to determine the qualifications of its own members has been questioned, I should like to see it. It seems to me that the proposition is too near an axiom to need demonstration; and yet the report of the committee in this case seeks to question it. It says, notwithstanding the two houses of the Kansas legislature declare that their members who voted for CALDWELL were competent to sit there and were members, notwithstanding their judgment upon that point, the Senate can come in and say they were not competent to sit and act.

Mr. President, there are a great many bad things in this world; there are a great many sins in the world; there are a great many wrongs in the world; but we cannot cure them all in one investigation; nor can the Senate take jurisdiction of everything in one investigation; nor can the Senate, for the purpose of getting at a wrong, or supposed wrong, afford to ride over the written law, which we are each sworn to respect. We have no more right to say that a member of the Kansas legislature was disqualified from voting, or that, if he did vote, his vote shall not be counted, than we have to abolish the State of Kansas. The continuing act of that legislature in keeping him there is a declaration which it makes, and which it has the right to make, the same as the declaration that the Senate makes in keeping CALDWELL here. CALDWELL has a right to vote. Nobody has a right to question it. We are the exclusive judges. Suppose the House of Representatives should attempt to investigate the seats of members here, or suppose the Kansas legislature should do so; there is just as much authority for the Kansas legislature to investigate our right to vote here as there is for us to investigate the right of a member to vote in the Kansas legislature. The States were made before the Constitution. They had that right then, and it has never been taken away from them. If we can judge of the right of members of the legislature to vote, they can judge of our right by the same authority.

We can do some things in judging of this election. What can we do? We can judge whether there is a State there that is entitled to elect a Senator; we can count the votes, and see if they were cast;

we can ascertain the fact whether there was an army surrounding the legislature, and whether there was any election held there. We can do all those things; but when we come to say that we can determine the right of a member of the legislature to sit there and vote, and have his vote counted, we are exceeding our jurisdiction, just as much as the legislature of Kansas would be exceeding its jurisdiction if it attempted to investigate our right to vote here.

I do not think, therefore, if this matter is to be discussed and decided upon law, that there can be a question that every member of the Kansas legislature who is decided by that legislature to be qualified and have the right to sit in that legislature, has the right to vote there. I do not think that question can be involved in any obscurity whatever. It is plain law, and when I have plain law I do not want to look to unwritten law. I am too fearful of my own ability, when the law is written, when constitutions are framed, when I am sworn to obey them, to look to some unwritten law, or to enact a new law, and become reformer while I am judge.

I will not go over the precedents of this subject. The case of Potter against Robbins, read by the Senator from New York, [Mr. CONKLING,] where all the best talent of the country concurred in the opinion that this was a question out of our jurisdiction and within the jurisdiction of the State legislature, is the highest possible authority. I will not refer to that case, because it has been already laid before the Senate. I will not revert to what was said in the report in that case. There are two reports subsequent to that; one that I believe I had the honor to submit from the Judiciary Committee, in which the former Senator from Illinois (Mr. Trumbull) concurred, in which the doctrine was laid down that each house of a State legislature was the exclusive judge of this question. I will not refer to authorities on this subject, because there is no authority against that doctrine. There is no law for this assumption, and he who undertakes to say that we shall assume jurisdiction, undertakes to say that we shall make constitutions and laws. I would rather preserve what we have than take the chances of making more without authority to do so. I will not be a party to the making of law when I am called upon, under oath, to administer law. He who denies that each house of a State legislature has the right to judge of the election and qualifications of its own members and their authority to vote, assumes an authority to make law.

I concur with the Senator from New Jersey, [Mr. FRELINGHUYSEN,] that of all the organizations in the United States, we are the least fitted for the trial of such a case as this—for the trial of a Senator for bribery. Our organization is least suited to such a case. While the Senator from New Jersey was speaking I was reminded of the history of the English Parliament in dealing with this same question; and although the Senator subsequently informed me that he had not read that history, and did not have it in mind, still the tenor of his remarks seemed enforced by the legislative enactments and judicial decisions in England so clearly that it seemed as if he must be familiar with that whole history.

They commenced, in the first place, as we are now commencing, without written law as to investigations of this kind. The lower House of Parliament then found that committees were so illy organized for the purpose of performing this duty, that they undertook to regulate the subject by law, and they passed various statutes on the mode of parliamentary inquiry, and almost all their laws were intended to confine the investigations to something like legal rules. Whatever you may say of England, Englishmen are in favor of fair play, and they hate to convict a man unless he has had a fair hearing. They tried this committee business for centuries; they amended their laws; they amended their rules; they changed them one way and another, attempting to get at something that would approximate a trial wherein the accused and the accuser could meet face to face; wherein the triers could see the witnesses and know the facts, and, after centuries of effort, in 1868, the English Parliament arrived at a conclusion that committees were not the proper tribunals to try these questions.

I hold in my hand an act of Parliament which refers these matters to the courts. On the 31st of July, 1868, Parliament passed an act to increase the number of the judges of the courts of common law, and to allow the judges themselves of the courts of Exchequer and Common Pleas to select of their number certain persons before whom these cases should be tried. Then it goes on to provide that the person accused shall have a trial, giving the form, &c.; and, among the most important, that the charges shall be specified, and notice shall be given to him, and the party bringing the charge shall give £1,000 bail to make good that charge. In order that there may not be sham charges brought, the party is required to give a bond of £1,000 that his complaint is made in good faith. Then it is brought before the judge in open court, and the judge reserves questions of law that arise on the admissibility of evidence, which may be taken by writ of error to the court of Queen's Bench, so that the highest law-officers of the government may determine whether the questions are admissible or not. Then a report is made to Parliament, and Parliament acts upon that report. It may reject it if it chooses, but it has the fact found, and the party accused is protected by all the forms of law, and the accuser has all the forms and machinery of judicial proceeding to prosecute his inquiry, which I say is just and right. That is what they came to after centuries of investigation.

Here we have a report, the first one of the kind that has ever been made in the Senate, which I regret that every member of the Senate has not read, and every lawyer in the country has not read. Let the lawyers of this country read that report, and if they do not say amen to the remarks of the Senator from New Jersey, I am mistaken in the judgment of the legal profession. If this report does not demonstrate and illustrate the inefficiency and the inadequacy of a committee to protect the rights of a citizen and to investigate a question of this kind with any degree of fairness, illustration is impossible; the imagination of man cannot illustrate it. The hearsay, the scandal, the irrelevant matter, the spleen, and hate breathing through this report in one incoherent mass, without index or reference, are laid before us, with no knowledge of the previous character of the witnesses, except as exhibited here, and we are asked to judge of these facts. What more? We are asked to pronounce judgment upon acts which have not been declared illegal, that have not been made crimes.

I call the attention of Senators to this fact: that we are about to legislate as to what is illegal and what are crimes, and to pronounce acts to be so without any authority for so doing. England felt this difficulty. It is not a new question there, but Parliament never went beyond what had been denounced by law as crime in dealing with these questions. The American Senate has never yet pronounced a judgment beyond the statute. We find in Parliament that from time to time they have increased the number of acts which shall be regarded as bribery.

First, the statute is directed against bribery, as we understand it, or the promise of any valuable thing or any office.

Secondly, it is directed against giving any meat or drink or entertainment of any kind to a voter; that is declared illegal and immoral by the statute. Parliament never undertook to pronounce judgment upon a case of that kind, upon the abstract question of morals, until there was a law that preceded it. One thing may be said in praise of the English government and those who have followed in the course of the common law, that they want the law to precede their judgment, and they want to follow the law. Before they would say that it was improper to give meat or drink or entertainment to voters for the purpose of procuring their votes, they placed it in an act of Parliament.

Thirdly, they provide that no force, or violence, or restraint, or threat, or intimidation shall be used.

Then they go on and provide against another thing, which you might not think was so bad. They provide against furnishing any inhabitant of any city, town, or place with a cockade, or mark of distinction, or any refreshment, on the day of nomination or polling the vote, or of any appointment on such account, or on account of any cheering, bands of music, flags or banners. They prohibit those by act of Parliament. These things are now regarded in England as immoral, things not to be done. They were so regarded before, but they passed a statute against them before they would take any action punishing for their commission. Is not that the fair way? Is there not some sense in that?

They do more. They also appoint officers to see that the candidate only expends what he may legitimately; but they never punish him for expenditures for purposes that have not by law been declared to be crimes.

I think the history of the English procedure is most instructive. We are called upon here to pass upon the quality of the act of using money at an election. Let us look at that for a moment, and I view it in the light of the English statute. It is perfectly safe, where we have got a statute declaring the use of money a crime, to follow it; but, when we have got no statute, there will be as much difference of opinion as there are men as to how much money may be used, and when it may be used, and in what manner. It is undoubtedly true that money is improperly used in elections. When you commence to use money to influence votes it is very hard to draw the distinction. It may be said that it is proper in the first place to hire persons to go out and canvass the voters and bring you a list of them; to find out how each one proposes to vote, so as to bring influence to bear upon him. It may be said that it is proper to get up torch-light processions, and pay money for them. The English statute holds that it is not. It may be proper for you to treat your friends, or give them money to treat themselves, and let them have a good time. The English statute says it is not; but it is done all over this country. It may be proper to hire friends to go and make speeches and influence votes in that way. Some may think that proper, and it is done frequently. It may be proper, if you have got money enough, to buy the whole press of your State, and denounce every other man who presumes to be a candidate as a rascal, and blacken his character and praise yourself through the columns of a bought press, and thereby cripple and destroy the opposition, and ride into power as the popular favorite. That has been done, and will be done again, very likely.

Now, I submit, is not that act of the same character as the act of buying off a candidate, when you buy up all the press, buy up all the workers in the State in primaries, and go through that way? If you do not buy them all off, and only buy one, the moral quality of the transaction is the same.

It seems to me there is too much money used in elections everywhere. I think I see enough in this case in Kansas to call upon us to say that there should be a remedy. What is the remedy? What should be done? Is there any remedy for this evil? Yes; there is a remedy, and that is in calling the attention of the country to it, and having a better state of public opinion on the subject. There is a remedy in providing statutes against it the same as England has adopted. Congress is not left without a remedy. Congress may reg-

ulate the manner of conducting senatorial elections just as it may regulate the manner of conducting a congressional election.

I have in my hand an act which denounces as a crime any interference with congressional elections or any bribery therein. Under the same language that gives us power to regulate the manner of senatorial elections, I undertake to say that Congress may pass laws denouncing bribery in senatorial elections, and may punish the briber and the bribee. They have undoubted power to do that. I think the time has arrived, judging from the condition of Kansas, which I shall allude to presently, for us to take action in a proper way. But those facts do not call upon us to violate the Constitution; they do not call upon us to destroy what we have that is good; they do not call upon us to pass from mere judges, and become law-makers, and disregard our obligations to the Constitution and the laws. I undertake to say that it is barbarous for us, as judges, to denounce acts as bribery that are not so declared by the statute.

There are some remedies in this case. Why have they not been resorted to in Kansas? I hold in my hand a statute of Kansas pointed against bribery. It is a well-drawn act. I will not read it. It is the usual act against bribery. If Mr. CALDWELL has been guilty of bribery, why has he not been indicted there? Has he no enemies? Has there been no effort to produce this book of evidence? Has there not been industry exhibited here—such industry as I never saw before? Why did they not resort to the remedies of the law which were before them? Why did they not go before the grand jury that had the right to consider this matter? Why come here? If they had followed the constitutional mode, and Mr. CALDWELL had been so unquestionably guilty as some Senators here assert, would there have been any difficulty during these two long years in having that record here?

Then we have already existing laws in Kansas against bribery. If need be, they may pass more. Congress may pass its laws against bribery. The courts are open to try such a question, and if the record of conviction comes here, there is no Senator who would hesitate for one moment to expel Mr. CALDWELL. Let them bring the record of conviction here; let them do something analogous to what the English Parliament requires to be done in England before we are called upon to vote in a case like this. I am speaking now of expulsion; but both these propositions run upon the theory that something must be done, and done now, because here is a case that demoralizes the people.

Senators, this question of trying a man on evidence is a serious business. I put the questions, Has every Senator read this testimony? Does every Senator know anything about it? Is every Senator satisfied upon the particular facts? Is this case proved for any purpose beyond a reasonable doubt? Would you not feel better satisfied if it had been tried by a court and jury, and brought here in the usual form, and we had the record of that trial and conviction? If it were your own case, would you not prefer to have a fair trial by a court? Are we to try a man upon such testimony as this? If you do, on your oaths you have got to find affirmatively that Mr. CALDWELL is guilty before you undertake to expel him; you must find that affirmatively from the facts as here reported.

Now, what are the facts? I wish to call the attention of the Senate for a few moments to them. I do think this is the most remarkable case that has ever come before us. The committee, after discussing the contract with Carney, and referring to the testimony of Mr. Spriggs, who appears to be the principal witness, say:

> The testimony of Mr. Spriggs is very full, and shows that the canvass of Mr. CALDWELL was thoroughly corrupt, and that money was the chief argument relied upon. Among many other things, he stated that T. J. Anderson told him that he had paid Mr. Crocker, a member of the house, $1,000 for his vote; that Mr. Crocker afterward backed out, and handed the money over to a Mr. Carson, to be returned to Mr. Anderson; that Carson got on the cars, went home, and kept the money. Carson was afterward called by the committee and corroborated the statement, admitting that he had received the $1,000 back from Mr. Crocker to be returned to Mr. Anderson, but that he had kept the money himself for his services to Mr. CALDWELL. Mr. Carney testifies that, in an interview with Mr. CALDWELL, after the election, in which he was urging him to procure an appointment for one of Mr. Carney's friends who had voted for him, Mr. CALDWELL took from his pocket a memorandum-book, and appeared to run over a list of names, and coming to the man referred to, said, "That man has been paid;" and Mr. Carney understood from his manner that he had in this memorandum-book a list of members with the sums paid to each; that Mr. CALDWELL told him upon another occasion that he had paid Mr. Bayers the sum of $2,500 for his vote, and Mr. James F. Legate the sum of $1,000 for his vote. Mr. Anthony also swears that in a conversation with Mr. CALDWELL, that gentleman admitted to him that he had paid $2,500 for the vote of Mr. Bayers. There is much testimony showing that Len. T. Smith, Frank Drenning, James L. McDowell, George A. Smith, and T. J. Anderson, among the most active friends of Mr. CALDWELL during the canvass, admitted at different times that they had offered money to members of the legislature to vote for Mr. CALDWELL, in some cases specifying the members to whom it was offered and paid, and in other cases that offers had been made that had not been accepted, and that negotiations were on hand with others which had not been completed. These men have denied before the committee all conversations and admissions of this character, and all payment of money to members, or offers to pay them, and several members of the legislature who were implicated have expressly denied that they received the money or that offers were made them.

This is their summary of the testimony. Upon this testimony four members of the committee believe that there was bribery in the case; they do not find Mr. CALDWELL guilty of it, but they find bribery in the case; and three members of the committee dissent. It seems to me that is enough, without going any further, to raise a doubt, and a pretty substantial doubt, when three members of your committee dissent from the finding. But we are not left to that doubt. It is necessary to inquire who a few of these men are and how they came here, and I wish to take up a few of these leading witnesses, so that the Senate can form something of an idea of their motives. I want to show the Senate that they cannot form a sufficient idea on this testimony to do justice, but I propose to refer to it so that they can form something of an idea.

Who is Mr. Carney? Mr. Carney is the man who received the $15,000. Mr. Carney was a leading man in Kansas. He had been governor of the State. He was a prominent man there. He was the recipient of the money under the bargain that makes my friend from New Jersey shudder to think of, and that makes his vote hang in the balance whether he will not vote to expel Mr. CALDWELL for that act, although the act has not been denounced by any statute on the books. It is an act so criminal *per se* that the Senate is deliberating now whether it will not expel Mr. CALDWELL for it, although there was no statute to make it criminal; an act which we are now discussing as to whether it is not so bad that we will expel Mr. CALDWELL for being a party to it. Mr. Carney was a party to that act, and he was the recipient of the money. There may be no difference between the briber and the bribee in law, but everybody knows there is in the estimation of society. A man who will sell himself for paltry gold is meaner than the man who buys him. So society believes. In law, the crime is the same; but in grade of morals everybody knows that a man who will receive money for doing a dirty thing is lower in the estimation of all men than the man who pays it. I am not referring to the buying of an ignorant man, but to the buying of a man like Carney, who had been governor of his State.

What else did Mr. Carney do? He not only took this $15,000, but he went to Topeka. The headquarters of the lobby there were in his room. He was familiar with every transaction, and testifies about them in great detail. He does not tell you that he protested against the proceedings. On the contrary, he was the head and front, the leading friend of CALDWELL in the affair. If this act be criminal, then the statements of Mr. Carney, without regard to it, should be taken with some degree of allowance. If there was wholesale bribery of the legislature, the statements of the man in whose room it was done should be taken with some degree of allowance. The law has guarded against that kind of testimony, and the law is a safe guide to follow. It is one of the fundamental principles of law that this kind of testimony shall be taken with great caution.

I am now discussing it on the hypothesis that the report is true, that these acts were criminal, that there was bribery, or that the acts were so utterly disgraceful that we are called upon to pronounce the law in advance upon them. If that is so, Carney is the head and front of the whole of them. Greenleaf on Evidence lays down a rule like this:

> But here, also, as we have before remarked in regard to admissions, the evidence of verbal confessions of guilt is to be received with great caution. For, besides the danger of mistake, from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is oppressed by the calamity of his situation, and that he is often influenced by motives of hope or fear to make an untrue confession.

That is in regard to the confession of a criminal. It is not the quotation I intended to read, but it is applicable to this case, because it is all made out by the confession of CALDWELL, detailed to us by Carney. That is the substantial part of it.

Now let us look at the next witness, and the one who is put in the foreground in this report, and that is Spriggs. Who is Spriggs? Spriggs was a friend of Carney's, and when Carney swore that CALDWELL was a good man to make Senator, Spriggs re-echoed the same thing. Spriggs was then for him. He went to Topeka to work for him. He was a member of the committee which it was said was formed, and he swears that he participated in the whole thing as a friend of Carney's, or at the solicitation of Carney, and helped to make the fight; but when Carney turns against CALDWELL and comes here to denounce him, Spriggs does the same thing. He appears simply as the shadow of Carney. Spriggs goes on to say that it was after Carney had invited him to do so, and after consultation with and at the request of Governor Carney, that he supported CALDWELL. So that in reality there was but one man. Spriggs and Carney are Carney alone. They are one.

Now we come to Sidney Clarke, the prosecutor in this case. The important part that Sidney Clarke has played in this transaction is illustrated by the committee. They say this:

> Mr. Clarke was unwilling to admit that he had made an agreement to transfer his friends to Mr. CALDWELL in consideration of the latter's promise to pay this money—

That is, $15,000 to be paid to secure the friends of Mr. Clarke—

> but taking all the testimony together, the committee have no doubt that the transaction between him and Mr. Clarke was as has been stated. Mr. CALDWELL'S subsequent refusal to pay the money to Mr. Clarke does not relieve the character of the transaction, and very probably resulted in the exposure of Mr. CALDWELL and the institution of this examination.

The committee themselves say, and there is more testimony to support that allegation than any other, that this investigation is brought here because CALDWELL refused to pay Clarke $15,000. That is the way it came here. That is the way the exposure came out. Do you want a better commentary upon the character of Clarke than that? Could I say anything as severe of Clarke as this committee has done? Is it possible that a man who has been a member of Congress, and has been recognized as an honorable gentleman, and has been trusted by his State, should be influenced by such a motive? The committee find, and the testimony shows, that he instigated this investigation be-

cause Mr. CALDWELL would not stand this black-mail. What does Mr. Clarke say with regard to it? He says that after the decision of his friends had been made that he was not to be a candidate, that he could not succeed, Mr. CALDWELL proposed to pay his expenses, and he indignantly refused; that he made no such arrangement; that he had no power to make any arrangement to help CALDWELL; that his friends left him and he had none; but that he told CALDWELL that Stevens was a friend of his, and that Stevens and CALDWELL had some arrangement. He admits that he came here and attempted to collect money under that arrangement, and finally admits that he was to have the money himself. That is the testimony. Clarke swears in the first place that he had no contract with CALDWELL, but had it fixed up by a go-between, and because CALDWELL would not come out with $15,000, we have this prosecution.

These are the three leading men in the transaction. There is one other—Anthony. Let us look at Anthony. Anthony was a life-long enemy, as he himself admits, of CALDWELL. What does Anthony say? That he had conversation with CALDWELL about supporting him. Anthony was a newspaper man, and he says that CALDWELL offered for his support to pay him after the election $5,000; that he refused to take the $5,000 on tick, but if CALDWELL had paid him the $5,000 he would have supported him. He says he was willing to negotiate for $5,000 to support CALDWELL. So that, in slang language, he was "on the sell," and wanted $5,000, and would have supported CALDWELL for that amount. There you can see the malignity of this man.

It is a mistake to say that Anthony corroborates the statement of Carney as to the transaction with Bayers. The report says that Anthony testified that CALDWELL admitted to him that he had agreed to pay Bayers $2,500, and that Carney stated the same thing. Carney does state that. Anthony does not state it. Anthony, in an angry conversation with CALDWELL, told him that he had raised the price of Bayers on him by telling Bayers his vote was worth $5,000 and insisting that Bayers should demand $5,000; and all the evidence shows is that CALDWELL denied that he had raised the price on him, from which Anthony inferred and testified that the price was $3,000—not $2,500, but $3,000—because CALDWELL denied what he said, that he had raised the price on him, and then he said that the price was what Bayers stated to him—$3,000. That was the admission of CALDWELL, and that is put in as a corroborating circumstance to sustain Carney upon the only point on which he is not contradicted. On every other one he is contradicted.

This testimony comes to us in this way. The men who testified to it were a part of the lobby. If there was money distributed, they were the men who distributed it, who saw it and knew it, and were of the transaction. They implicate a large number of persons in this transaction; men that we have no means of knowing how they stand. They deny it. It is said by the committee that the parties inculpated deny it. Here are A, B, and C, stating that they were a part of the corrupt transaction, that they were lobbying, that money was used, that they were engaged in this fight, that they were helping it through, all except Anthony. He did not engage in it, but was willing to do so for $5,000. All these men, we know from the testimony, were engaged in these transactions. They accuse CALDWELL and many others, and Mr. CALDWELL and the others deny the accusations, and but a bare majority of your committee believe them.

Now, can you say in this condition of things that a case has been made for the action of this Senate for expulsion? I do not believe there is a Senator who can say that upon this question of bribery Mr. CALDWELL has had a fair trial. I do not believe there is a Senator here who will not admit that this book is full of hearsay and irrelevant testimony. I do not believe there is a Senator here who will pretend that as to any particular case the facts have been developed so that he understands them; and, remark, bribery must be proved; it cannot be presumed. I do not believe there is a Senator here who can say it is proved in a single instance. It is simply assumed without proof. I do not believe in establishing a precedent whereby a question of this kind, that is so peculiarly within the jurisdiction of a court and jury to find the facts, where all parties can be heard, should be brought here and be disposed of on hearsay testimony, and brought here by men who were engaged in the transaction and got mad because they did not get more money, and who then undertake to unseat this man for that reason. There is testimony in this record that Governor Carney threatened to unseat Mr. CALDWELL for grievances. There is much feeling on his part. There is testimony in this record with regard to Clarke that he came here to get $15,000; and the committee report that because he did not get it, he instigated these proceedings. He appears as a witness in many places in this record. There is testimony in this record that every prominent witness on whom any reliance is placed was a mere *particeps criminis* if there was crime, and is now testifying against his associates. That is the condition of things. I do not say that that should exonerate CALDWELL, but I do say that it is a case that should be tried by a jury who know the parties. I could judge of this better if I were a Kansas man. I should like to hear the Senator from Kansas who is not implicated in the matter give us some statement as to the character of these men. I hope we shall hear from him, so that we can judge of their credibility if any Senator is inclined to vote upon this evidence.

Remember, Senators, if you vote to expel this man, or put him out in any way, you must vote affirmatively on the facts here presented. I undertake to say that there is no finding in the record, except in the case of the transaction with Carney, upon which a fair-minded man can say that he is satisfied. All this illustrates the wisdom of the position of my friend from New Jersey, [Mr. FRELINGHUYSEN,] that we should not seek for jurisdiction in such matters; we should not seek for investigations; that we should confine ourselves to the duty which the Constitution has imposed; that we should not seek to enlarge our jurisdiction to do a thing that we are doing so badly. In the length of time that we have spent in this case, if it were before a court and jury, with the witnesses before them, so that the jury could see them, there would have been more of the merits of the case developed in one day than we have developed altogether.

This money transaction in connection with the election is certainly very bad; it certainly calls for the action of Kansas; it is certainly immoral; it calls for the action of the legislature to pass further laws; and I believe it calls for a law of Congress; it calls for public opinion to stop it; and it calls for laws to stop other acts in regard to the use of money in elections; it calls for a stop being put to the extravagant use of money for any purpose. I say that too much money is used in America, too much is collected, too much is contributed. We are too apt to say that Mr. A. T. Stewart or some other great merchant has contributed largely to carry the party through a campaign. We are too much inclined to praise them for these things. The highest men in the country contribute money to carry elections, and their names are ostentatiously paraded in the public press as benefactors. There is too much said in favor of that practice, and not enough against it. Money will be used while public opinion tolerates it, while the press lauds those who contribute largely, and while it is the road to power. Can you be surprised, while the high and the low mark this out as the road to power, that a merchant inexperienced in politics, who has been a business man all his life, who sees that these large sums are contributed, and that those who contribute them receive praise, should think that money may be used, and so fall into the trap? Let those who are wiser, those who have had more experience in politics, than CALDWELL, cease to collect money, and to use money at primary elections, which is worse than using it on Carney, because there you deal with a different class of men and corrupt them. I do not think Carney himself was much worse after this transaction than before. He understood the act very well. But I say buying up the people, using large sums of money by which to corrupt the masses, is worse than this Carney transaction. In some respects this matter of Carney's is not so bad. If he had any chance of being elected to the Senate, CALDWELL has half redeemed himself even with money by keeping Carney out.

Buying off rival candidates will never prevent a good man from coming to the Senate. But you have made, and your public press makes, an ostentatious parade of the use of money. You call for it in your political committees, and you use it to carry elections, and I say the time has come when it should be stopped. There is no use in making a scapegoat of CALDWELL, or any particular man about the business. The whole system of using money should be stopped. Do as the English Parliament did when they found that the use of money was demoralizing. Did they punish a man for it because it was demoralizing? No; they passed a law against it, denouncing it as a crime, and then punished a man if he violated that law. They passed no *ex post facto* law.

While the use of money is sanctioned in general elections, ambitious men will use it; and it is no worse to use $40,000 or $50,000 than $10,000 or $5,000 or $1,000, if it accomplishes the same purpose and gets a man into the Senate. No matter whether it is used outside of what is denounced as bribery by the law—it is no matter where you use it, if it accomplishes that same purpose. Use it on the press, and you will be regarded as a great patriot, be lauded every morning, and hear your editors praise you, and be happy, and say you are virtuous. Use it on the masses, and pay workers to go around and sing your praises; pay it to eloquent orators, and send them forth for the purpose of bringing votes to you, and no complaint is made.

I do not mean to say, nor has the English law said, that there may not be proper uses of money, that expenses may not be paid, and there should be some understanding about it. I do not say that you may not contribute to men who are giving their time to elections to pay their expenses when they make campaigns. But the idea that money may be used in any way, that it may be used on the press in any way, that it may be used on workers in an election, that it may be used on primaries, and that hundreds of thousands of dollars may be used in a campaign, and that it must be used, and that men who do not contribute are mean, is to be condemned. Anybody that does not think such practices will produce just such a case as this of Mr. CALDWELL does not know the American people. Public sentiment must be changed on this question; but there is no use in breaking down the laws of the country; there is no use in making another Constitution; there is no necessity to say we will not obey the law as it is written. At the next session of Congress we may pass a law against bribery. Let that be discussed and passed, and it will have this effect; and let the press proclaim against the use of money at all in elections. Let those who are strong and popular in their States and have been honored by their constituents stand up and say that they will not contribute and that money shall not be contributed to their election, and that they will not have an election if money is used. Let an effort be made in the right direction. But to accomplish this you do not want

to convict a man on doubtful testimony, you do not want to convict a man by the assertions of co-conspirators that he has committed a crime, and that upon hearsay which is denied by a large number of citizens, and you cannot tell who is the most trustworthy. Do not convict a man for using money in the same line and where there is no moral distinction between what he has done and what others have done; but do as has been done since the common law has been in force: if there is an evil that is likely to demoralize the country, proclaim against it, legislate against it, and then enforce your laws, and you can then act as honest judges, men who can say, "We have administered the law." What Senator here, upon hearsay testimony that he never heard, that is reported in this book, full of spleen and malice and selfishness and spite; what Senator, I say, can take up that book and say, "Upon that I will pronounce judgment upon this man; I will convict this man because politics are getting too corrupt?" What Senator can say that and reconcile it to his conscience? I tell you, fellow-Senators, that CALDWELL has only done in a little exaggerated degree what is too prevalent in this country. I believe that the American people are going to be waked up to this question of using money in elections. I believe it must and will be stopped. I believe the time will come when it will be regarded improper for a candidate for the high place which we occupy to pay so much attention to primaries and pay so much attention to conventions, to pay so much attention to details, to make so many promises of appointments to office, to hold out so many inducements. I believe the time will come when such means and the use of money will be condemned.

I think that the CALDWELL case will not be without its good effect. I think the malice of Clarke and the vengeance of Carney will do something to clear the atmosphere; but I do not believe it will make us pass the resolution of this committee in violation of the plain law; I do not believe it will make us pass a resolution of expulsion upon doubtful, hearsay evidence, when we read in the Constitution that no man shall be convicted without due process of law. We remember that a fair trial has been the pride of our race from time immemorial; that a fair trial is the boast of Americans; that we have provided for it in our Constitution; that States put the principle in their constitutions. Shall a Senator of the United States be denied a fair trial? Shall he not be confronted with his accusers, the jury that are to pass upon the facts? May not that jury see the witnesses? Must he be tried on depositions? I say that fair trials are the boast of our free institutions. Let us preserve that; it is useful; let us preserve a system of fair play and fair trial. It is useful. If Kansas believes this man guilty of bribery, she has it in her power to send us a record at the next session upon which there will be no doubt.

But what do the committee say? They say this man was as much sinned against as sinning. What! a man who is to be branded as a felon, and expelled from this presence, and carry the mark of Cain through all his life, as much sinned against as sinning? I want to vote against a man who has sinned more than he has been sinned against. I want to vote against a man that has sinned more against the laws and the Government of the United States than he has been sinned against. If he is a criminal, if he has committed bribery, why talk about sinning against him? Why talk of sinning against a man with sufficient intelligence to hold a place in these halls, or to get here? Why talk about sinning against him if he is guilty enough to expel from this presence? If I am called upon to vote on the question of expelling any man from these halls, I will obey the laws and my own conscience. I will not, by any outside pressure or influence, vote to expel a man that I am not satisfied beyond a reasonable doubt is guilty of the offense. I think the rule suggested by the Senator from New Jersey was admirable. I think the question of expulsion should never be considered except upon a record of conviction, or the notorious fact of committing an offense upon which there could be no doubt. I think that one or the other should occur, and that we should not usurp jurisdiction in a doubtful case when we do not have the witnesses before us; where there is nothing like a fair trial; where not half the Senators have read the testimony. I tried to read it twice. I cannot judge of it as I would if I saw a single witness. I know that it has embarrassed the committee; it has divided them as nearly equal as they could be.

This is not the case for such a sacrifice. I believe, as a lawyer, that before any court, upon this testimony, with twelve honest men in the box, I care not what their feelings might be when they entered the jury-box, they would acquit. I would undertake to defend upon this testimony; there would not be much of it in, I know, because most of it would not be admitted; but for what legal testimony could get in before a jury, I do not believe they would be called upon to leave the box. I have had some little experience in trials by jury; I have acted as prosecutor, and I have defended; but never in my life did I hear a proposition like this advanced as in the case of Spriggs's testimony. He is called to prove the declarations of T. J. Anderson. The foundation is laid by asking if Anderson was a friend of CALDWELL. The witness testifies that Anderson was a friend of CALDWELL. Then they go on and allow him to say what this other person, Anderson, CALDWELL's friend, said; these statements are allowed to be given in evidence—conversations between third parties, with whom CALDWELL had no connection. The fact that he is a friend of CALDWELL is sufficient to make his declarations evidence. Three-fourths of the whole book is from declarations received from men who qualified themselves to testify by swearing that the declarations they were going to detail were made by a friend of CALDWELL. It may be well to look at a single case. If I can turn to Spriggs's case, I think it will illustrate the whole matter:

Question. Now, Mr. Spriggs, state to the committee what you know, if anything, in regard to the use of money, or other corrupt means, on the part of Mr. CALDWELL to procure his election.
Answer. Personally, I don't know anything directly of my own knowledge.
Question. Let us see how, when you come to it. What do you know about it?
Answer. All I know is what other men told me who talked about it.
Question. Whom did you have conversations with in regard to it?
Answer. I had conversations with quite a number of men—with George Smith, that these other gentlemen have testified about, and Len. T. Smith.
Question. What was the conversation with George Smith about?
Answer. It was in regard to the election of Mr. CALDWELL.
Question. Was it in regard to the use of money?

That is not leading, of course!

Answer. Yes, sir; some of it was.
Question. In what capacity was George Smith there?
Answer. George Smith was there working for the election of Mr. CALDWELL.
Question. Was he a prominent friend of Mr. CALDWELL?
Answer. He was a very active friend, I will say.
Question. Was he recognized there as one of Mr. CALDWELL's active friends?
Answer. Yes, sir.
The CHAIRMAN. Now it will be for the committee to say whether a foundation is laid for introducing Mr. George Smith's statements, taken in connection with what has been said before.
The question being put, the committee concurred that the statement should be received.

They got a heap of testimony in that way. He was known as an active friend of CALDWELL. Where does this come from? From Spriggs—Carney's man Spriggs—who was a friend of CALDWELL when Carney was, and an enemy of CALDWELL when Carney was. Do you want that for a precedent to try a man by? Do you want men to come here, and have one loafer swear that he heard another loafer say something—if they be loafers; I do not say they are. Some of them showed themselves to be pretty rough characters. There is Carson, who figures largely in the report. He got a thousand dollars to give another man, and put it in his own pocket! Such men have conversations among themselves of which Mr. CALDWELL knows nothing, yet he is to be held responsible for such idle or vicious talk.

The idea of the Senate being competent to try any such proceeding as this is utterly out of the question; you cannot get at the truth of it. You violate law and your own conscience by trying to get at it in any way, and it will degrade you to put this man out in this way when every soul in Kansas knows he is a better man than any one of his persecutors.

Mr. ALCORN. Will the Senator allow me to call his attention to a page of testimony? He seems to be at a loss for any testimony upon the point. I refer him to page 380. I read from the testimony of Chester Thomas, who was not a member of the legislature. The question was asked him, "Were you authorized to negotiate for Mr. Steele's vote?" Mr. Steele being a member of the legislature. He said he was. Then this followed:

Question. He authorized you to negotiate for his vote?
Answer. Yes, sir; he offered his vote; we had a talk about it. I got acquainted with him before the first ballot. He said nothing about negotiating his vote for money before the first ballot. I think I got acquainted with him at Mr. Clarke's room. He introduced himself as coming from the adjoining county in Pennsylvania to where I came from. I introduced him to Mr. Clarke before any ballot. Between the ballotings he offered to negotiate his vote. He said they were selling their votes for money, and he might as well put in as anybody.
Question. Did you have any conversation with Len. Smith about it?
Answer. I went to Len. Smith and Mr. McDowell, and I may have spoken to others, but them in particular.
Question. What did you say to Len. Smith or Mr. McDowell?
Answer. I think the first I said was something like this: to ask if they wanted more votes. They said they did, and then I told them my business, and Len. Smith, I think, did not stay or remain long at the time at all; I think he turned around after I told him what would be required for a vote that was opposed to Mr. CALDWELL.
Question. What did you tell him would be required?
Answer. Eight hundred dollars. Mr. Steele had asked a thousand, but he had agreed to $800 before I went away
Question. Did you tell him he could have Mr. Steele's vote for $800?
Answer. I did not mention Mr. Steele's vote at all.
Question. Well, the vote of a member.
Answer. I told him a member that had opposed them——
Question. Would vote for Mr. CALDWELL for $800?
Answer. Yes, sir; through to the end.
Question. What did he say?
Answer. Mr. Smith turned around and said they could get all the votes they wanted now, as though they were confident; he said they could get all the votes they wanted for $500, or in substance like that. Then I talked with Mr. McDowell a little more by ourselves.
Question. Did Mr. Smith go out then?
Answer. He turned around; he was in a crowd.
Question. Did he leave you in conversation with Mr. McDowell?
Answer. Yes, sir.
Question. What did he say?
Answer. In talking over he seemed to want to know the name. I did not tell any name. I do not think he inquired directly for it, but before he got through Steele's name was introduced, and I catched at it in a moment; I saw in a moment by the expression that he had been treated with. I did not still mention his name. I kept it entirely back. I listened to it and ascertained that he was committed to Mr. CALDWELL, and that he had received the money.

By Mr. CARPENTER:

Question. What did he say?
Answer. I cannot tell; only I became satisfied from the conversation that he was committed, and how much money he had, and that he had not voted as he agreed. We did not dwell long after that.

By the CHAIRMAN:

Question. You said that Mr. Steele had not voted as he agreed?
Answer. He had not voted as he agreed to at all.
Question. When did you ascertain that?

Answer. While talking with Mr. McDowell there.
Question. What did Mr. McDowell say about it? Come as near as you can to stating what he said.
Answer. I do not think he talked very plain, only that Steele was their man, and he complained of his not voting as he agreed.
Question. Did he tell you or give you to understand from his conversation that Mr. Steele had received money?
Answer. I understood it distinctly, that is, to my own satisfaction, while he did not say he gave it to him, or this, that, or the other amount; but I learned that he had given him the amount.
Question. How much?
Answer. Just $500; and as soon as I learned that, we separated pretty quick. We did not talk a great deal about it afterward. I learned that——
Question. This conversation occurred between the two votes?
Answer. Between the two ballots.
Question. Was it the evening before or the morning of the joint convention?
Answer. I should think it was the morning of the joint convention. It might have been in the evening; I rather think I met him twice.
Question. Was that all that passed between you and Mr. McDowell?
Answer. Yes, sir; we were together some little time.
Question. Did you see Mr. Len. Smith afterward in regard to it?
Answer. I do not think I did.
Question. Did you have any conversation with him about it?
Answer. It strikes me that the name of Mr. Steele came up that day some time with Mr. Smith—I do not know but it might have been Mr. McDowell—and he thought he would vote right in the end.
Question. Which was it, Smith or McDowell, made that suggestion?
Answer. I cannot tell. It was my impression, and I have thought of it considerably since, and am inclined to think it was Mr. Smith.
Question. Did Mr. Smith state that he thought Mr. Steele would vote for Mr. CALDWELL in the end?
Answer. It might have been after this.
Question. Was there any reference in that conversation to the fact that Mr. Steele had been paid?
Answer. I learned it to my satisfaction that he had been paid, and the amount.
Question. Was there any reference in that last conversation, which you think was with Mr. Smith, to that subject?
Answer. Not any to money.
Question. When he said he thought he would vote for Mr. CALDWELL, was there any reference to money?
Answer. I do not think there was, but the question of his final vote was mentioned incidentally.
Question. After you had learned from Mr. McDowell, as you thought, that Steele had received $500, did you go back and talk with Steele?
Answer. I did directly.
Question. What did he say?
Answer. He said, "I told you not to mention my name." I answered, "I did not mention your name at all, Mr. Steele; I was very careful;" and I talked to him, maybe, with a little warmth.

By Mr. CARPENTER:

Question. Tell the conversation.
Answer. I says to him, "You are already sold; you have got the money in your pocket, and you have not voted as you agreed to."

By the CHAIRMAN:

Question. What did he say?
Answer. I cannot tell you much about it. I guess I repeated this right along. He made this reply: "I told you not to mention my name." That is as I remember it.
Question. Did he deny that he received the money?
Answer. He did not deny it at all nor acknowledge it directly. He turned and said, "I told you not to mention my name."
Question. And you said you had not?
Answer. I said, "I did not mention your name, Mr. Steele; your name came up, and of course I listened to it, and I know you are already sold, and, sir, this is no way to do business."

Mr. STEWART. That illustrates it perfectly. In the first place, it is not very reasonable that Steele would engage him if Steele was already bought. This man tells his own story. Who is testifying falsely? Does anybody know who Chester Thomas is, or what credit he is entitled to? That is the kind of evidence presented here. You prove that CALDWELL is guilty of bribery by a conversation between Chester Thomas and Steele, wherein he swears Steele sent him and he went to Len. Smith, who is alleged to be the principal man in the transaction, and he put him off with a casual remark that votes were not worth more than $500. Could you tell whether that was a mere bluff remark of Len. Smith's or what he meant unless you saw the witnesses on the stand and saw their manner? Len. Smith does not negotiate. He goes there and gets foiled. He has told this story, and he comes here and tries to make it good by hearsay, with which CALDWELL is not connected in any way. Now Mr. Steele comes forward and denies the whole transaction. Here is his testimony denying it under cross-examination. I do not know who Mr. Steele is. Mr. Steele may have been a great deal the better man of the two; and when on the stand he denied it all. Now, how can you predicate action upon that? You have not connected CALDWELL with it; it was a conversation among others. It was a conversation on the part of a man who commenced to do dirty work. Who was Mr. Chester Thomas? Who has he written himself down to be in his testimony? A briber—a negotiator for bribes. He says that Steele came to him to negotiate his vote; he went and attempted to do it.

I am stopped in this argument that this testimony may be produced, and it is the best you can produce—a man that is referred to here confessing himself infamous. If what he says is true he could be convicted of attempting to bribe under any decent statute of any country covering the ordinary cases of bribery. He is the agent of Steele to get a bribe for Steele; he gets bluffed and comes here and condemns the Senator. That will not do; that is "too thin;" that is sorry stuff. Come with one decent man who knows the facts, come with one man with clean hands before you lay hands upon a peer in this body. Let something come from some man who was not engaged in bribery or black-mail. If Chester Thomas would be the agent of Steele to negotiate his vote, he would be the agent of any conspirator to drive CALDWELL from his seat. If upon such trash as that a Senator is to be accused, if that is evidence, beware that evidence be not manufactured in your own case that it is reported that members of the lobby are selling every day all hands, men that they dare not speak to; and when they are engaged in that business their conversations and declarations are certainly valuable. I know a very remarkable case; my friend from California will remember it well. We had in California in early times, when I was a citizen of that State, a judge of great ability. He had his faults. He was a generous, strong man, who dealt out the law with a degree of power and fairness that made him a great reputation. There was a certain broker who was in the habit of selling him. He would sell him to both sides. He was supposed by the judge to be a man who had nothing to do, and who was harmless. He would go to one side and say, "Now, for $1,000 or $5,000 I think I can help you; and if I do not succeed I will not charge you anything." He would make the same arrangement with the other side. Then the case would have to be decided one way or the other, and he would go and collect his money from whichever side won. He kept that thing up for years, and finally he died suddenly. From his papers these facts appeared. This business continued up to a time just previous to his death; and the judge had come to be regarded as corrupt by the people. These cases had been talked over, and his reputation was very much injured. I met him frequently. He did not know why people talked about him as they did. In fact, the members of the bar did not know where it came from. They would argue their cases before him with no want of faith. The man would never go to the lawyers; he would keep away from them; but he went to the clients. This sapped the judge's reputation, and but for the accidental death of that man, and the uncovering of his papers, that judge would have gone down branded as having been bribed in all those cases.

It is very easy to get up outside conversations and implicate the character of any man. I tell you, beware of hearsay. I tell you that it is not enough that a man says that this man's declarations that he is going to testify to shall be received to brand a Senator. Suppose a case is being investigated of the misconduct of a Senator on this floor. A witness presents himself and says that John Doe made such declarations. Who is John Doe? A friend of the Senator. Can he then go on and repeat the statement? But the case which the Senator from Mississippi puts is the case of a self-convicted criminal, a man who has no more sense of right or decency than to first become the agent of a member to sell his vote and then come here and testify to it with a great deal of gusto, as if there was nothing wrong in it; and that is the kind of testimony. I thank the Senator from Mississippi for illustrating it. This book is full of it.

Mr. ALCORN. The Senator will allow me a word. I agree that the book is quite full of it, showing the character of the lobby of the legislature of Kansas. He cannot expect me to go to secluded virtue to find testimony sufficient to delineate vice. I can only get those who mingle in the vice and bring them here and show them to the Senate that they may judge of their character.

Mr. STEWART. I suppose that Chester Thomas is the only man that hates vice, but does Chester Thomas connect Mr. CALDWELL with it? If we can only go to those who mingle in the cess-pools, and they are not able to swear that CALDWELL had anything to do with it, if that is all you can bring here, all of it——

Mr. MORTON. Has the Senator read the volume?

Mr. STEWART. Every word of it.

Mr. MORTON. Then the Senator knows that Mr. CALDWELL was connected with it from beginning to end.

Mr. STEWART. I do not know from that volume that he is connected with any case of bribery. I do not believe from that volume that he is. I believe from that volume that he went into politics an honest business man, that he was ambitious, that he was surrounded by Clarke, and by Carney, and by Spriggs, and by Anthony, &c., and that they robbed him of his money.

Mr. FERRY, of Connecticut. Will the Senator allow me to read a few words from Mr. CALDWELL?

Mr. STEWART. Yes, sir.

Mr. FERRY, of Connecticut. It is on page 55, in the testimony of Spriggs. Mr. Spriggs is testifying to a conversation between himself and Mr. CALDWELL:

Question. Was anything said in that conversation about the use of money or necessity of paying money for votes?
Answer. I will just tell you what Mr. CALDWELL said to me about it. He asked me if I knew any members of the legislature that could be influenced by the use of money for their votes, and I told him that I knew two members, I believed, that had the reputation of having been influenced in their votes on former occasions.
Question. What did Mr. CALDWELL say in reply to that?
Answer. He said if I found any members that wanted a little money for votes, to send them to him and to Len. Smith.
Question. Was that all that was said upon the subject?
Answer. Mr. CALDWELL said there was another class of high-toned gentlemen there in the legislature that would not sell their votes, but they put it in this way: that they had been to a pretty heavy expense in carrying their election, and they would want their expenses paid, and, if I met with any of that class, to send them to him or to Len.

Does not that testimony make Len. T. Smith the agent also of Mr. CALDWELL, and all that he said and did proper and legitimate evidence against Mr. CALDWELL?

Mr. STEWART. I thank the Senator from Connecticut for that suggestion, and will illustrate it by calling on one of the members of the committee who knows that Mr. CALDWELL was at home sick at

the very time that conversation was reported to have taken place, as proved by the testimony of two witnesses.

Mr. CARPENTER. Two witnesses, whose testimony is found in the record, testify that on the day fixed with such particularity by this witness as the day when he conversed with Mr. CALDWELL, (for he fixed it by reference to the day of the election, knowing it was exactly one week before the election,) Mr. CALDWELL was sick at Leavenworth, and one of these men was his physician.

Mr. MORTON. Mr. President, this is an attempt to break the force of a positive statement by trying to prove by somebody else that the witness must have been mistaken in the particular day when the conversation occurred, it having occurred pretty nearly two years before the witness gave his testimony. That is a fair illustration of the technicalities and the quibbles that are resorted to to break down this testimony.

Mr. STEWART. I do not care about technicalities. I take the mass of this testimony as it stands. I take Spriggs as a specimen. Spriggs swears that he was a friend of Carney; went there as such at the request of Carney, and, when Carney directed him, he went in with Carney to carry out this transaction. If there was anything wrong, he was part and parcel of it. If there was any corruption, he was part of it. It is very easy to swear to declarations. I tell you the impression on my mind is that there were a party of men who had come to the conclusion that they would defeat CALDWELL unless they could black-mail him.

Mr. CARPENTER. Will my friend allow me to suggest another point?

Mr. STEWART. Certainly.

Mr. CARPENTER. It also appears in evidence that this same witness was examined before the investigating committee at Topeka, and questions were put to him which called for this conversation with CALDWELL, if he knew of any such conversation, and he omitted to state any such thing; and that was just six months after the conversation must have taken place, and at that time he did not recollect it, but eighteen months after his recollection is perfectly distinct—so distinct that he can fix the day; and when the day is fixed, two men swear that Mr. CALDWELL was away at Leavenworth, sick in his bed.

Mr. STEWART. Is that a technicality? I tell you, these fast witnesses will arrange their stories every time. A man who will, at the dictation of another, enter the lobby and do what he swears he knows is criminal, will mend his oath and swear again. There are other parties who have had several swears in this record. Mr. Clarke comes every time there is a necessity, and he appears and re-appears. If CALDWELL is convicted on this record, it will be a disgrace to all judicial inquiry; it will be a denial of a substantial right guaranteed to every citizen of this Republic, to have a fair trial before his accusers on legal testimony.

I have not come to this conclusion hurriedly. I have read this testimony twice, every word of it. I have looked over these witnesses and their motives as carefully as I could. They may have given money to legislators, some of this crew, for the purpose of taking the curse off; but my opinion is that CALDWELL was sinned against by Carney, Clarke, and others, and that they had all this talk at Carney's headquarters; they talked freely of the use of money when they were putting it in their pockets, and that brings me to the $7,000, which I had almost forgotten, and which was mentioned so graphically by the Senator from Pennsylvania.

A day or two before the election, when the excitement was running high, a witness, whose name is Comstock, I think, swears that Carney became dissatisfied with his $15,000 and wanted then to become a candidate, and there was a little flutter in the camp. Carney had got inside and had all the secrets, and he consulted with his friends to know if it was time for him to come in and carry off the prize. Just at that very unfortunate time Len. Smith drew, in favor of Thomas Carney, a check for $7,000. The check appears here in this book with Carney's indorsement on it. T. J. Anderson had it cashed. Anderson swears that he gave that money to Carney. Len. Smith swears that it was for Carney. The check was drawn in favor of Carney. What does Carney say? That it was used to buy members of the legislature. That was his idea. He says that the money was brought and put in his back room, and then he said, subsequently, that it was stolen.

Mr. MORTON. How does Len. T. Smith explain that he came to give that $7,000 check to Carney?

Mr. STEWART. Because Carney was going to become a candidate.

Mr. MORTON. That he would not stand by his agreement?

Mr. STEWART. That was it.

Mr. MORTON. To show that my friend does not understand this testimony at all, according to his own statement, allow me to refer him now to the narrative given by Len. T. Smith, Mr. CALDWELL'S friend.

Mr. STEWART. What does he say about it? Can you not state that without reading?

Mr. MORTON. I can state it without reading it. Mr. Len. T. Smith swears unconditionally that when he went there he offered to Mr. Carney the $7,000 to pay his expenses and as a condition that he would not become a candidate, and he swears two or three times over that that was all the money that he knew about being used in that election, and he presents that as the sole consideration and the sole payment to and contract with Carney. After being examined for two or three hours, just as he was about to go off the stand, he dropped a remark that was taken hold of by the committee; he was pressed to explain the remark, and then he came out and revealed the fact that before that time there was a $15,000 contract, which falsified his testimony; there is where the perjury comes in.

Mr. CARPENTER. Will my friend from Indiana allow me to interrupt him a moment? The precise question now being discussed by the Senator from Nevada is whether this $7,000 was paid to Carney or not. The Senator from Indiana, instead of stating what Len. Smith says upon that point, proposes to show that Len. Smith swore falsely on some other point.

Mr. MORTON. If I was willing to take up the time of the Senator from Nevada I could show that my friend from Wisconsin has not helped him out a bit, but has only got him in.

Mr. CARPENTER. You have not helped him in.

Mr. STEWART. Not a bit. If the Senator has shown an inconsistency in the statements of Len. Smith, it is nothing more than I expected. I do not believe anything these fellows say about that money; I believe they got it among themselves. The fact is, that Len. T. Smith drew his check in favor of Carney; there is no doubt about that; and when he is pinned down, although he may have squirmed around a little to keep character with Carney, he says Carney got the money. Carney indorsed the check in the regular course of business.

Mr. CARPENTER. The regular course of that business.

Mr. STEWART. It was drawn in his favor, and he would naturally have to indorse it. Len. Smith says he got it. Does anybody believe that that gang of thieves gave up one cent of that $7,000?

I was showing that Carney was not to be believed. My friend from Indiana comes up and shows that Smith is not to be believed, and I suppose he would argue that Anderson was not to be believed. The fact is, Smith drew the check and gave it to Anderson, and then he closed the book, and when the check came back it would make no difference what was done with the money; it would be a plausible claim against CALDWELL. Does anybody believe that was not a black-mailing performance among those fellows? If you discredit them all, how can you credit Carney? This explanation is worse than anything else. He seems to intimate that the Doniphan County delegation got it, but his explanation makes him a briber of the worst kind. He says that he indorsed that check drawn to him for the purpose of buying the Doniphan delegation. That is the effect of his testimony. He would rather have it that he bribed men; he, a man who had been governor of the State, would rather stand charged as the briber, the man through whom the money was drawn to bribe a delegation; he would rather swear to that infamy than admit that the $7,000 was received by himself.

Mr. MORTON. Suppose the Senator is correct in his statement; what is the effect of it?

Mr. STEWART. That it was one of the most thoroughly scientific black-mailing operations I ever heard of, and that they returned it to CALDWELL as a check for expenses to bleed him further.

Mr. MORTON. Will the Senator allow me a word right there?

Mr. STEWART. Certainly.

Mr. MORTON. If the Senator is correct in his statement, the bribe paid to Carney was $22,000 instead of $15,000. If Carney is correct in his statement, and Anderson is correct in his repeated confessions about it, Carney only got $15,000, and the other $7,000 went to the Doniphan County delegation. So far from black-mailing CALDWELL, they sent for Carney repeatedly, and brought him by repeated invitations to Topeka. They opened the negotiations every time and they brought the whole thing about, and there is Len. T. Smith swearing to it himself—your own witness.

Mr. STEWART. That shows the position the Senator occupies. He says that Carney, so far from black-mailing anybody, was sent for to come to Topeka. Does he find it necessary to compel Carney to convict CALDWELL? Carney not black-mail anybody! On the very threshold he demanded $15,000 as black-mail, and got it. He stamped himself as a black-mailer at once. Tell me that when a man has taken $15,000 of black-mail, and then proposes to break the engagement, and a check for $7,000 is offered, he will not take it! That is too absurd. Of course Carney got every dollar he could, and the committee themselves say that Clarke, because he did not get the same, brought this prosecution before the Senate.

Mr. ALCORN. Will the Senator allow me?

Mr. STEWART. Certainly.

Mr. ALCORN. We are in search of light, and I know the good nature of the honorable Senator is inexhaustible.

Mr. STEWART. I am giving the gospel on this question. [Laughter.]

Mr. ALCORN. I desire that, and therefore I may be pardoned for presuming to read from page 4 of the report:

> It is further shown that three or four days before the election took place Mr. CALDWELL'S agent went into the banking-house of Scott & Co., at Leavenworth, and drew the sum of $10,000 upon Mr. CALDWELL'S check, for the avowed purpose of taking the money to Topeka by the train that morning, which was given as the reason for presenting the check before bank-hours. Mr. Jacob Smith, banker at Topeka, testified that at nine o'clock in the evening before the election took place——

Mr. STEWART. I have read that report. What do you want to say about that?

Mr. ALCORN. Presuming on my friend's patience, I will read a little further; I trust he will hear me out:

Dr. Morris, of Leavenworth, a very active friend of Mr. CALDWELL, drew $5,000 from his bank, and that Judge Crozier, of Leavenworth, an influential supporter of Mr. CALDWELL, and then at Topeka, laboring for his election, drew $1,200 from the bank after banking-hours, at the request of Mr. Smith, which was handed over to Mr. Smith.

Mr. STEWART. What inference do you draw from that?

Mr. ALCORN. I submit, with the Senator's permission, that having shown that these large sums of money were drawn just preceding the election of Mr. CALDWELL, at the time all this bribery is charged, having traced the money in the direction of Topeka, Mr. CALDWELL being the only man living who could tell the committee precisely what became of that money, where it went to, and for what purpose it was appropriated, he contents himself with closing his mouth and refusing to be interrogated by the committee on that subject, he being, I say, the only man who could have explained it, and he refuses to explain it, except by the general declaration that it was used in his private business. When I have pursued and found stolen goods in the possession of the holder, and he is called upon to explain the manner in which those goods got into his possession, if he fails to explain it, he is chargeable with the crime.

Mr. STEWART. Now I am glad that interruption is made. That shows the character of the Senator's mind, and how he is disposed to deal with this case. In the first place, this was CALDWELL'S own money; so the parallel of stolen goods does not hold.

Mr. ALCORN. I do not pretend to impute anything of that sort.

Mr. STEWART. If the Senator from Mississippi is found with $10,000, and he does not tell me what he does with it, have I a right to think he has bribed somebody or committed some crime?

Mr. ALCORN. Will the Senator allow me to reply?

Mr. STEWART. No, I will not allow him to reply now.

Mr. ALCORN. I will only say that my friend's instance is not in point.

Mr. STEWART. That shows the character of the Senator's mind. I think if anything is unfair it is the attempt to show that $10,000 was drawn

Mr. ALCORN. It shows my friend's patience is not inexhaustible.

Mr. STEWART. It is strange that anybody should think it of sufficient importance to patch up this case and show that CALDWELL had drawn $10,000 of his own money; but I was right in the point of showing where this money went to; and I was right in the point of showing that these harpies were robbing him right and left. Clarke swears that his ordinary expenses there were about $15,000. Carney's expenses must have been a great deal more than that. He complains that he gave on a former occasion, one witness swears, $25,000 to Len. Smith. He is "going for" CALDWELL, and to drive him out of the place, because Len. T. Smith, who, it is said, is a friend of CALDWELL, got $25,000 of him on a former occasion to buy the legislature, and did not buy the legislature. I was going on to say that they had use for more than $10,000, and every one of them invited all his friends. They had four hundred, five hundred, six hundred, or a thousand men at Topeka; board was high, a rich man running, and every one of them came in for his share.

Mr. MORTON. You are making it worse than the evidence.

Mr. STEWART. They went to rob him right and left; that is what it was; and then because these men cried for more, more, more money, more money all the time, and he fails to respond, the committee report that his failure to respond to these harpies brought about this investigation. These men, influenced by such motives, brought on the investigation to get money. If men would do that, would they not fix up a case; could they not take this same lobby that was eager to be bribed, that was eager for black-mail, could they not bring them here for more blood-money? CALDWELL had no idea of the character of Carney when he started. It is incomprehensible that a man who had been governor of the State should be willing to do what Carney did.

Mr. MORTON. Will the Senator allow me to make a suggestion in regard to that evidence?

Mr. STEWART. Yes, but do not occupy too much time, for I want to make this speech myself.

Mr. MORTON. I want to suggest to the Senator in that connection, talking about that one $10,000 item, that the evidence shows that Mr. CALDWELL'S agent, Mr. Martin, drew $10,000 out of the bank at Leavenworth, at nine o'clock in the morning, before the bank opened, for the avowed purpose of taking it to Topeka, to Mr. CALDWELL, by the morning train, and that was two days before the election; that was on Monday, and the final election took place on Wednesday. Mr. CALDWELL had it in his power to explain that that money was used for private business, but did not do it. On the night before the election, one of his agents and workers, at nine o'clock at night, a gentleman who lives in Leavenworth, drew $5,000 out of the bank. Mr. CALDWELL might have explained that Dr. Morris did not get the $5,000 for him; but all the evidence shows that he did get it for him, and that the banker knew it. On the same night Judge Crozier drew $1,200 out of the bank after banking-hours, and handed it over to Len. Smith, and during the day, in the day-time, the Kansas Pacific Railroad Company paid to Len. Smith, according to his own statement, $10,000, making nearly $30,000 received on that day.

Mr. LOGAN. If the Senator from Nevada will allow me right there, I should like to interpose one word in reference to this testimony. I am sorry to hear this statement repeated; but there is not one solitary declaration in all these four hundred pages that shows that Dr. Morris drew $5,000 for anybody else except himself. He was the president of the bank. And further, I say as to Mr. Len. Smith, who, the Senator alleges, got $10,000 from a railroad company, and alleges it on the declaration of Mr. Carney—Mr. Len. Smith swears positively that it is not true. Further, in reference to this agent the Senator speaks of, Mr. Martin, does the testimony show that he was the agent of Mr. CALDWELL? This bank clerk stated that he was in reference to the management in his railroad, or some business matter; but you have no statement in this testimony anywhere, except the statement of that clerk that he understood that Mr. Martin was drawing this money to go to Topeka. Nowhere have you a declaration showing that the money went to Mr. CALDWELL, or that one solitary dollar of it was ever used, directly or indirectly, in this election. Not a solitary statement have you to show that. These are the facts that are disclosed. The Senator infers other things himself that the evidence does not show.

Mr. MORTON. One word, if the Senator from Nevada will allow me. I want to say to my friend from Illinois that I think it is impossible for any man to read that evidence and bear out his statements. They are entirely too sweeping. My friend is mistaken. The evidence shows, and leaves no sort of doubt unexplained, (and it was in Mr. CALDWELL'S power to explain it,) that that $10,000 was sent there two days before the election for that purpose; there is no explanation that he wanted money there for any other purpose; he did not live there. The evidence shows that Dr. Morris went up from Leavenworth to electioneer for him—he was one of his friends there—and that he drew $5,000 out of the bank late at night, and that the bankers understood what it was for. The $1,200 was drawn by Judge Crozier and handed over to Len. T. Smith, and Len. T. Smith himself was a millionaire, and his check always good; but he wanted Judge Crozier to draw the money for him in his name, and he did, and he handed it over to Len. T. Smith, and, according to Crozier's own statement, Len. T. Smith afterward paid the check. The whole thing was conceded; it was done at night, under circumstances that clearly proved it was not fair. And now as to the $10,000 of the Kansas Pacific Railroad Company. Mr. Anderson drew the money. He says he did not know what it was for; but there is the positive statement of Len. T. Smith and of Carney that he got the money. Mr. Anderson gave a false reason for cashing the check at the bank there. He said there was no money in the treasury of the Kansas Pacific Railroad, a corporation having eight hundred miles of railroad. He afterward explained it in another way, by saying that the treasury of the company was down in Saint Louis, too far off. There is the positive statement of Carney as to what Len. Smith told him; and then come the statements of Clarke, and of Anthony, and of Carney, in regard to what Mr. CALDWELL said about the payment of money on the part of the company. Now, take it all together, put this evidence together, and it seems to me it is impossible for anybody to doubt that the money was paid to Len. T. Smith on that day, making nearly $30,000 there that was unexplained.

Mr. CALDWELL had it in his power to explain every bit of it, if there was any explanation to it. Mr. CALDWELL made a general denial of the use of money, but he would not swear to it. Why, the Senator himself, if he had occasion to go before a committee to exonerate himself, I know would ask to be put under oath, and he would not ask the committee to take his statements upon his honor. We have seen that in the case of members of Congress and Senators recently, who were anxious to be put under the obligations of an oath, morally and legally, and did not seek to exonerate themselves by making statements upon their honor. It was in Mr. CALDWELL'S power to have explained all these things; but here is this converging testimony showing nearly $30,000 paid him there on that day; and, taken in connection with the rest of the testimony, it leaves no doubt that it was for the purposes of that election.

Mr. STEWART. Now, I will yield to the Senator from Illinois, but I will not yield to the Senator from Indiana again till I have had a word to say.

Mr. LOGAN. Now, I desire to repeat what I said awhile ago to the Senator from Indiana, that there is no reason why either he or I should give any color to this testimony that the testimony does not give to itself. I said to him that he might infer what he had a mind to about the use of money, but that the testimony itself did not say so, and that is what I am talking about. Let me see whether I am borne out or not, for I am sure I know this testimony as well as any man in this Senate; I did not read it merely with a pencil in my hand to misstate it, but I read it to understand it and state it as it is. Inference I will not give; but if the Senator wants to draw inference from the testimony he is perfectly welcome to do it, but I state the testimony as the testimony is.

The evidence in reference to the $7,000 is that it was paid to Mr. Carney the night before the election, as testified to by Mr. Anderson, on a check drawn by Mr. Len. T. Smith to Mr. Carney and indorsed by Mr. Carney. The Senator says it was used, and Mr. CALDWELL must have known it, for corrupt purposes. He intimates that. We all, at least, ought to be willing to give every man what fairness of statement gives him when he is on trial for such an offense as this. Does not the Senator from Indiana know that the evidence shows that Mr. CALDWELL never knew the fact that that $7,000 had been drawn until this committee disclosed the fact? Is not that true from this testimony? I say——

Mr. MORTON. Does the Senator ask me that question?

Mr. LOGAN. I merely say that.

Mr. MORTON. If it is asked of me I will answer.

Mr. LOGAN. The Senator can answer as often as he has a mind to. I am speaking of what the evidence is. What he may think or what others may think is not what I am talking about; I am talking about the testimony. He says that Mr. Len. Smith got the $10,000 from the railroad. Let us see whether he did or not. Mr. Carney swears that Len. Smith told him so. Is not that what the Senator bases his statement on? Mr. Len. Smith swears that he told him no such thing. What does Mr. Anderson swear? Mr. Anderson is the man who drew the money, and what does he swear? Mr. Anderson swears that the money was expended to pay the taxes of the railroad, and to give dinners and wines to get legislation for the railroad.

Mr. MORTON. O, no.

Mr. LOGAN. We will see whether it is or not.

Now, in reference to the other proposition, about the $10,000 drawn by Mr. Martin. You say that was drawn for corrupt purposes. Why do you say so? You ask, why does he not explain it? Mr. CALDWELL states in his explanation that it was used for business purposes in his ordinary business management. Do you want any more explanation than that, or do you want to put him on a griddle and roast him for two days, as a Senator here was before a committee, to explain what he had done with all the money he had, from ten thousand dollars to a dollar? If so, I ask the Senator if he can explain every dollar he has used for all purposes within the last five years. God knows I could not. I can say, generally, that I had used it in my business, for my business purposes in the general management of my business, but I could not tell where it had all gone, and I could not, without a full examination, tell anything about it.

You say it was corrupt. Why corrupt? As I said awhile ago, there is not the testimony of one solitary man showing where one single dollar of that money went, except the statement of Mr. CALDWELL that he used it in the management of his business affairs, not one scintilla of testimony, and yet you charge, because he drew twenty-five or thirty thousand dollars in that month, he must have used it for a corrupt purpose. That is your inference, drawn from what? Drawn from a certain state of facts which you do not know whether they are true or not, from hearsay, from rumor, from vapor, from everything, where a man wishes to draw some inference by which he may punish some poor mortal, based upon no state of facts that are true and that have been sworn to.

The facts are as I state them. Hence I say that the testimony brings you to no conclusion of that kind, except by an inference. If a man chooses to draw inferences, he has a right to do it, but the testimony does not warrant the statement.

Mr. STEWART. Now I believe I have the floor. When I struck on a tender point and created such a fluttering here a little while ago, I was alluding to a single transaction, that Len. Smith drew in favor of Carney a check for $7,000, and Thomas Carney tried to show it was used for bribing purposes, and Smith says he got it. I have before me Len. Smith's explanation of it, which I might read. Here is Len. Smith's testimony:

By the CHAIRMAN:

Question. What reason did Mr. Carney give for demanding that money?

Answer. As I said before, that he had been to a good deal of expense—had rented rooms, and would like to have his expenses paid. He pretended that it had cost him a great deal more than this would make him whole.

Question. More than $7,000?

Answer. Yes, sir.

Question. What was the consideration of that check to Governor Carney?

Answer. For claims for his expenses.

Question. Were you willing to pay it to him?

Answer. I cannot say that I was; but I was, under the circumstances, for we were in such a place I could not afford to differ with him, as there was a great deal of mistrust all the while that he was coming out as a candidate, and we were anxious to secure a Leavenworth man, and could not afford to differ with him at that time.

That is his explanation. That is what Len. Smith swears to, whether Len. Smith is credible or not. I made the statement that the check for this $7,000 was drawn by Len. Smith in favor of Carney. The record bears me out in that. I said further that Len. Smith said it was given because he was likely to be a candidate. Comstock and one or two others swear to that fact. Anderson says he did not.

I was interrupted as misstating the testimony. There is nothing I stated which is contradicted; but it is because Governor Carney gave another account, and it was improbable that the governor would tell a falsehood! Now, there are witnesses who stand unimpeached who say that he declared in Leavenworth that he would come here and put CALDWELL out of his seat, for the reason that he was himself on the eve of being elected to the Senate at the time Ross was elected, and that it required the buying of a few votes, and they were in the market; and he gave Len. Smith $25,000 to buy them, and Len. Smith had sunk the money, and therefore he wanted to swindle Len. Smith's friend, CALDWELL, out of his money. This man, who came here with that declaration, this man that already had in his pocket blood-money, black-mail, because he gives another account of this transaction, two witnesses are contradicted and must be disbelieved, and not only that, but the face of the check must be contradicted, and I must be called to order, and all the money that CALDWELL has drawn, or anybody has drawn, it is said CALDWELL is to account for. He must not only account for money that he drew, but for money that Dr. Morris drew, money that the railroad man drew, all the money that was used by anybody where the testimony fails to show any connection between him and that money.

It is said that CALDWELL ought to have gone on the stand himself. It is not shown that he knew the money was drawn that he is called upon to explain; and this is the institution, this is the Senate that is going to vindicate its honor; this is the Senate that is going to be on trial! Yes; I think the Senate is on trial. I think the honor of the Senate is on trial when it comes to the conclusion that it is its duty to convict a man because he has not explained transactions with which he had nothing to do, and prove a negative in a case where it would be necessarily impossible for anybody to do it. I thought this was to be a trial. I thought before a Senator was to be disgraced and marked with the brand of Cain upon his forehead through life it required affirmative proof. Talk about the Star Chamber of England! Talk about the Inquisition! Give me them and deliver me from a committee where conspirators, with their blood-money in their pockets, can come and by hearsay testimony ruin a man that has stood well, with honorable parentage, with a good character. I was touched by the remarks of the Senator from Pennsylvania when he told us of this man's father and the honorable character that he had borne and the services that he had rendered to his country. Of this young man no one has spoken ill. Every Senator has been constrained since he came upon this floor to speak well of him, and say that Mr. CALDWELL has conducted himself as a Senator so as to offend none. Some have congratulated themselves that they would have a victim; that they could not be accused of spite if they punished him, because they were not unkindly to him. I tell you, Senators, there is evidence in this record that somebody is mad at him. There is evidence in this record that he has been robbed.

Now, I regard that transaction with Carney as highly discreditable; I believe there ought to be a law passed against such transactions; but, from the circumstances under which it was done, the committee itself was constrained to say that in that transaction he was more sinned against than sinning. The citizens of Leavenworth had petitioned him to become a candidate for the Senate. That town was ambitious to be represented. Carney had hitherto been their aspirant. He tried to buy himself in, according to one story, but it failed. His name had become associated not pleasantly to the people of Kansas. They were anxious to have a candidate who would have some show to be elected, and they petitioned CALDWELL to become a candidate. Carney was absent, but on his return he says, "Fifteen thousand dollars or I will be a candidate, and you will have two candidates in Leavenworth, to defeat both. You shall not be represented in the Senate unless you pay me for my former expenses." Fifteen thousand dollars, this was the amount named. I say the payment of that $15,000 under those circumstances is no worse than buying a newspaper to advocate your cause, no worse than spending money in an election. It would never put a man out of the way unless he was willing to take black-mail. It was an unfortunate thing; but I say it was no worse than using money to pay for electioneering purposes, and many men have used money for those purposes out of their abundance, and have been extolled in the newspapers for it. How many have been rewarded with office for pecuniary contributions? And it appears that in Kansas, particularly, the state of public morals is such that it is considered no man can come here unless he does.

But there are several witnesses who say Clarke was trying to bribe them. Suppose Carney or Clarke had been elected, where would this record place them? They go on to speak of the large amount of money that they expended. Would the thing have been better if one of them had been elected? No, Senators.

Here is the case: when the committee fail to point out the evidence criminating CALDWELL, they feel called upon to say that he ought to have explained what was not proved. In a criminal proceeding, on whom is the burden of proof? Has it come to this, that a Senator is to be put on the rack to explain himself before he is shown to be guilty? Is he to disprove things which are not proved? Is he called upon to prove affirmatively his innocence? Has the order of proof been reversed?

O, it is easy now to go after Mr. CALDWELL; it is easy to expel him; it is easy to make a great show of virtue, and we are told that we must do something or we approve of fraud and corruption. How would such an argument appeal to the British Parliament after they had come to the conclusion that treating, or that bands of music or dressing in parades, and all that kind of thing, was improper and should be stopped? What would be said of the British Parliament if it had taken up a man and expelled him for those things before there had been a law prohibiting them—when they had been the custom of the country for a long time? Would you say that they were trying to do their duty? Would you not have said that they were trying to make a show of cheap virtue, and that the British Parliament had fallen very much in your estimation? But they went to work deliberately, and when the use of money in elections had become intolerable they passed a law against it; they provided rules which all parties observed.

But here we are called upon by one Senator to go back of the Constitution. There is a constitution back of and above the Constitution, he says, and we are called upon to enact the law, convict a man, enter judgment, and carry it into execution, in one vote. When that practice prevails in the Senate of the United States, the liberties of the people will be at an end. It will not be done. The Senate of the United States will not do it. They will neither declare this election void nor expel this man. They cannot declare the election void without violating the Constitution. They have no jurisdiction to say

who shall vote in the Kansas legislature. No man has put his finger upon the authority for your doing it. You cannot do it. Do not do that until you can put your finger on the authority, if you are a judge. If you mean to be a partisan, do what you will. If you are going to be a judge, find the law. Mr. CALDWELL has a right to demand the law. I demand the law under which you say you can decide who can vote in the Kansas legislature. You cannot produce it. Every statesman, from the beginning of this Government until now, that has spoken on the subject, has said you could not. You cannot review the action of the Kansas legislature on that subject.

Then some say "It is immaterial; I will vote for that, and then I will vote for expulsion." You have the power to expel, but that power in all civilized countries is governed by some legal rule. Will you be satisfied with a record that you do not understand? Will you be satisfied with a record of hearsay, and will you be satisfied to predicate your action upon the malice, the recorded malice of a lot of conspirators, each of whom acknowledges himself infamous? Will you be satisfied, I ask, to pronounce a man guilty upon the testimony of witnesses, each of whom condemns himself, when this man has from his childhood a good reputation—when he has conducted himself without spot or blemish while he has been a Senator? Will you, I ask, be satisfied if, upon hearsay testimony, you have destroyed a man thus situated, and for such a reason; and then will you say that that is American justice? Will you be satisfied that that is giving to every man the right of trial before his peers; the right of having the witnesses presented; having the facts understood? Will you say that that comports with English or American justice? Will you be satisfied with that?

Fellow-Senators, I do not want a record of that kind. I do not want to record decrees against this man written in the malice of Carney and Clarke. I cannot rest my conscience upon that, it is very clear. I will take none of that responsibility. I believe, if he has committed a crime, that the people of Kansas will convict him there by prosecution for the offense, or by his rejection at the next election, or by some manifestation of public sentiment. I believe it can be corrected there. I believe they will correct it. But if we commit a mistake, if we yield to the prejudices and passions of the hour, violate the Constitution, trample upon the rules of evidence, trample upon the laws that guard elections for the purpose of securing a victim, there is no retracing that step. Justice can never be done in that way; it never can be reviewed; the evil never can be repaired; but I do believe that the people of Kansas will do justice between these men, and I do believe that this discussion and this *exposé* will have a great moral effect against the use of money. I do believe that Congress, so far as it can, at the next session, will pass laws against the use of money, and I believe Kansas will wake up.

Mr. MORTON. What *exposé* does the Senator refer to?

Mr. STEWART. The *exposé* of this conspiracy; the *exposé* of the manner in which a candidate has been robbed, and submitted to it, in one election in Kansas; that is what I referred to; and the further *exposé* that the Senator talks of convicting a man because he is not put upon the rack, and has not accounted for all the money he has had. I think it will attract some attention in this country, that a man came very near being convicted because he would not put himself upon the rack and swear against charges not established, and make a fool of himself, reversing the whole laws of criminal jurisprudence. The fact that anybody in the Senate of the United States should get up and urge that a man charged with bribery is bound to prove that he was not a briber before any man has proved that he was—I think that proposition, made in the Senate of the United States, will attract some attention among lawyers. I should like to send this testimony to lawyers, that they might see the mode of examination; the facility with which spite can be vented; the ease with which men can be thrown, and the facility with which a man can be put out of the Senate, or declared not elected, notwithstanding there was a decision of the Senate that he was elected. And that is called a trial by the Senate of the United States!

This record will be a precious thing if CALDWELL is put out. It will be authority for what? It will be authority for calling a Senator up, and if he does not tell everything he has done in his life-time, it will be presumed he has done something wrong, for which you are to turn him out of the Senate. It will be authority for letting men who say they have committed fraud and rascality prove hearsay, come in and detail their guilt. It will be authority far worse than the Star Chamber, because if you are going to put the thumb-screws upon a man, if you are going to do the job right up for him, why go to the expense of taking this testimony? Why not apply the rack direct? What is the use of getting a whole lot of perjury? In old times they did not spend any time on that; they went to him directly. What is the use of having Carney here, all reeking with corruption and vengeance? What is the use of having Sidney Clarke here trying to collect his $15,000? What is the use of having any of the rest of them here? Why not take CALDWELL out and put him right through without any trial, at once, and ask him all sorts of questions? You say you condemn him because he did not go on the stand himself and answer all sorts of questions. Then there is no use in beating about the bush. Take him up and sift him through. Take any Senator; go through his senatorial election; ask him how much money he had, and whether he paid any money to anybody; go through with it; purge the whole body; let us have an *exposé* of the whole thing. You need not charge anybody with everything, but have a committee appointed; call him up; ask him, "Did you ever do anything wrong; did you not have some money; did not somebody pay you some money?" and some men come in and say they heard somebody say that so and so occurred. That is the way to deal with American Senators! Here is a man charged and attempted to be expelled because he did not tell what Dr. Morris did with $5,000 of his own money, which he drew; did not tell what Crozier, a lawyer, did with $1,200 he drew of his own money. He must be a terrible man if he would not tell what those men did with their money!

Now see the uncertainty of this; look at this report. I abandon the question of declaring the election void, because that is too absurd. If any lawyer is willing to rest himself on that, I am satisfied; he may glory in that theory, and see where it leads him.

Now I come to the question of expulsion. The committee say that there was something bad going on—bribery going on; but they do not find that Mr. CALDWELL committed bribery. They have not found that fact affirmatively. Here are half a dozen Senators who have got up and read the testimony, and said they would vote for expulsion. The report of the committee does not find any fact connected with it. The report does not recommend him to be expelled, and it does not find that he has committed any act to be expelled for, or that he has committed bribery at all. And yet here are plenty of Senators ready to vote for his expulsion on account of bribery; and men who do not say that they have read the testimony, and men who do not discuss it as if they knew anything about it, get up and take it for granted that there has been an enormous offense committed, and therefore have no difficulty on that point, because there must be a law back of the Constitution to punish all such offenses. That is the kind of argument we hear.

I tell you, fellow-Senators, that this is a matter of law, and the American people will submit to the execution of the law. They will bear with these evils until they can correct them by law; they prefer that. Mexico makes a revolution whenever a thing goes wrong; fanatics may do that; but the American people bide their time, and they will correct the evil; they will apply the knife to these diseases. They will indict bribery; they will raise their voice against it. If Congress will pass statutes against it the thing will be stopped; but it will not be stopped by violating the Constitution, by denying a man fair trial, by condemning him on hearsay testimony, or putting leading questions to witnesses, or upon the conspiracy of men who desire to black-mail; but let every man be tried according to law. It will be done here, I have no doubt; but I do say that if you are going to pass upon this testimony, it is your duty not only to read it but to know who these men are who testify. It is quite important enough to spend from now to December in examining this testimony. I, for one, if this thing is going to be pressed to a vote, would rather sit here and have each one of those witnesses brought upon the stand and testify in the presence of these Senators, if such an extraordinary thing is necessary. If it is necessary now that we should have an example, let us have the witnesses here. I want to see them.

Here we are trying a man for crime on depositions. There has not been a time in three hundred years that that would not have produced a revolution in Great Britain. Try a man for bribery on depositions! No fact of bribery in the election is found; we have nothing but loose statements, and then look at the certainty of it! Here are three Senators on this floor who deny it; two who affirm it to be true. The other two Senators who were on the committee are not now here, and we cannot hear what they have to say about it.

I hope that I have not said anything offensive to anybody in my remarks, and particularly to the witnesses who figure in this report. I think they will not be offended at me if they will read the report themselves and see themselves in the light they are presented there, since I have called their attention to the fact as plainly as I can do it. Telling such things does not appear very well, I know; but since I have called attention to the facts, I think if they will read it they will rather sicken of themselves. I think the Senate should not get into a special spasm over the fact that some of these gentlemen cannot collect more black-mail from CALDWELL. They have not collected all they want, and therefore this prosecution. The report is that the prosecution happened because more black-mail was not forthcoming. This seems to be a proceeding for the collection of the remainder of this black-mail, and I think that if we do not commence by making a victim of a man who was "more sinned against than sinning," we had better make an example by expulsion, to testify our indignation against the use of money in elections. The people would be just as well satisfied. They would as lief we should take an old rogue rather than a man who is green in politics and who was robbed, as an old politician would not be.

This is the first case that has been thought of. These other fellows were veterans in bribery in Kansas in other years. I think the people would be more glad that we should get hold of one of them rather than get hold of a man who was sinned against more than he sinned. I do not think they will feel especially outraged if we do not make a victim of this particular man, for I have great confidence in the people. They at last do arrange things so as to make them come out about even. They will now start on this question; no doubt about that. This practice has got to be stopped. Men who have not money have got to have as good a chance as those who have, and men need not expect hereafter to make anything in elections by the use of money. The practice is going to be stopped, but it will not be done by making a victim of the man who has done the least.

Suppose Mr. CALDWELL were to be tried in Kansas on this testimony. I venture to say that you could not get one man out of any twelve jurymen in Kansas, of either party, to convict him. I caught the key-note of this proceeding in the testimony of a democrat who testified before this committee. His name is Fenlon. He was a member of the legislature of Kansas which elected Mr. CALDWELL, and he is the bright particular star in this proceeding. He throws a great deal of light on the way things were done there. He did not have anything to do with the use of money himself, but he throws a great deal of light on the politics of Kansas. He does not appear to think that CALDWELL was a very bad man, but rather a pretty good fellow; and the committee admit that Mr. Fenlon was a very good man, and he appears excellently in the testimony. So I will take a democrat, I will take Mr. Fenlon as a sample, and I am willing to take a jury of all democrats, and let them have before them all these witnesses in Kansas on a prosecution for bribery, and then if Mr. CALDWELL be convicted of any offense, I will vote for his expulsion. I will be satisfied with that verdict. I will be satisfied with the rule of evidence administered by a court under such circumstances, and will acknowledge that justice has been done. But I do not believe this report throws any light on the subject.

I know we are told that Senators go before these committees voluntarily, but how do they come out? After they have been cross-examined what becomes of them; what kind of trial do they have? Here I am reminded of the fate of a Senator who recently sat with us. In justice I cannot help referring to him—a gentleman who went before an investigating committee of the Senate at the last session. I do not pretend to say anything about the report of that committee; but here was a man who had borne a good name all his life, who never had handled money, who never had anything said against him, but he was accused of dealing in Credit Mobilier stock, and he went before a committee of the Senate, and was so overcome by the situation that he could not tell a story which would correspond with that told by others. The committee sympathized with him, were sorry for him, but he was so perfectly overcome at being charged with an offense that he did not know what to do. I have read through and through the testimony taken by the committee in the case to which I refer, and it shows that that man could not make any statement at all. He had no rights there. That was not a fair trial. You have never given him any hearing, and yet that committee proposed to expel him.

Mr. MORRILL, of Maine. I cannot let what my friend has just said stand without some notice.

Mr. STEWART. I am not reflecting on the committee.

Mr. MORRILL, of Maine. What case does the Senator refer to?

Mr. STEWART. The case of Senator Patterson, of New Hampshire. I say he went before the committee, and was so overcome by the situation that he could not tell two stories alike.

Mr. MORRILL, of Maine. Why is it necessary for the Senator to apologize for more than one case at the same time?

Mr. STEWART. I am not apologizing for it at all, but the Senator from Indiana recommends that CALDWELL should be put upon the rack in this particular case, and that is the way to do it. Now, I think Mr. Patterson was a very great fool for making any statement at all about that transaction. There is a principle involved in this. Men have confessed murders that they never committed. Men have been executed for murders they never committed, on their own confession. Why, sir, a case occurred not very many years ago where two persons were convicted of the murder of a man on their own confessions who finally turned up alive. Now, courts refuse to convict for a murder on a confession, until the homicide is proved. Most men, particularly one that has not been accustomed to such a situation, when put on the stand, accused of crime, and questions are put to them, are not competent to speak in their own behalf. The law so declares, and there is no place where the common law is administered where such a practice would be tolerated. There is no place where the common law is administered where you can put a man upon the stand and take advantage of the trying circumstances under which he is placed to extort a confession. Confessions voluntarily made by men under such circumstances have turned out to be untrue, until there is but little faith put in them.

I say, therefore, there is no force in the suggestion that CALDWELL should have been put on the stand, and should have been put to the ordeal of accounting for all the sums of money that he and everybody else drew, and then, of course, if he had failed to account for the money that Crozier drew, or that Dr. Morris drew, or that anybody else drew, he would be held guilty, and that would be conclusive evidence of his guilt. That would be a good deal like the rules of evidence that were adopted in ancient times with the witches. They were put in the river, and if they swam they were guilty and had to be hanged, but if they sank and were drowned they were innocent. So you would put CALDWELL on the stand, interrogate him, and make him account for all the money that he may have used about a certain time, and he would have the same chance that a witch would have under the old practice.

If you seek to raise the presumption against this man because he was not sworn, let me remind you that you have had Senators here who have rebelled against being sworn when they were called upon as witnesses; and it is very questionable whether it is the proper proceeding to swear a Senator. That has been demurred to by old Senators in this body, some of them within the last year. But, sir, at any rate I say that no inference unfavorable can be drawn to Mr. CALDWELL because his statement in answer to these charges is made on the honor of a Senator; it traverses every allegation; and his character before was good and has since been good, while his accusers are as a body engaged in extracting money from him, and they admit that to be their object. No charge of bribery is proved against him, nor is it proved that he was connected with any specific case of bribery. There may have been general bribery out of doors there, but it was not brought home to him.

Mr. President, I shall not longer detain the Senate. I am obliged to the body for the attention which it has given to my remarks.

Mr. FERRY, of Connecticut. I have something to say on this subject, Mr. President, but I do not desire to go on to-night.

Mr. SHERMAN. If the Senator from Connecticut will yield, I desire to move an executive session.

Mr. CARPENTER. Will not the Senator let us move an adjournment over to Monday first? ["No!" "No!"]

Mr. SHERMAN. Let us go into executive session. There is some business we ought to do in executive session. 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-five minutes spent in executive session the doors were re-opened; and (at five o'clock and five minutes p. m.) the Senate adjourned.

IN THE SENATE.

SATURDAY, *March* 22, 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.

WITHDRAWAL OF PAPERS.

On motion of Mr. DORSEY, it was

Ordered, That A. B. Denman have leave to withdraw his petition and papers from the files of the Senate.

ELECTION OF SENATOR CALDWELL.

The VICE-PRESIDENT. Resolutions are now in order. If there be none, the Senate will resume the consideration of the unfinished business of yesterday.

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.

The pending question was on the amendment of Mr. FERRY, of Connecticut, which was to strike out all of the resolution after the name "ALEXANDER CALDWELL," and insert "be, and he hereby is, expelled from the Senate of the United States;" so that, if amended, the resolution would read:

Resolved, That ALEXANDER CALDWELL be, and he hereby is, expelled from the Senate of the United States.

Mr. FERRY, of Connecticut. I should not be willing to proceed unless there should be a quorum of the Senate present, and therefore I will yield the floor to any Senator who desires to speak in the present condition of the Senate.

Mr. FERRY, of Michigan. Mr. President, I should not now thus interrupt the course of this instructive debate but for the amendment offered by the Senator from Connecticut. I regret that he has submitted his amendment of expulsion at this particular time in the determination of the whole case. While I have not occupied the attention of the Senate during this discussion, I have, so far as I could, given close attention to the ten days' debate which has been so ably conducted, and which has shed so much light upon the novel question, now for the first time formally raised in the American Senate, whether bribery vitiates the election of a member of this body. If I have fairly apprehended the scope of this debate, it has aimed at and confined itself substantially to the question of the legality of the act of the legislature of Kansas by which ALEXANDER CALDWELL holds a seat in the Senate of the United States. I am borne out in this by the scrupulousness with which Senators participating in the discussion have so far avoided the question of expulsion in the submission of their views. It has also been disclosed in debate that the majority of the committee who reported the resolution were in doubt as to the proper method of disposing of this case. They chose the question of the validity of the election as the primary, if not proper one, upon which they would invite the judgment of the Senate. To make sure of the one or the other, a member of the committee, the Senator from Mississippi, submitted a resolution of expulsion, which at his instance was to serve as notice and be laid upon the table to await the determination of the Senate upon the first resolution, when that next should be considered. This appearing to be the logical order of consideration in committee, it would seem more in accord with their wishes and the logical sequence that the Senate should pursue the same order in its consideration and determination. It would hardly be just to the committee to treat it in any other order. The amendment of the Senator from Connecticut reverses this, and compels the Senate to record its judgment upon the question of expulsion before it can adjudge whether Mr. CALDWELL is by elective right entitled to the seat he occupies.

Mr. MORTON. If the Senator will allow me, I think it proper to say, as the chairman of the committee, that in my first speech in the introduction of this debate I did attempt to discuss the question of expulsion. The Senator may not regard it as a discussion, but at least I attempted to do so. I had occasion to state, I think more than once, in this chamber, that in committee I took the ground that the Senate had a choice of remedies; that I rather favored the one of expulsion myself, but that a majority of the committee thought it should go to the election rather than to expulsion; and that the action of the committee was controlled, at least in part, by two members of it who have since taken the ground upon the floor of the Senate that it did not go to the election.

Mr. FERRY, of Michigan. I was aware that the chairman of the committee, in his opening remarks, covered the two questions of election and expulsion, and very wisely did so, in order to cover the whole ground in the opening of the debate. In my judgment, it became his duty to do so. But I was speaking of the action of the chairman as reflecting the opinion of the majority of the committee, in reporting a resolution questioning the validity of the election, and could not with propriety say, as I did not even know till the Senator has just disclosed, what his individual opinion was. Like reference had been made by Senators who have spoken of this, and I think the Senator from Mississippi disclosed this view: that the two questions were not only before the committee, but the committee seemed in doubt for awhile as to which should have priority. My simple object is to state faithfully and historically the course this subject has pursued through the committee, and finally reported to and now before the Senate in open debate. Let me now restate the point I was making when interrupted. The amendment of the Senator from Connecticut reverses this order of which I have spoken and contend for, and compels the Senate to record its judgment upon the question of expulsion, (and I speak merely by force of parliamentary rules, compelling the Senate, as it is now presented before us and out of the hands of the committee,) before it can adjudge whether Mr. CALDWELL is by the action of the legislature of Kansas entitled to the seat he occupies. To require a vote first upon expulsion is to embarrass the Senate in expressing its conviction upon the distinction clearly made by the two resolutions. As I understand the majority of the committee, they are in favor of declaring the election void, and the Senate refusing to so declare, they then favor the expulsion of Mr. CALDWELL. The amendment of the Senator forces such of the committee, and others in accord with them, to first vote for expulsion, and thereby imply the validity of the election, for expelling a Senator presupposes his holding a valid seat.

Mr. FERRY, of Connecticut. You suppose, then, that the Senate cannot expel a Senator *de facto*?

Mr. FERRY, of Michigan. Not at all; I am not stating my views upon the rights of expulsion, but my remark was that expulsion implies a seat duly held till lawfully questioned. I think before I am through the Senator will see that I do not expect or desire to avoid that question, while at this stage of proceedings I do not express any judgment upon it. I am merely stating the nature, the sequence of the order in which the amendment of the Senator from Connecticut presents the question to the Senate, and consequently forcing the Senate to vote for expulsion, and to that extent implying that the Senator is holding a valid seat.

The amendment of the Senator is double-edged, and Senators who favor the validity of the election, and have not yet sufficiently considered the question of expulsion, but may incline to favor it, are also compelled to record a negative of the one in order to reach a direct vote affirming the other.

The pivotal idea upon which the whole debate has ranged has been the effect which bribery has upon the election of a Senator. It is due to the Senate and to the country that this debate should be allowed to crystallize into a vote upon the merits of the question. The gravity of the case demands that a precedent should be established by the solemn judgment of the Senate upon the simple question of the committee at issue, otherwise the debate is substantially a waste, so far as the recorded opinion of this body is concerned. What more opportune moment could be afforded for the dispassionate discharge of a constitutional duty? Although no advocate of the hackneyed shibboleth of "State rights," I do entertain due respect for State sovereignty, and believe now is the time for the Senate to mark the boundary between Federal and State elective jurisdiction. Our associates over the way have divided in the expression of their views, and thrown down the gauntlet for equal abandonment of political affiliations on this side of the chamber in the determination of a high constitutional question. Partisan strife is wholly at rest. Survey the national horizon, and not a speck as big as a man's hand indicates the approach, much less prevalence, of political antagonisms. The heat and criminations of party zeal have subsided into the cool and respectful amenities of citizen fellowship.

Is it not the time and place, and would we not be recreant to our duty if we did not rise above the politician into the domain of official dignity to hail this auspicious occasion when we can pronounce the clear, enlightened judgment of the statesman in the exalted forum of the American Senate?

It is for this object, Mr. President, that I propose an amendment to that of the Senator from Connecticut. While in nowise committing myself in advance upon the merits of either resolution, but biding the time when my votes shall express my judgment, I shall strive to approach each with that respect which is due to State action and to the conduct of an associate whose two years' acquaintance here has shown no act unbecoming a gentleman, and, in the light of this, cast first my judicial decision upon the validity of an election of a United States Senator questioned by alleged bribery, and next upon the resolution of expulsion, which I am prepared to meet unmoved by sympathy and with rigid regard for the exactions of my constitutional oath.

I now offer my amendment to the amendment of the Senator from Connecticut.

The CHIEF CLERK. The amendment to the resolution is in the following words:

Strike out all after "CALDWELL" in the original resolution, and insert "be, and he hereby is, expelled from the Senate of the United States."

It is proposed to amend that amendment by striking out the words "expelled from the Senate of the United States," and inserting "declared to have been elected a Senator of the United States by the legislature of the State of Kansas;" so that the amendment, if amended, will read, "be, and he hereby is, declared to have been elected a Senator of the United States by the legislature of the State of Kansas."

Mr. MORTON. Is that amendment in order?

The VICE-PRESIDENT. The Chair thinks it is in order.

Mr. ALCORN. I do not understand that the Senator desires to submit the motion at present.

Mr. FERRY, of Michigan. I ask no action upon it now, but I want it to take its place, of course.

The VICE-PRESIDENT. The question before the Senate now is on the amendment proposed by the Senator from Michigan to the amendment of the Senator from Connecticut.

Mr. ALCORN. I understand the Senator from Connecticut [Mr. FERRY] is entitled to the floor, and I yield to him if he desires to proceed now. If not, I have a few remarks to offer, and will then yield the floor to him.

Mr. FERRY, of Connecticut. I yield to the Senator from Mississippi to enable him to make his remarks.

Mr. ALCORN. Mr. President, the argument offered on the part of the defense rests the demurrer to the jurisdiction of the Senate in considering the resolution of the committee on false issues. British law and British precedent having nothing whatever to do in the question, I am glad to observe that the Senate has settled down to its consideration as, what it really and only is, a question of the Constitution.

In rising to add to my former argument on the question of jurisdiction, I shall confine myself mainly to points raised on the side of Mr. CALDWELL.

Because the legislature is a competent political power in the election of a Senator, it is claimed that its act is in that case final. If this means competence to the extent of exclusiveness, the proposition simply begs the question, and is not entitled to consideration. But the Constitution makes the act of election subject to the review of a judge, and be the scope of the review ever so narrow, that which is subject to review cannot be said to be in its nature final. Not only is the election of a Senator by a legislature not necessarily final, but I contend that, outside of acts proper to its own government, a legislature, save by a two-thirds vote, is in fact incapable under our system of any act that can be said to be final.

The analogies drawn from an act of legislation to an act of election by a legislature proceed, I submit, in violation of fundamental differences in the two things. Legislation, involving a concurrence of two branches of the State government, is an expression of the sovereign will; the election of a Senator, being the act of the legislature only, is clearly inferior in dignity, an act of but a part of the sovereignty.

But the election of Senator may be seen not to be an act of the sovereignty on other grounds than its want of the concurrence of the State executive. The sovereignty of the State is never expressed by the legislature under our system, save when, as in the case of overriding a veto, impeaching a governor, it speaks by special authority of its constitution in a vote of two-thirds. In no other form is the authority of a legislature sovereign. In legislative action which is valid under a simple majority, the legislature, unlike a constitutional convention, exercises but a portion of the sovereignty of the State, and in the case of the election of a Senator does so (as in legislation it does in reference to the governor) subject, within the limits of constitutional intention, to the assent of this Senate.

The election of a Senator differs from legislation in form and essence. Carried out under the regulation of the Federal Government, and subject to the review—formal or otherwise—of this Senate, it is, in fact, an act of subordination. As an original act it differs from the election of members of Congress in only one respect—the immediate constituency. The people of all the congressional districts of a State exercise in the election of their delegation to the House of Representatives an aggregate power, less in no essential of sovereignty than that exercised by their legislature in the election of Senators. And this is not all. In a State admitted under an apportionment giving it only one member of Congress, the election of that member might be held, because of the direct action of the people and of the greater expenditure of sovereign power involved in that action, to have obtained even a higher sanction than the election by the legislature of one of two Senators. I do not assert, however, that the one act is higher than the other. Taking them, as I do, at their level in the Con-

stitution, I hold them equal. For the text of that instrument leaves me no room for any other opinion when it places these two classes of election on the same footing, by conveying the control of each House over its own class in precisely the same terms.

The presidential elector has been cited as constituting an analogy apposite in the election of a Senator. This confounds radical distinctions that separate the two cases. The elector is appointed by the State superior to Federal intervention; the Senator is chosen subject to the regulation of the Federal power and to the acquiescence of the Senate. The elector is essentially an agent of the State, who never comes in contact with Federal authority; the Senator is essentially an agent of the United States, a very constituent part of the Federal authority. Over the creation and the subsequent existence of the Senator, Federal power has specific rights; over the creation and subsequent existence of the elector, Federal power is absolutely impotent. To reason from the one to the other of these is, I repeat, to ignore essential differences in the nature of things.

A Senator objects to the power of the Senate to go into judgment on elections, because of his declaration that it is not a body competent to try questions of law and fact. But the Constitution holds the contrary, for it declares the Senate competent to try these questions when giving it power to try impeachment. If this body can find on fact and law as a court of impeachment, I am really at a loss to understand why it cannot do so as the judge of certain elections. But competent or not competent is, after all, a question of the intention of the Constitution, and to reason from allegations of our competence or incompetence against that intention is something like reasoning in a circle.

The right of the legislature to "choose" is pleaded in bar of the right of the Senate to "judge." And yet the two rights are granted in the Constitution concurrently. I am, therefore, not free to hold that the exercise of the one, however it may modify the exercise of the other, must exclude that exercise. It is said in specific terms that we are "not the judges of the election." I submit in answer a certain text of the Constitution which declares expressly that we are. "It is not our business," we are told, "to inquire whether this gentleman corrupted the legislature of his State." This appears to me to be what the logicians define as "proving too much, and therefore nothing." The denial of our right to inquire into that corruption on the part of Mr. CALDWELL goes beyond the ground taken by any Senator as to our abstract powers; for it precludes all purging of the Senate from contempt in such cases, by cutting us off from grounds for the proper exercise of even our powers for expulsion. If we have no right to inquire, we have no right to punish. But even though this denial of our right to inquire be good, it is, I submit, offered now too late. We *have* inquired, and the question before us is simply as to the action to be taken on the result of the inquiry.

In trying this election of Mr. CALDWELL, it has been objected that we try the legislature which he has corrupted. I could hardly suppose an answer necessary in the case of the special plea against the jurisdiction of a court that the prosecution of the seducer amounts to a prosecution of the seduced! We have nothing whatever to do or to say in the case before us as to the persons, motives, or legal competence of the electors who have sent here Mr. CALDWELL. With the presence of that gentleman among us our jurisdiction in this case begins and ends; and the exercise of that authority does not only not go to a trial of the legislature of Kansas, but it does not go to a trial of even Mr. CALDWELL, save only to the extent of his right to a seat in this body.

Of the several precedents cited in this discussion, but one appears to me to be pertinent. The report on the case from Rhode Island presents an opinion that bears directly on the question at issue here. An incidental statement, however, as that only point of analogy in all the cases adduced really is, it is therefore wanting in the form and essence of that direct enunciation of thought which constitutes a fundamental condition of authority in precedent. I leave that discursive reference as to the right of the Senate in questions of bribery at whatever it may be held by the judgment and conscience of Senators.

The precedent from Pennsylvania has, I submit, no bearing on the question before us. It deals with charges of bribery made by some members of the legislature; and does so by referring the charges for preliminary action to the legislature. We are called to act under circumstances radically different. The case before us has not been urged upon us by a few members of the legislature; it has been presented to us in due form by the electing body. It has passed still more completely outside the scope of that precedent; under the direction of the Senate itself the subject has come up in the imposing form of accusations made by a committee of the Senate.

The precedent from New Jersey turns on the question whether an election by a plurality with the consent of the majority was valid. While this has no special relation to the question at issue here, it is good for the general conclusion that the Senate has a right to go, in issues as to the manner of election, behind the certificate and the fact of election.

The case from Iowa applies to an election in which the two houses of the legislature came together without due regard to the formulary prescribed for their joint meeting. While this has no particular bearing on the question before us, it bears directly on the general right of the Senate to go, as to the manner of election, behind the certificate and the fact of election.

The case from Florida decides whether an election by twenty-nine specific votes in the face of twenty-nine blank votes constitutes a choice. This has a direct and important bearing on the case before us, though not at all in a sense adverse to our jurisdiction. It is a precedent that goes beyond the form of the election to its essence, and is direct authority for the constitutional rendering that gives the Senate the right to go behind the certificate and fact of election to the question of its essence—the question of *choice*.

But it has been said justly that, in interpreting the intention of the Constitution when it makes the Senate the judge of certain elections, we must do so under the light of the context. The context is mediate and immediate. The latter stands thus:

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

This gives the Senate distinct functions as judge of elections other than those given it as judge of returns and qualifications. What are these distinct, these unspecified functions? I am at a loss to even conceive what they can be if they must be held to exclude that essential condition of any judgment on elections—bribery.

But the mediate context suggests limitations on the right to judge in the correlative right to choose; and the precedent from Florida declares that the Senate shall see to it that the election shall be an act of *choice*. Now, does not this judgment as to the *fact* of choice go to the question of bribery? In the freedom of election supposed under our system of government, bribery is *duress*. And, inasmuch as twenty-nine specific votes, in the face of twenty-nine blank votes, did not constitute a *choice* in the case of Mr. Yulee, how much more positively may it be declared that (the general fact of bribery placing in evidence the general fact of duress) the bribery in the case of Mr. CALDWELL, if established, excludes him from all rights under the authority given by the Constitution to the legislature of Kansas to "elect," to "choose," members of this Senate.

Mr. FERRY, of Connecticut. Mr. President, the Committee on Privileges and Elections report a resolution—

> 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.

I yesterday offered an amendment to the resolution of the committee which, if adopted, will cause the resolution to read:

> That ALEXANDER CALDWELL be, and he hereby is, expelled from the Senate of the United States.

This morning the Senator from Michigan [Mr. FERRY] proposes an amendment to the amendment, which, if adopted, will cause the resolution to read:

> That ALEXANDER CALDWELL was duly elected a Senator of the United States from the State of Kansas.

I believe that is it substantially.

Mr. FERRY, of Michigan. Not strictly so.

Mr. FERRY, of Connecticut. Let it be read by the Secretary.

The CHIEF CLERK. The amendment to the amendment is to insert the words:

> Declared to have been elected a Senator of the United States by the legislature of the State of Kansas.

Mr. FERRY, of Connecticut. I shall reserve what I have to say upon the amendment proposed by the Senator from Michigan until a later portion of my remarks. In the remarks which that Senator made, he deprecated the introduction of my amendment, and it is, therefore, perhaps proper that I should in the outset explain the reasons why that amendment seemed to me to be necessary, and its adoption due to the people of the country and to the Senate itself.

Mr. FERRY, of Michigan. Will the Senator allow me just one moment, as I wish to be placed right, to say that I deprecated at this time in the progress of the debate the consideration of both questions of election and expulsion, by the introduction of his amendment?

Mr. FERRY, of Connecticut. In examining all the evidence in this case, I have been unable to avoid the conclusion that, in the election of a Senator by the legislature of Kansas in January, 1871, there was bribery of members of that legislature, bribery in the interest of Mr. CALDWELL, bribery, the purchase-money of which was paid by Mr. CALDWELL himself. Having arrived at that conclusion of fact, it seems to me essential, not simply to the dignity and honor of the Senate, not simply out of regard to the state of public feeling in the country, but for the preservation of the very institutions under which we live, that the Senate before it adjourns should in some way emphatically express its condemnation of those transactions.

The Committee on Privileges and Elections, substantially finding the facts as I find them, have reported a resolution declaring the seat of Mr. CALDWELL vacant, on the ground that he never was duly and legally elected a Senator from the State of Kansas, and the majority of the committee place that result upon two grounds: first, that a sufficiently great number of the members of that legislature were bribed to affect the result, to wit, the election of Mr. CALDWELL, and, therefore, that the election was void; or, if this be not so, in the second place, that some of the members were bribed by Mr. CALDWELL, and that although the number may not have been sufficient to affect the result of the election, yet it so far did contaminate the election as to render it void.

Now, sir, I have come to different conclusions upon the questions of fact in these two propositions. I cannot find proved by the evidence before the Senate that a sufficient number of the members of the legislature of Kansas were bribed to affect the result. I do find, as I

have said, that members were bribed, and bribed by Mr. CALDWELL. I am unable to agree as matter of law with the report of the committee that, by the bribing of a less number of members of the legislature than would be sufficient to affect the result, the election is invalidated and Mr. CALDWELL not to be declared elected, if that were all there was in the case. And on the other hand, did I find the fact that a sufficiently large number of the members of the legislature had been bribed to affect the result, I should certainly arrive at an entirely different conclusion from that arrived at by the Senator from New York [Mr. CONKLING] in his elaborate speech of the other day; and I consider the doctrines of that speech so dangerous, so calculated to subvert all political morality, so calculated to subvert the foundations of republican government, that although, in my view of the facts, it may be somewhat irrelevant to discuss that argument, nevertheless I propose to say a few words about it.

The Senator from New York arrives at the conclusion, as the result of his research and inquiry, that under our Constitution, in the election of a Senator of the United States by the legislature of a State, even though every member of that legislature were bribed to cast his vote for the member returned to the Senate, yet that election by force of the Constitution of the United States and existing law is a valid election, and the Senate of the United States is incapable of declaring it void.

The very enunciation of a proposition like that seems to me to indicate that, somewhere in the course of the argument by which the Senator arrived at that result, there must be a monstrous fallacy; and, sir, I think I see that fallacy. I do not know that I can make it as clear as I would wish to the mind of others, but in considering the argument of the Senator from New York, the fallacy appeared to me to be so plain as easily to be pointed out. His argument substantially was this: We, as judges of elections, are bound by law; and in that I agree with him. The judicial tribunals of the mother country and of this country have declared the rules of law by which they will be bound in arriving at their decisions upon the validity of the enactment of a statute; and in prescribing the rules which bind them, they have determined that they will not pronounce a statute invalid though that statute was procured by bribery; and the inference is then drawn that we, a parliamentary body, gifted with the power of being judges of elections by the Constitution, are bound by the same rule of law which the judicial tribunals of the country have applied to themselves; and there is the fallacy. That is what I utterly deny.

The law by which the judicial tribunals of the country have bound themselves, and those of the country from which we derive the common law, have bound themselves for generations, are not all of the common law. They are part of it; but there is a common law governing parliamentary bodies in the administration of their duty as judges of election, as well as there is a common law of judicial tribunals, and that common law is as old as the period when it became desirable for men to obtain seats in Parliament, for there was a time when men did not choose to go to Parliament if they could help it; but so soon as seats in Parliament became desirable, bribery began, and the law of Parliament applicable to elections in which bribery took place commenced, and has grown up to the present time; and the one fundamental principle of that law is this: that a bribed vote is no vote. Its nothingness, absolute nothingness, runs through the common law from the days of Elizabeth till now. No man on this floor has disputed it; and the Senator from New York in his elaborate argument was compelled to admit it. He read from the best known commentator upon elections the very language that I have used, that a bribed vote is no vote.

Well, sir, what is the result? If there be a sufficient number of bribed votes to change the result of the election, they must be cast out, they must be disregarded, for they are nothing. Such was the common law when, in 1787, the makers of our Constitution assembled to prepare that frame of government. They represented States in every one of which the common law of England had prevailed from the first colonial settlements. Many of them were distinguished lawyers, and their whole intellectual being was imbued with the principles of the common law applicable to questions of this kind. And in view of that common law, in view of the principle that a bribed vote is no vote, knowing it as well as we know it now, they placed in that Constitution the expression that each House shall be the judge of the election of its members; and the expression taken from the parliamentary law of England, as my friend from Missouri [Mr. SCHURZ] suggests, still more emphatically indicates how their minds were turned to the common law regulating parliamentary bodies in judging of elections as it prevailed in their day and time in the mother country and in their respective States.

And now, sir, under that power granted to the Senate by those men in the Constitution of being the judge of elections, can we not say whether there was an election or not? Is it trenching upon State rights for the Senate to say that? Is it an inquiry into any man's motives? Sir, I have never heard more unmitigated nonsense in my life than this talk of inquiring into motives, when you are looking for the fact of bribery. Why does duress invalidate an election? Because the will is constrained by fear of personal harm. Why does bribery invalidate an election and make the vote a nullity? Because the will is constrained by the hope of personal gain. And if when you ask after the fact of bribery you are inquiring into motives, you are just as much inquiring into motives when you look after the fact of duress.

But, sir, I have strayed away somewhat from the point. The result of this pursuit, after the fallacy of the argument of the Senator from New York, inevitably brings us to the conclusion that the clause of the Constitution which makes us the judges of election compels us, when a charge of bribery is made, to inquire into that charge, because if the bribery have contaminated enough of the members of the legislature to affect the result, no election whatever has taken place, and it is our bounden duty to find that fact. So that if it were clearly proved here that the result of the election in the legislature of Kansas were affected by the bribing of the members who were bribed, I should unhesitatingly vote for the resolution of the committee.

But, sir, I have examined this evidence carefully, and my mind is left in doubt as to whether a sufficiently large number of members was bribed to affect the result. The preponderating inclination of my mind is to believe that a sufficiently large number was contaminated; but in a case like this I must have clear evidence to enable me to declare a seat vacant because of the contamination of a sufficiently large number of members of the legislature to vitiate the election, and, as I have said, I find upon this point the Scotch verdict of "not proven." Upon the other branch of the case I find, as I have said, members bribed, and Mr. CALDWELL in complicity with the bribery; but not finding a sufficiently great number bribed to change the result, I am unable to concur in the resolution reported by the committee.

What, then, shall I do? I have found the fact of bribery; I have found that the Senator *de facto* here is guilty of complicity in that bribery. What shall I do? Shall I fold my arms and sit down and say that nothing can be done? Shall I consent that the halls of every legislative body in the land from this day forth are to be open to the briber with money in his hands and with no apprehension that, after all, the prize which he seeks may be snatched from him on account of his very iniquity? No, sir; the Constitution, which made us judges of election, has conferred upon us also the power of expelling a member of the Senate. I will not take time here to argue the quibble which is made in a printed document before us, that because, if bribery was committed, it was before Mr. CALDWELL took his seat, we have no jurisdiction of it. I hardly think that any lawyer, at any rate in this body, will adhere to a position of that kind in the present case.

I, as a Senator bound to preserve the integrity of this body and the purity of our institutions, ought, when I find a fact so patent as this, and find myself precluded from agreeing with the resolution recommended by the committee, to propose to the Senate some remedy which I think adequate; and believing the remedy of expulsion to be the only one adequate, I find it to be my duty, painful as it is, kindly as my relations with Mr. CALDWELL always have been, to present the amendment expelling him from this body, for which I can vote in lieu of a resolution for which I cannot vote.

And moreover, sir, if I am right in the decision of fact at which I have arrived—if it be true that Mr. CALDWELL has been guilty of bribery—we must not have such considerations as have been pressed upon us here weigh upon our minds, that he was more sinned against than sinning; that he is a kindly and courteous gentleman; that he has not an enemy on this floor. All these things are true; but if a thousand more good things could be said of him, it would not change our duty. The hands of Algernon Sidney were polluted with French gold, paid and accepted for services rendered to a French king in the British Parliament Not the great name of Sidney ought to protect him were that charge brought home to him, were he living to-day, from the censure, and the strongest censure, of that body whose privileges he had abused.

No, sir; if this fact be true, Mr. CALDWELL ought to be expelled from the Senate of the United States, and anything less than that is a shame to the nation. If it be true, who is there upon this floor who would vote that the seat was vacant, who cannot vote for the amendment to expel? Who is there that believes that a sufficient number of members of the Kansas legislature were corrupted by bribery to affect the election, who must not also find the fact that in that bribery Mr. CALDWELL had a part? And he who can vote to vacate the seat because of such bribery, and finding Mr. CALDWELL to have had a part therein, can he not also vote for expelling him from this body? Is it not his duty to vote to expel him from this body? I do not want to stand here before a body of Senators of the United States and dilate upon the enormity of the crime of bribery and how it goes down to the very foundations of the institutions under which we live. We all know it; and if we believe the facts which have forced themselves upon my conviction, we shall stifle our own consciences if we do not vote to expel.

Now, sir, do we believe those facts? for there, after all, is the *gravamen* of this case. It is not a question of law in this case that naturally would embarrass Senators a hundredth part so much as the questions of fact. I have read this testimony; I have read it carefully, not with the hope of exonerating Mr. CALDWELL or with the hope of finding grounds to convict him, but that I might come at the truth. And, sir, as I have said, reading this testimony in the light of twenty-five years' experience in weighing and comparing and sifting testimony, reading it in the light of the exercise of common sense upon the common affairs of life, I must find that members of that legislature were bribed with money to vote for ALEXANDER CALDWELL; I must find that ALEXANDER CALDWELL knew of such bribery, and paid the money to carry it into effect. I do not stop here to talk about the Carney case and the Carney transaction.

It is said the witnesses are not to be believed. There are Carney, and Clarke, and Hammond, and Spriggs, and Anthony, whose testimony, if true, or a tithe of it true, stamps indelibly this transaction with all the features of bribery. But it is said that Carney and Clarke are false; it is said that all the men whom I have named were connected with negotiations for bribery, and therefore not to be believed. Why, sir, the answer is open and patent to every mind exercising its own judgment. Of course, in obtaining evidence of bribery, the witnesses, more or less of them, will be those who were contaminated by complicity in the transaction. But who are the two main witnesses relied upon to contradict Carney, and Clarke, and Hammond, and Spriggs, and Anthony? They are Leonard T. Smith and T. J. Anderson. Who were they? A year ago or more there began in the legislature of Kansas an investigation of these transactions, and Leonard T. Smith and T. J. Anderson were citizens of Kansas. If they knew anything about this affair, it was their bounden duty to make it known to that legislature, for everybody here who has claimed that we have got nothing to do with this, has insisted that the legislature of Kansas was the proper forum. As citizens of Kansas, at all events, they were bound to hold themselves in readiness to answer a subpœna; but, the moment they heard that an investigation in their State was pending, they both fled the State. For what? They came stealthily back from time to time. Constables and sheriffs were after them with subpœna, and they fled again. For what? Sir, it is said that "conscience does make cowards of us all;" and it was the guilty conscience in their hearts that drove them from their State. And now, after the lapse of another year or more, they come here, and how do they testify? Let me characterize the whole testimony of Leonard T. Smith, for instance, by the character which was given to it by the Senator from Wisconsin, [Mr. CARPENTER,] as that testimony closed. For hours, apparently, Smith had been upon the stand, evidently trying to keep back everything that he knew, holding back his knowledge of the transaction between Carney and CALDWELL to the very verge of perjury; yea, quite over it, in my judgment; and as he left the stand another witness was called, and this was said:

Mr. CARPENTER. I wish this witness admonished, before testifying, that the oath administered here not only requires witness to state the fact in answering questions, but to state all he knows. The last witness, Mr. Len. T. Smith, seems to have intended to conceal the most important part of his testimony.

And that is Len. T. Smith, who fled from Kansas to avoid the subpœna of the Kansas legislature, and that here stands perjured before this committee, endeavoring to conceal the most important part of all he knew!

Mr. CARPENTER. Will my friend allow me a moment?

Mr. FERRY, of Connecticut. Certainly.

Mr. CARPENTER. The Senator, by his reference to that remark of mine made in committee, and the application which he now seems to make of it, would seem to leave the impression that I am vindicating Mr. Len. T. Smith. I have no more respect for Mr. Len. Smith than the Senator has. I think he acted very badly on the stand. I characterized it as it struck me then, and I characterize it in the same way now; but what I want to suggest to my friend is, that, because bad men have sworn that they did not do what other bad men say they did, is no reason why we should convict CALDWELL of a thing not proved by anybody.

Mr. FERRY, of Connecticut. The point of the argument which I was making, the Senator has forgotten. Here are five witnesses whom I have named testifying to facts which, if true in the one-half part thereof, would inevitably convict Mr. CALDWELL of bribery. Among other reasons given here for not believing the testimony of these witnesses is that they are contradicted over and over again by Len. T. Smith and T. J. Anderson. I did not refer to the Senator from Wisconsin as the one who had made the argument that they were thus contradicted, though I think I have heard during the course of this discussion from his lips, on this floor, that the witnesses against Mr. CALDWELL were contradicted over and over again, by other witnesses, though he may have referred to other persons, members of the legislature, who made these contradictions, instead of Smith and Anderson.

Mr. CARPENTER. If my friend will allow me once more, my own opinion is that men perjured themselves all around, that it was liar against liar, and I was offsetting them on a par. I think Len. Smith swore falsely, but he swore just as truly as Mr. Carney or Mr. Anthony or Mr. Clarke. I think they all lied.

Mr. FERRY, of Connecticut. Let us see. Let us not forget that here we are a grave judicial tribunal, and that when testimony is before us we are to believe that testimony unless the evidence against it be such that it ought not to receive our credence. You may say that Carney and Sidney Clarke were instigated by motives of personal revenge or by a desire to extract money from Mr. CALDWELL in what they have done in this investigation. But what is to be said of the testimony of Mr. Spriggs, a witness who is a reputable man, a witness against whose character no one speaks, a witness who has no motive under heaven to come here and lie about this matter? You may read the testimony from beginning to end, and he is simply the most reckless, careless, perjured liar that ever lived, without a motive to make him so, or what he states is true.

Then, again, there is one characteristic of the testimony of Carney, and Clarke, and Spriggs, and Anthony, and Hammond, which never exists except as co-existent with substantial truth, and I will tell you what it is. Their testimony agrees with all the circumstances which transpired in connection with the transactions to which that testimony refers, and is what we should expect to find in connection with just such transactions. For instance, Mr. CALDWELL becomes a candidate for the Senatorship, and illegitimately at least, and improperly, admittedly pays out $22,000 in buying off opposing candidates. He is at the capital with a host of strikers from different parts of the State of Kansas, and those strikers, at least, are about, offering money, seeking to procure the price of members, demanding money for themselves, until the whole atmosphere is thick and murky with corruption, and every citizen of Kansas who breathed it must have felt his cheeks tingle with shame. Mr. Spriggs, for instance, testifies that which I read yesterday from his evidence, that Mr. CALDWELL himself said to him, "If there are members who want money, send them to Len. Smith; what he does I sanction;" and Len. Smith, all through, is found to be the principal operative agent for Mr. CALDWELL, laboring for him, drawing large sums of money, and dining and wining members of the legislature. Anderson testifies that Smith was doing that.

What is said by the witnesses that I have named is natural and probable, and what you would expect in connection with the proved and admitted facts all through these transactions. The witnesses Hammond and Anthony and Spriggs have no motive for falsifying. Their invention exceeds that of Munchausen unless their statements be true. Details, time, place, and circumstance are given of such a character that the imagination could not have invented them. The Senator from Illinois [Mr. LOGAN] said the other day that Spriggs was not to be believed in his narrative of an interview with CALDWELL, because after the lapse of a year and a half he fixed the wrong day of the month for the day of its occurrence. Why, sir, there is not a lawyer certainly among us but knows that such a mistake as that will not and ought not to shake for a moment the credibility of the witness or disturb our confidence in the veracity of his testimony; and that is all that I have heard against the testimony of Spriggs in all this long discussion, in all the Senator from Illinois had to say, in all the Senator from Nevada had to say.

Mr. STEWART. If the Senator will allow me a word right there, he says it is impossible to invent such a state of circumstances. I should like to submit to him, if my theory of the case, which I maintain is borne out by the testimony, be correct, that this was a black-mailing lobby, for the purpose of obtaining money for themselves, is not everything connected with that natural and all the stories that grow out of it? If Carney, Spriggs, and all hands were there to make money and had their headquarters in Carney's room, is not all this scandal natural, growing out of that black-mailing organization?

Mr. FERRY, of Connecticut. The trouble about the matter is that you do not lay the foundation for your black-mailing conspiracy in one jot or tittle of evidence. Where does this business begin? Len. Smith is negotiating with CALDWELL for the purchase of Carney's chances. There is the beginning of it. Len. Smith gives his votes and CALDWELL takes them up, and just at this time CALDWELL is saying "What Len. Smith does I do." Black-mailing with an agent to go and do the work of paying the bribe to buy out Carney! There is the beginning of this work. Is it the beginning of bribing a legislature or the beginning of black-mailing a candidate? Judge, Senators, for yourselves.

Mr. President, I have gone further into this testimony than I had intended, but I have indicated at any rate the reasons why upon this testimony I must find the fact that bribery occurred, and that CALDWELL paid the purchase-money.

But the Senator from New Jersey [Mr. FRELINGHUYSEN]—and I am sorry he is not here—with his kind heart, told us yesterday, in substance, that we should strike from the Constitution the power of expelling members of this body, and strike from it our capacity as judges of the election of members, rather than to have a trial of an offender by the Senate of the United States under either of those clauses of the Constitution. That was the sum and the substance of his argument. Sir, those clauses were put into the Constitution for a wise purpose. The expulsion clause is one essential to the integrity of this body; and when I speak of that I do not wish to have it understood that the reason is exhausted when the integrity of this body is spoken of. What is this body for? What are its honor, integrity, dignity, purity for? It is not for ourselves. It is not to cast a halo around our foreheads. We are a component part of the legislature of a great nation; a nation whose Government is so organized that corruption cannot exist without prostrating the liberties of the people and the prosperity of the Republic. The Senator from New York said the other day, and said most truly, that England was honeycombed with bribery from Cornwall to Northumberland. He might have gone on and said that England, with her aristocratic form of government, prospered yet. But, sir, here it cannot be so; here prostrate the purity and integrity of the Senate to the rich men who seek seats here simply for personal ends and without regard to the welfare of the country, and to the great corporations who are advancing with giant steps to the control of all the power of this land, and the danger from which has never been more faithfully depicted than it has been by the Senator from Wisconsin—prostrate our integrity and purity before them, prostrate the integrity and purity of the legislatures of the States, and you have sapped the foundations of all our hopes; you have made republican government a sham; you have prepared the way for that ultimate corruption whose only final result is the empire of a Tiberius or a Napoleon III.

These things are too grave for us to admit kindly considerations toward a fellow-member or technical considerations of technical law to prevent us from doing our solemn duty. At any rate, in offering this amendment, I have tried to do mine. The amendment which the Senator from Michigan has offered as a substitute for the one proposed by me is one for which I cannot vote, first, because it declares that Mr. CALDWELL was elected a Senator from the State of Kansas, and though I find the fact not proven as to the controlling effect of the number of members bribed, yet the fact is not clear enough, on the other hand, for me to vote that he was elected.

Mr. FERRY, of Michigan. If the Senator will allow me, I desire to ask whether I misapprehended him when in the course of his remarks I understood him to state that he could not vote for the original resolution reported by the committee, which declares the election void?

Mr. FERRY, of Connecticut. I said I could not vote for it.

Mr. FERRY, of Michigan. I have one other question; but before putting it I desire to say that my object was not to strike down an expression upon the idea embodied in the amendment of the Senator from Connecticut. I now ask him what difference there is in voting upon an affirmative declaration and voting upon a negative one, my amendment declaring that there was an election, and the report of the committee declaring that there was not an election, and the Senator stating that he should vote against the resolution of the committee?

Mr. FERRY, of Connecticut. As I stated, I should vote against the resolution of the committee, because I found the Scotch verdict of "not proven" as to the complicity of a sufficient number of members of that legislature to invalidate the election; and so, on the other hand, I cannot vote for the amendment of the Senator from Michigan, because the bribery and corruption which shroud the action of that legislature and the atmosphere of thick darkness are such that I cannot find as a fact that Mr. CALDWELL was properly elected.

Mr. FERRY, of Michigan. Then where would the Senator leave Mr. CALDWELL—hanging between heaven and earth?

Mr. FERRY, of Connecticut. I will state that in a moment; I was just coming to it. The Senator from Michigan and some other Senators have entertained, and I think the Senator from Nevada did so yesterday, the strange delusion that there is no such thing as a Senator *de facto*, and that if we happen to get a Senator *de facto* into the Senate of the United States, the clause of the Constitution providing for the expulsion of a member will not apply to him.

Mr. FERRY, of Michigan. I desire one more interruption, and then I will cease, if the Senator will allow me.

The VICE-PRESIDENT. Does the Senator from Connecticut yield?

Mr. FERRY, of Connecticut. Certainly.

Mr. FERRY, of Michigan. We are too good friends to misrepresent each other. I do not wish to be oversensitive on this question, and I am not; but I desire to be placed right, as it is a grave question. What harm is there, I ask the Senator, instead of shirking the question—not that I suppose the Senator would do it, but I am speaking of the body at large—if they fail to pronounce a judgment upon the question whether there has been an election or not, what objection is there to declaring in positive declaration whether an election has occurred in the case of Mr. CALDWELL, from Kansas?

Mr. FERRY, of Connecticut. I was just coming to that. After having stated that it would be impossible for me to vote for the amendment of the Senator from Michigan, because of the obscurity resting over this election, from the thick darkness of corruption that surrounds it, I add that I cannot vote for his amendment from its utter irrelevancy to the resolution before the Senate as it now stands. Why, sir, a resolution is introduced into the House of Representatives for the expulsion of Preston S. Brooks for assault upon a Senator in the Senate-chamber, and somebody gets up and offers as an amendment: "*Resolved*, That Preston S. Brooks was duly elected a member of the House of Representatives." Who would vote for it? The fact was so. Preston S. Brooks was duly elected a member of the House of Representatives, but whether you believed the fact to be so or not, you would not vote for such an amendment as that to a resolution for expulsion. I am proposing a resolution of expulsion based on the turpitude of the member, while you propose to offer as an amendment that he was duly elected.

Mr. FERRY, of Michigan. Will the Senator allow me again?

Mr. FERRY, of Connecticut. Yes, sir.

Mr. FERRY, of Michigan. On the question of consistency, I would like to call the Senator's attention to the fact that the resolution reported by the committee declaring the election null and void requires but a majority vote. The Senator from Connecticut has changed the issue by offering an amendment looking to expulsion, which requires a two-thirds vote of this body. Now, I say, if there is any logical inconsistency in the presentation of amendments, in my judgment it would apply more to the amendment of the Senator from Connecticut, who has offered a proposition requiring a two-thirds vote, rather than to my amendment, which replaces in the only possible form the question back just as the committee reported it; in other words, has there been an election? my amendment being in the affirmative form, the committee's resolution being in the negative form. It was the only possible way of meeting it, riding through or over the amendment of the Senator from Connecticut.

With no disrespect to him, and with no disposition to shirk the issue which will come up on the resolution of the Senator from Mississippi, [Mr. ALCORN,] covering the very point embodied in the amendment of the Senator from Connecticut, I have merely introduced my amendment for the purpose of placing the question back logically just where the committee considered it, and asked the Senate in that light to consider it—upon the question of election. Then, on the question of expulsion, I will be with the Senator from Connecticut to meet that issue as faithfully and as bravely as I trust and know he will.

Mr. FERRY, of Connecticut. Mr. President, it was the irrelevancy of the amendment of the Senator from Michigan which I regarded as being, apart from other objections, entirely fatal, and I think that the illustration which I gave of a resolution of expulsion under other circumstances is one which clearly shows the absurdity of attempting to place upon my amendment the amendment offered by the Senator from Michigan. He says that there is an inconsistency because my amendment requires a two-thirds vote. If he means by that to say that it requires a two-thirds vote of the Senators to adopt it as an amendment, he is mistaken. A majority of the Senate may adopt it as an amendment, though it would require two-thirds then to pass the resolution as amended.

But the Senator from Michigan asks me another question, regarding which also I intended to speak before I closed. Why not wait, he asks; why not first vote upon the resolution of the committee, and then vote upon the resolution of the Senator from Mississippi, which provides for expulsion? Well, sir, in the first place, I do not wait because I esteem it to be my duty not to wait. I cannot vote for the resolution that came from the committee. If that resolution fails, I have a great apprehension that this session will close without any action of this Senate whatever upon these flagitious transactions in Kansas. If that resolution fails, we have done the work of the Senate upon the report of the committee. Another Senator offers an independent resolution, which never came from a committee, has never been to a committee, and a motion to refer it, a motion to postpone it to December, in the present temper of the Senate, after this long and weary debate, what great danger there is of its prevailing you and I, sir, know too well. And it is because I believe it to be my duty to do all that I can to bring this Senate to some definite action upon these transactions in Kansas that I offer my resolution of expulsion as an amendment.

Mr. CARPENTER. Will my friend allow me to make a suggestion at that point?

Mr. FERRY, of Connecticut. Certainly.

Mr. CARPENTER. If the Senator from Connecticut should withdraw his amendment, the amendment of the Senator from Michigan of course would fall with it, as it is an amendment to it. If he will withdraw that and let the Senate come to a direct vote on the resolution reported by the committee, I will vote with the Senator from Connecticut to take up the resolution for expulsion the next minute. There is no disposition, so far as I know, on the part of any Senator here, to avoid the responsibility of voting on these propositions; but they ought to be voted on separately. Let us have a straight vote on the resolution as to the election, and then I will join with the Senator from Connecticut the next moment and vote to take up the resolution for expulsion.

Mr. SHERMAN. Will my friend from Connecticut allow me a word?

Mr. FERRY, of Connecticut. Certainly.

Mr. SHERMAN. The suggestion now made by the Senator from Connecticut is the only impression that has been made upon me in regard to his amendment. I was clearly of opinion that we ought to allow the vote to be taken on the proposition of the committee without its being embarrassed by these parliamentary substitutes. The question is too important to allow amendments and amendments in various forms; we ought to deal with the question fairly. But if the Senator supposed there was a purpose to evade the issue on the main question after this resolution is disposed of, I should feel like him. But as the question has been debated in the double aspect, I think we ought to decide it forever; and I think we ought to accept the proposition now made by the Senator from Wisconsin, who has represented the minority of the committee, and let us have a fair, square vote on both propositions.

Mr. CARPENTER. There will be no attempt to evade it.

Mr. SHERMAN. If there should be a disposition to avoid a decision of the final question by voting to adjourn this session and thus defeat all action, I should be disposed to vote with the Senator from Connecticut.

Mr. CARPENTER. There is no such disposition.

Mr. SHERMAN. I suppose not, and I hope my friend from Connecticut will accept that.

Mr. FERRY, of Michigan. I assent to the proposition made by the Senator from Wisconsin. My only object in the amendment I offered was to place the question right back on the ground reported by the committee, which would be accomplished by the withdrawal of the amendment proposed by the Senator from Connecticut. I would in that case, if it did not drop with the withdrawal of his amendment, withdraw mine. No one is authorized to speak on my behalf; but I wish for myself to disclaim that, in the moving of the amendment, I designed to prolong or evade a vote on the question of expulsion. I am ready to vote against adjournment, and to sit

here until we have considered that question and arrived at a vote. Now let me not be misunderstood on that point.

Mr. CARPENTER. Allow me one word more. I do not believe there is a Senator in this chamber who does not feel that it is the duty of the Senate, after this full discussion, to end the entire matter here and now; and I am for ending it. I say to the Senator from Connecticut that the moment a vote has been taken on the resolution of the committee, if it is defeated, I will vote to take up the resolution for expulsion, and I do not believe there is a Senator here who would vote not to proceed to its consideration immediately.

Mr. BUCKINGHAM. I think there is very great objection to proceeding to act upon the resolution offered by the committee. I stated a day or two since that I thought the committee erred in not presenting a resolution for expulsion; and my objection to the course suggested by the Senator from Wisconsin is this: Suppose we first act upon the question whether Mr. CALDWELL is entitled to a seat. If we shall determine that he is entitled to a seat, and the question comes up then in regard to expulsion, we may fail of that, because it requires a two-thirds vote. It is a matter of so much importance that it appears to me we should try the main question first, and not try a question on which, if we fail, we cannot reach the other; and we should fail of reaching it if, by voting on the resolution of the committee, we should find that Mr. CALDWELL was not elected.

Mr. FERRY, of Connecticut. Mr. President, the Senator from Wisconsin, the Senator from Ohio, the Senator from Michigan, and myself make but four members of the Senate. I have, contemplating the length of this debate, the great anxiety, again and again expressed of Senators, to get away, felt that there was, as I said, serious danger that no vote would be arrived at upon the resolution of the Senator from Mississippi if we took the vote upon the resolution of the committee as it stands. But, sir, I have no wish by amendments to turn this matter from the course which it has hitherto taken. I could not, however, withdraw my amendment without the unanimous consent of the Senate that, immediately after the vote has been declared upon the resolution of the committee, without further debate or amendment, we proceed to vote upon the resolution of the Senator from Mississippi. Can I have that?

Mr. CARPENTER. It seems to me that would be very unreasonable. I do not suppose that the debate would last for a day; but of course some Senator who has not spoken at all on the question of expulsion might desire briefly to state his reasons.

Mr. FERRY, of Connecticut. I heard one Senator say in this debate that the discussion on the resolution of expulsion must occupy days.

Mr. CARPENTER. It has occupied days. That has been discussed as much as the other. The discussion has covered both grounds.

Mr. FERRY, of Connecticut. The Senator making that statement was arguing that we were discussing first the resolution of the committee, and that after that days would be occupied in the discussion of the resolution of expulsion.

Mr. MORTON. He said that would be an entirely different proposition.

Mr. CARPENTER. Let me make this proposition and see if we can have a general understanding: that the debate on the expulsion resolution shall not exceed four hours, and be confined to ten minutes apiece.

Mr. FERRY, of Connecticut. I have no objection to that. That would be reasonable.

Mr. SHERMAN. I think that is fair.

Mr. CONKLING. It would be better to say "one day."

Mr. CARPENTER. Well; limit it to one session.

Mr. FERRY, of Connecticut. But not driving us into a night session?

Mr. CARPENTER. A session ending by five o'clock.

Mr. FERRY, of Connecticut. I have no objection to that. The understanding, then, which is proposed between us is this, that after the vote has been taken upon the resolution of the committee, one day, terminating at five o'clock, shall be allowed for debate upon the resolution of the Senator from Mississippi, the speeches being limited to ten minutes each. If unanimous consent can be had to that arrangement I will withdraw my amendment.

Mr. CARPENTER. I hope unanimous consent will be given.

Mr. MORTON. I do not know what is to be the precise effect of this proposed arrangement. I give no consent myself now.

The VICE-PRESIDENT. Unanimous consent is not given.

Mr. FERRY, of Michigan. I should cheerfully withdraw my amendment if I could now, but the Senator from Indiana has prevented it by his objection to the proposition of the Senator from Connecticut.

Mr. BUCKINGHAM. I object to the withdrawal of the amendment proposed by my colleague. I think that is the question which should first be tried, and I hope it will not be withdrawn.

The VICE-PRESIDENT. The Senator from Connecticut [Mr. FERRY] is entitled to the floor.

Mr. FERRY, of Connecticut. I believe, Mr. President, that I had about finished my remarks when we went off into this discussion about a definite agreement, and I will yield the floor.

Mr. ANTHONY. I do not think the objection of the Senator from Indiana should prevent this arrangement, if it is acceptable otherwise. The Senator from Indiana, who has charge of this matter, undoubtedly ought to be allowed to occupy his own time in closing, and so should the Senator who is on trial; but if the other Senators can come to a general understanding to limit the debate, as has been suggested, I do not think the objection on the part of the Senator from Indiana should prevent it, his time being unlimited and the same privilege being given to either the Senator who is on trial or to any Senator who may represent him.

Mr. STEWART. I cannot assent to anything of that kind. I think the proceedings of yesterday preclude my assenting to any such thing.

Mr. LOGAN. This proposition has nothing to do with the resolution of the committee. It is only to apply after that has been voted upon.

Mr. ANTHONY. I so understand.

Mr. LOGAN. It has nothing to do with that; and any time any Senator may see fit to occupy on the resolution of the committee is accorded. The proposed arrangement does not affect that.

Mr. ANTHONY. I so understand. The resolution of expulsion can be discussed, as it has been discussed here, before we come to a vote on the resolution now pending.

Mr. STEWART. Yesterday I undertook to make some remarks, and it was turned into a running discussion all around. I want to hear everything that is said on this case, and I do not propose to make any arrangement, in a matter so important, in this early stage of the discussion, not believing that half the Senators have read the testimony. If we adopt the suggestion of the Senator from Rhode Island, we give to a particular man unlimited time and cut off others; that seems to me very remarkable. This is not at all like an ordinary case of legislation. Let us go on a little longer with the discussion before any arrangement is proposed.

Mr. ANTHONY. It is always customary for the Senator who has charge of a measure to close the discussion.

Mr. STEWART. We are all equally in charge of this case.

Mr. ANTHONY. Undoubtedly the Senator from Indiana has charge of the pending resolution.

Mr. LOGAN. He has charge of the resolution of the committee, but not of the other.

Mr. ANTHONY. That is true. I agree that it is proper that a Senator in charge of a measure should close the debate; but of course in this case the Senator implicated should have the privilege of closing.

Mr. STEWART. I think it would be entirely improper, and other Senators would not do their duty, if, after the Senator from Indiana made his speech, in case he had declared anything which wanted correction, they did not correct it. If any statements were made here which I did not think were warranted by the evidence, and which were calculated to prejudice Mr. CALDWELL or to do him injustice, I should feel derelict if I did not get up in my place and say so at any time before the vote was taken.

Mr. SHERMAN. There would seem to be a pause in this matter, and I will take a moment of the time of the Senate. I do not intend to give my opinion on the merits of this proposition except by my vote. I have resolved myself into the condition of a juror upon this question. Parliamentary law embarrassed me a little as to the order of the votes; but I think I understand it now.

I regard it as a matter of public duty that none of us dare shrink from to dispose of this case of Mr. CALDWELL during the present session of the Senate, and I should regard it as a violation of public duty to avoid or delay any vote that may come up before us, however unpleasant it may be. I also think it is due to the committee who investigated the matter that the resolution presented by the committee should be voted upon first, that it should not be embarrassed by questions of order, amendments, or parliamentary forms. Therefore, I feel myself bound, from what is due to the committee as a body, to vote against any amendment whatever, until the question is solved whether or not Mr. CALDWELL is legally elected. Then we are equally bound to take the converse of the proposition which has been made and debated for two weeks, offered by the Senator from Mississippi, and vote upon that after a reasonable debate. But if I could, even for a moment, entertain the idea which has been suggested by the Senator from Connecticut, that there would be an effort made to avoid the vote on the latter proposition after the disposition of the first, I might do what others have been compelled to do sometimes, resort to parliamentary tactics to get the proposition voted upon that I desire voted on. But I do not believe there is the slightest danger of that. In view of the declarations already made on the floor here, I have not the slightest idea of it.

Mr. BUCKINGHAM. Allow me to ask a question.

Mr. SHERMAN. Certainly.

Mr. BUCKINGHAM. If we should vote on the proposition of the committee, and say that Mr. CALDWELL is not entitled to his seat, how could we reach the proposition of the Senator from Mississippi?

Mr. SHERMAN. It would be unnecessary to reach it, then. I would not cast a Parthian arrow at any one who was elected that we said was not entitled to his seat. If he is not entitled to sit here, we have no right to expel him; we have no right to fire arrows at him after we have driven him out of our presence. I do not think my friend from Connecticut, on a moment's reflection, would desire to say anything more about Mr. CALDWELL'S case when he is not a member of the Senate.

Mr. BUCKINGHAM. I think we should determine first whether he is a member of the Senate, if that is not determined already; and if he is a member of the Senate, the question comes up whether we cannot or ought not as a matter of duty to expel him.

Mr. SHERMAN. That is the very point.

Mr. BUCKINGHAM. I say for that purpose he is a member to-day.

Mr. SHERMAN. I think the logic of this whole case, with due deference to my friend from Connecticut, requires us first to pass upon the fact whether Mr. CALDWELL is entitled to a seat here among us. If the resolution of the committee is adopted by a majority vote, he has no right here. Then he goes, and we have no right to throw arrows at him, or throw our resolutions of censure at him, or anything of the kind. He is then a private citizen; that is the end of the case. But if, on the other hand, it is resolved that he was legally elected, but that he procured his election by such misconduct as would justify us in the presence of the American people in expelling him from this body, that is a question which we ought to act upon at this session immediately after the other, and it seems to me that there ought to be no question about the willingness of all Senators to agree that this case shall be disposed of by a final vote.

As I said before, my mind has been made up for some days, and I am prepared to vote; but I do not wish either to convince others or to influence the opinion of others, but I am disposed to give my opinion by my vote, and to vote against all amendments to the proposition made by the committee until that is settled. If that is settled in one way, that is the end of the case; if it is settled in another way, then let us take the vote deliberately on the other question that is presented to us by the resolution of the Senator from Mississippi. That is the course I will pursue.

Mr. MORRILL, of Maine. Mr President, for myself, I have not the slightest embarrassment in voting in the order suggested by the report of the committee, as it will be seen from the observations I had the honor to submit to the Senate yesterday. But from the standpoint taken by the Senator from Connecticut [Mr. FERRY] this morning, it is obvious enough that the same rule does not apply to him; and so I take it from the general sentiment expressed on all hands here, all Senators are not free in the sense that I am to vote on the question as presented by the committee. Now the proposition of expulsion is an inclusive proposition. We are divided here on law, not on fact. Many of us who entertain the question touching the legality of the election still entertain the same opinions with others in regard to the question of expulsion, the power of expulsion, and the duty of expulsion growing out of these facts.

Now, it will be seen that on the question of expulsion all those would unite who believe that the facts justify expulsion, though they hesitate whether they do or not justify declaring the seat void. That is the case of the Senator from Connecticut; and you see that he is obliged to present that proposition growing out of the facts which he says satisfy him in his mind that bribery existed, but do not satisfy him or leave him in doubt whether it existed to such an extent as to vitiate the election. He is obliged to anticipate the action of the Senate by submitting a proposition which includes a point on which others have argued, that the election is vitiated by the fraud. Therefore, while I am entirely free to vote in the order suggested by the committee, and shall vote in that way in any contingency, I sympathize entirely with the views of the Senator from Connecticut, and I see in the attitude in which he is placed that the true proposition for him to vote first upon is expulsion; and so it must present itself to every Senator who believes that bribery exists in this case, but doubts whether to a sufficient extent to vitiate the election.

Mr. SCOTT. Mr. President, one consideration strikes my mind, which I feel impelled to present to the Senate, as to the desirability of first voting upon the resolution of the committee.

Through all this discussion of nearly two weeks no one has doubted that the power of expulsion applies to this case, and the only question is whether the facts justify the exercise of the power. But upon the other question, one of the most important that has ever been presented to the American people or to the Senate, there has been a very wide difference of opinion, not marked by party lines, as was said yesterday, to the honor of the Senate, by the Senator from Maine.

Now, sir, after having spent two weeks upon the discussion of that most important and delicate question, striking down to the very roots of this Government, if we pass upon the resolution of expulsion first and there be two-thirds for expulsion, that question is left where it was when we started, and the sense of the Senate is not declared upon it. I think that it is not the least important result to be arrived at from this discussion, that the sense of the Senate be declared upon that most important and delicate question. I am ready to vote upon either of these questions; and having my convictions very decided upon both of them, it is of very little moment to me personally which of them comes first. I shall vote against the resolution of the committee, let it come first or last. I shall vote for the resolution of expulsion, let it come first or last. But if the resolution of expulsion do come first, and there be a majority for it, we shall never reach that most important question which has divided the Senate for the last two weeks.

Mr. BAYARD. Will my friend let me ask him, how can he vote for expulsion in case the first resolution should carry, and the person be declared not to have been elected?

Mr. SCOTT. Of course I cannot then. I say I am ready to vote on them in any order. We can never vote for the resolution of expulsion, of course, if the first resolution be carried.

Mr. CONKLING. Let me put it the other way, if my friend will allow me. Suppose a majority of the Senate, less than two-thirds, vote for the resolution of expulsion, can that same majority afterward turn around and vote that the very man whom they declared in favor of expelling as a member, in truth and in law, never was a member of this Senate?

Mr. SCOTT. That is a consideration which may govern members in their vote. The consideration which I am presenting to the Senate is the importance of having this grave court decide the question which has been argued before it for the last two weeks; and, as I say, if you vote first on the resolution of expulsion and carry it, you never reach that question. If you vote first on the other resolution, you do reach it, let it be carried or defeated, and I want the expression of the Senate on that question.

Mr. FENTON. I only wish to remind Senators, as they seem to forget, that the propositions before us, by amendments now pending, do not bring us to a vote upon the resolution for expulsion first. The pending amendment brings the proposition of the committee before the Senate in a changed form, making it an affirmative declaration instead of a negative one. I see no objection to allowing the matter to be acted on in the order now proposed by the various amendments, for it brings us back to the starting-point; and I object to any arrangement or understanding in the matter. Let the debate go on.

Mr. BAYARD. Mr. President, the Senator from Pennsylvania [Mr. SCOTT] has well said that the question which is to be solved by a decision of the Senate upon the resolution of the committee declaring that Mr. CALDWELL was not duly elected a member of this body, is one which reaches principles that lie at the very root of our governmental institutions. The discussion we have had for the last two weeks has shown a vast variance in opinion between members, growing almost wholly out of that natural, honest mental difference arising not only from education and from organization of mind, but from all those nameless causes which affect the judgment of men. It is from the differences of honest minds that truth is evolved.

And, Mr. President, there is no question that, while a proper consideration and decision of this subject must embrace great fundamental views of the structure of our Government, it behooves us, with patience, care, and grave anxiety, to approach such a consideration and decision. I do not think that any of us can overrate the importance of a proper decision of these subjects; and yet at the same time it seems to me that there is a question before this body even more important. It is the question, the great moral question, that underlies this case, the question whether, *de facto* or *de jure*, this body contains a member unworthy, unsafe from his acts, or acts to which he has been a party, to remain a member of the body. While I shall experience that sense of relief which certainty brings with it, as any man will who is enabled to come to the decision of that which has distressed him in its consideration, even though the decision may be contrary to his own views; while I am anxious for that; while I also believe that, whether we reach that decision by a vote of the Senate or not, yet, nevertheless, the discussion which has preceded it has been timely and valuable, still I say there is the other question which has a right of precedence, which we are called upon to decide in advance, a question of fact, first, whether this body does contain an element unsafe to allow to remain within it, and next, whether there is that high sense of justice to the Government to which we adhere that will induce us to pronounce sentence upon him. That is the more important question in my mind, and as a result of fact it settles the first in so far as it relates to the present case.

There are three considerations before the Senate. The first is the report of the committee that the seat be declared vacant. That is to be decided as a question of constitutional power, as to whether the Constitution of the United States justifies the report of the committee that the seat has been illegally filled. It is a mixed question of fact and law.

It is moved to amend that proposition, and substitute a resolution of expulsion, which would save a decision of the questions of law and fact embraced in the first, and simply throw upon the Senate the duty to decide, under the facts and under the Constitution and laws, whether the right existed, and, correlative with the right, the duty to exercise that right and power, of expulsion by two-thirds.

Further, it is now proposed to amend that amendment or substitute by declaring that there was a valid election, so that expulsion, if subsequently proposed, can act logically upon a sitting member *de jure*.

Mr. President, I regret that the last proposition was offered. I know it was not intended to embarrass the subject; I have too much respect for the honorable Senator who offered it to imagine such a thing; but at the same time I respectfully submit that it does tend to embarrass the subject. It calls upon us to declare whether in our views of the law there was a valid election or not; that we are first to decide upon the facts of the case, and then, applying to those facts the law of the case, we are to decide whether bribery in any and what degree, committed by the sitting member or not, in his interest or not, shall affect the election. Those questions are grave. The facts surrounding them, I do not say to me are doubtful, but they have been sufficient to throw doubts on minds as capable of judgment as my own, although they may have led them to a different result. The acts of the legislature of Kansas, the acts of the persons who took part in the election of Mr. CALDWELL, who were interested in his election for one motive or other, have undoubtedly thrown a murky cloud, as was well said by the Senator from Connecticut, [Mr. FERRY,] around the transactions in the town of Topeka in the month of January, 1871. If needs be, we must penetrate that cloud; we must dispel it; we must let in what rays of truth we may, and we must do our duty according to our best lights.

Now, Mr. President, when the opportunity of duty arrives, are not the claims of duty paramount? What are they? If this body discover that it is no longer safe for them to retain an element in their midst, if that question is made, then I say the first duty is to settle it, and by settling it you have settled all the other questions presented for decision. I trust that there will be no question allowed to come between the Senate and that decision, which I hold to be its first and gravest duty at this time.

I admit the importance of the constitutional questions raised by the inquiry whether this was or was not a valid election; but I do not care to embarrass members of the Senate, who agree entirely upon the grave question of the duty to expel whenever the facts that warrant it are presented. I do not desire to see those who may agree upon that all-important question sever in their votes, or in any way interfere, embarrass, or impede a decision on that subject, by differences upon the constitutional questions that surround the other question of the power of the Senate by a majority vote to declare the action of a legislature void and a seat vacant, because of a greater or less degree of bribery in the election.

I have heretofore given imperfectly my reasons why I could not support the resolution of the committee. Differing with other gentlemen who seem to think that they ought at this time to withhold their opinion, the conclusions of their minds, the conviction of their consciences on the subjects of fact involved in the question of expulsion, I have also expressed, with sadness and with truth, my own convictions in relation to that. The expressions of opinion, whether they ought to be given or whether it is proper to withhold them, I make no comment upon; but for want of that expression, by reason of that reticence which gentlemen have a perfect right to exercise, we cannot know the fate of the resolution to expel, it requiring the larger vote; nor can we tell the fate of the resolution to declare the seat vacant by a majority.

As I have said before, with my present views of the powers and duties of the Senate of the United States to judge of the election of its members, I cannot consent that it should impose any punishment upon a sitting member under color of deciding his election void; and yet that idea has been consented to; it was stated yesterday by the Senator from New Jersey, [Mr. FRELINGHUYSEN,] in positive terms, that this was a lighter method of punishing a member. Sir, no such punishment can legitimately be exercised upon a member by the vote of a majority. If you mean to declare his seat vacant, you do so without reference to his personal conduct in the transaction at all. He may be as pure as snow, as clear as the light of heaven, and yet it may be the duty of the Senate to declare there was no election, from causes entirely beyond his control or in which he had no part. No, sir; if this vacation be made for punishment, the Constitution demands that it shall be by a two-thirds vote.

Let there be no cover of it. Let the people of this country, who are interested in this proceeding as much as we can be, understand our action. It is true that the honor of the Senate is not our honor alone; the virtue of the Senate is not alone for our advantage; but whatever we may have here of virtue, of honesty, of ability, is the property of the American people, and to be used for their advantage only. If we have it, we have it in trust for them and for ourselves as simple integers of the great Union. I say it is the duty of the Senate, if they consider that the honor of the body has been stained; that the safety of the body as legislators has been endangered; that the credit of the body has been touched, to punish him who has so invaded it, and to say openly, not only by their votes but by the manner in which they decide to have the question presented for their votes, what they mean.

The resolution to declare the seat vacant is a proposition of law that does not in any degree involve the personal conduct or character in any way of Mr. CALDWELL, and which leaves him personally without judgment, without sentence, without punishment at all. It is an abuse of terms to say that it is "a milder form of punishment." It is no such thing. It is the adjudication of an abstract proposition of law, not in any way involving his conduct in the transaction.

But, sir, if the question shall go beyond that, and his personal wrong and impropriety unfitting him for membership shall come before us for decision, then if he is to be punished, it must be punishment expressed upon its face and inflicted by the only method which the Constitution of this country permits. Two-thirds of this Senate must concur, and the resolution ought to be plain, disentangled from other questions, express on its face, so that the country may know what we mean, and that we may ourselves understand precisely the nature and effect of our action. But if, on the contrary, we are to postpone that great question for the decision of abstract propositions of law involved in the report of the committee, in relation to which there are differences of opinion so various that it may possibly be that in the discordant views on that subject the great end sought to be reached may be overlooked and in some way defeated, then, I say, we may lose sight of the greater duty in pursuing what is comparatively an abstraction, and which, if useful as precedents, will lose their value even for that purpose when we consider for what different reasons of law and fact Senators have indicated their intentions to support or oppose the resolution of the committee. I trust, therefore, that in the order of voting on this subject, as the resolution for expulsion has been placed in the foreground, it may be kept there. I do here aver that, grave as are the constitutional questions arising under the power to vacate the seat, the moral question is greater. It looms over and above it all; it ought to be decided first; and I trust it may be kept in such a parliamentary position that it shall be decided first. The Senator from Maine [Mr. MORRILL] well said yesterday that we stand here in the presence and under the shadow of a great enormity. If that be true, and I think it is true, we must meet that question first, and the vote of two-thirds will decide that question and carry with it all the effects that are sought to be expressed by the majority proposition.

Mr. SCHURZ. Will the Senator yield to me for a moment?

Mr. BAYARD. Certainly.

Mr. SCHURZ. I desire to submit a consideration to him which may not be without importance in the line of his argument. There are some Senators here who entirely agree with him upon the moral question, but whose views are different from his as to the resolution reported by the committee, and as he may desire to avoid a precedent such as might be established by the adoption of this resolution, so they may desire to make such a precedent. Now the amendment substituting a resolution of expulsion may render that entirely impossible, and those who desire to vote "ay" on the resolution reported by the committee, together with those who are against that resolution, as well as against expulsion, may form a majority and vote the amendment down, and then the resolution of the committee may not receive a majority of votes, and both may fall in that way, and then we should have no understanding as to whether, after the failure of the resolution reported by the committee, the resolution to expel should be taken up. Would it not, therefore, after all, be better to agree to an arrangement by which we can first have a clean vote on the resolution reported by the committee, with the understanding that afterward the resolution to expel shall be taken up immediately?

Mr. SHERMAN. Allow me to say to the Senator from Delaware that if he desires to get a vote upon the resolution of expulsion for moral effect, he is taking a very singular way to do it, with his knowledge of parliamentary proceedings, because some gentlemen, he knows very well, will vote against an amendment in the second degree, first, because they think there ought to be a square vote on the resolution of the committee; and among them are some who will vote for a resolution of expulsion. He knows that fact. The Senator who reports the resolution from the committee, together with my friend from Missouri, [Mr. SCHURZ,] and other Senators, and you might select them by the half dozen, will vote against the proposition of expulsion as an amendment to the resolution of the committee.

Mr. BAYARD. I have never heard that, and, with due respect, I cannot precisely understand the logic of the man who says that the time has come and the duty exists of expulsion, and yet says he will not vote for it because he desires to have an opportunity to vote first on an abstract proposition, a proposition that would be settled, or rather the case presenting it would be entirely settled, by the prevalence of the two-thirds vote, an unquestioned exercise of clear constitutional power, including in its results a practical solution of the entire case.

Mr. SHERMAN. Why, Mr. President, what is the question before us? The question is whether Mr. CALDWELL was legally elected. A committee of this body have reported a resolution that he was not. That is the basis upon which we are acting. I may vote against a great many things as amendments to that proposition, which are perfectly right in themselves. I might vote against the Ten Commandments, the Lord's Prayer, the Litany, and many other things that I have been taught to respect, as amendments to that proposition, simply because I wish a vote on the proposition itself, and I do not wish any substitute in the face of that.

The pregnant question put by the Senator from Missouri ought to convince the Senator from Delaware, that he is not pursuing the right course for moral effect. On the contrary, the effect of offering these amendments, involving us in a parliamentary controversy and dividing those who may agree upon the question of expulsion, it seems to me, might present the spectacle in this body of having one-third of the body vote for the resolution of expulsion as an amendment to a proposition that may finally fail in the end. I think the simplest way is always the best way, and the simplest and best way is to meet these propositions as they come before us—first, on the resolution reported by the committee. We ought to pass upon that as a question of parliamentary law, as a question of precedent. It is a proposition that has been debated for two weeks. Let us take our position upon it. It is a constitutional question upon which men of different parties, both the great political parties of this country, are divided. Here is my colleague, who has one great fault of being so much a State-rights man that he sometimes is not quite national enough, in my opinion, agreeing with gentlemen who are a little too much national and too little State rights. A question that seems to divide the old political parties of the country is presented to us, and has been debated for two or three weeks, and on the whole, I think, although the debate has been rather longer than I wish it had been, yet it has been a very able and very instructive debate. I can say that, as I have not participated in it. Many of the speeches that have been made in this debate are admirable and excellent. The tone of the debate has been good. Now, on the whole, after this debate upon a constitutional question involving parliamentary law, it seems to me it is due to the country that we take the vote directly on that proposition; and the Senator from Indiana, who has devoted so much time and labor to this subject, has the right to ask and demand of the Senate a direct vote on this proposition. Then the question of expulsion will come up.

If I feared that there would be a disposition to evade the question of expulsion, then I would seek some reason for antagonizing the proposition of the committee by parliamentary amendments; but I cannot believe that, and I do not believe it. In view of the statements that have been made in our presence by those who are opposed both to the resolution of expulsion and to the resolution of the committee, I have not the slightest idea that there will be any disposition to prolong even debate on the proposition of expulsion. After we dispose of the question of the legal right of this gentleman to his seat here, then the other question must be determined definitely before the close of the session. Therefore, I repeat what I said a little while ago, that I shall vote against any amendments that may be offered to this resolution until it is out of the way, and then I will instantly vote to take up the resolution of the Senator from Mississippi. [Mr. ALCORN.]

Mr. THURMAN. If my personal feelings alone were to be consulted, I should greatly prefer that we should take a direct vote on the resolution reported by the committee, without being bothered with any amendment at all. I should do that, because I wish to record myself in favor of that view of the Constitution that I have endeavored to explain to the Senate; because I wish to say by my vote that I believe that bribery goes to the election. On the other hand, while those are my own personal views, I am a little embarrassed by the apprehension that a majority of the Senate do not entertain those views, and that the decision upon the resolution of the committee will be adverse to that resolution, and therefore that a very bad precedent, in my judgment, will be set. I am here between two difficulties: on the one hand, desirous that the constitutional view which I entertain, although I have the greatest respect for those who think differently on the subject, and cannot in opposition to their views say that my views are necessarily right; I claim no infallibility; while, I say, on the one hand, I wish to see the true view of the Constitution, as I consider it, vindicated by the vote of the Senate, I cannot shut my eyes to the apprehension that it will not be vindicated, but that precisely the opposite view will be decided by the Senate.

It is very true that a decision against the resolution of the committee does not necessarily decide the constitutional question, because Senators may vote against the resolution of the committee who believe, as I do, that bribery does go to the election, but who think that the facts here do not make out a case of bribery sufficient to avoid the election, as is the case of the Senator from Connecticut, [Mr. FERRY,] who has so ably addressed us this morning, who, if I understand him aright, believes that in a case in which the majority that controlled the election was bribed, that would go to the election. He agrees with me, therefore, on the constitutional question, but yet cannot find in this evidence sufficient proof upon which to vote that there was such a majority. That is the condition of my friend from Delaware, [Mr. SAULSBURY,] in the remarks which he made the other day. So that a vote against the resolution of the committee does not necessarily interpret the Constitution. A vote in favor of it is an interpretation of the Constitution. The one makes a precedent for legal decision; the other does not, because questions of fact are complicated with it.

Mr. CONKLING. Will my friend allow me one moment at that point?

Mr. THURMAN. Certainly.

Mr. CONKLING. I wish to state a difficulty that I have in my own mind as to the effect of these votes. I understand the honorable Senator to say that the adoption of the resolution of expulsion avoids the constitutional question.

Mr. THURMAN. I was not speaking of expulsion.

Mr. CONKLING. I know my friend was not talking of expulsion.

Mr. THURMAN. I have not come to that yet.

Mr. CONKLING. I am aware of that; but inferentially I understand him to hold that if we do not vote upon the resolution of the committee, we do not pass upon what he has denominated the constitutional question. I simply desire to suggest to the Senator, as he passes along, this view: many members of this body at least hold, and I am one of them, that we cannot expel a man unless he be a member. I hold that we cannot satisfy ourselves at all by the suggestion made this morning by the Senator from Connecticut, that a Senator may be a member *de facto* although he was not elected. I understand that Senators must be chosen by the legislatures of States, not by the United States Senate. Therefore, a man is a Senator because he was elected, or he is not a Senator. In consequence of this, those who hold this view could not vote to expel Mr. CALDWELL, unless by implication they voted that he was a member so as to be expelled.

Now, the point I wish to present to my honorable friend is this: If when the record is finished it simply shows, supplementing all this debate, that a resolution of expulsion prevailed without avoiding, as it seems to me, the constitutional question, it will leave an ambiguous precedent, a precedent which will be treated on different sides in different ways. On the one side it will be said, "Why, this decides that Mr. CALDWELL was a member of the Senate, because it declares that a member is expelled by this resolution;" on the other hand it will be argued, "No; the Senate avoided that question altogether; they chose not to pass upon the question whether Mr. CALDWELL was elected or not; they chose to eliminate him from the body; they took him up root and branch without deciding whether his seat was rooted in an election or whether, as has been now placed by the Senator from Connecticut upon the record, it is competent to expel a man who sits here *de facto*."

Mr. BUCKINGHAM. Will the Senator allow me to ask him a question?

Mr. CONKLING. If my friend from Ohio does not object. I am speaking by his permission.

Mr. THURMAN. I have long ago made up my mind that I can never make a speech in this body without having two or three speeches injected into it

Mr. CONKLING. If my friend will pardon me, in that respect he is like Montesquieu, who said he wrote not to show how much he thought, but to make others think. So my honorable friend, when he speaks, not only radiates a great deal of light, but he engenders light in other people.

Mr. THURMAN. No; the Senator means that the Senator from Ohio is not witty himself, but he is the cause of wit in others. [Laughter.]

Mr. CONKLING. That is better, perhaps.

Mr. THURMAN. That is what the Senator really means.

Mr. President, if the Senator had not interrupted me, I should have come to his point after awhile. What I was saying—it has been so long since that I have almost forgotten it myself, and I expect the Senate have quite forgotten it—was this: a vote in favor of the resolution of the committee affirms that bribery goes to the election, and is a decision of the constitutional question. A vote against the resolution of the committee does not decide any such thing necessarily, because many of those who vote against the resolution of the committee may do so, not because they dissent to the constitutional view that bribery goes to the election, but because they do not find in the evidence sufficient facts to warrant them in holding that the election was controlled by that. That is, I was saying it had nothing to do with the question which the Senator from New York had put, and I said further that as I desired to record my vote upon the constitutional question, I personally preferred to have a direct vote on the resolution of the committee; but that I was apprehensive that there might be a majority against that resolution composed in this way—composed of those who believe that bribery does not go to the election, that the Senate has no right to look into the motives of the members of the legislature in voting for a Senator, and of those who, entertaining the same view of the Constitution that I do, yet think that the evidence here is insufficient to make out a case to avoid an election for bribery. In that way the resolution may be defeated; but even if that be the case, although a vote against the resolution would not be necessarily a decision of the constitutional question at all, although, in fact, it would not be, yet it could not fail to have great weight in any future investigation of the subject before the Senate. And therefore, although I prefer myself to have a direct vote on the resolution of the committee, yet in apprehension of a wrong precedent being set, if the majority of the Senate see fit to bring the vote first on the question of expulsion, I have no particular objection.

But, Mr. President, the Senator from New York starts a new theory—I think he is quite entitled to the merit of invention—and that is to say that you cannot expel a Senator until you have first declared that that Senator is legally elected.

Mr. CONKLING. I did not say that.

Mr. THURMAN. That is what it comes to.

Mr. CONKLING. I beg pardon.

Mr. THURMAN. Then I am incapable of comprehending it.

Mr. CONKLING. I do not wish to interrupt the Senator.

Mr. THURMAN. I wish to be interrupted whenever I misstate anything.

Mr. CONKLING. I did not say the Senate must declare that the Senator was elected. The Senator from Ohio surely did not so understand me.

Mr. THURMAN. I certainly did.

Mr. CONKLING. I said the resolution must proceed upon the ground, the implication, the presupposition that the man to be expelled was a member; else you cannot apply to him that clause of the Constitution which says, "and, with the concurrence of two-thirds, may expel a member." That is what I said; not that the Senate must so declare, but it must be only in the case of a member that the resolution could apply.

Mr. THURMAN. Well, let us take it practically here, for we are talking about a mode of procedure. Suppose the resolution of the committee shall be voted down, and then the resolution of the Senator from Mississippi shall be taken up, how would that differ in any respect from a motion to expel any member on this floor—the Senator from New York or myself?

Mr. CONKLING. Not at all.

Mr. THURMAN. Not in the slightest degree, would it? Now it is precisely the same thing if the amendment of the Senator from Connecticut should be adopted; and why? ALEXANDER CALDWELL is as much a member of the Senate to-day as the Senator from New York or myself, upon the question whether or not he can exercise the privileges, and rights, and duties of a Senator, and is subject to expulsion, because, until the Senate declares that he is not a member, he having presented the proper credentials and having been sworn in, he must be regarded as a Senator.

Mr. CONKLING. Why?

Mr. THURMAN. Because, until his *prima-facie* case made by his

credentials and ratified by allowing him to be sworn in is overthrown by the judgment of the Senate, he stands here a Senator.

Mr. CONKLING. Because he was elected.

Mr. THURMAN. No matter whether he was rightfully elected or wrongfully elected, he is here a Senator. By what right is it, when the yeas and nays are called, the name of CALDWELL is called? By what right is it that he votes? By what right is it that he speaks? By what right is it that he exercises all the powers and duties, and enjoys all the privileges of a Senator? Because there are his credentials on your table, and he has been sworn in, and it never has been decided by the Senate that he was not elected; and therefore, when the question shall come up about expelling him, so long as his election has not been declared void, so long is he to be considered a member of the Senate, and he may therefore just as well be expelled as any other member of the Senate. There cannot be any doubt about that, as it seems to me.

If it were not that everything can be doubted; if it were not that Bishop Berkeley proved, so that nobody has ever satisfactorily answered him yet, that there is no such thing as matter, although Byron said it was no matter what he said—although that has been proved so that people have been puzzled ever since to know whether they existed, so that the old beginning of reasoning on metaphysical subjects, the maxim, the postulate "*ego sum*" itself, is denied by metaphysicians, yet it does seem to me that, notwithstanding this world of doubt, incredulity, and uncertainty, there is no doubt that the Senator from New York is wrong in his proposition.

Mr. President, in respect to this matter I do not feel disposed to take any leading part in indicating what shall be done. I am willing to vote on these questions just as the majority of the Senate see fit to bring them up. My own personal preference is to take a square vote on the resolution of the committee. If a majority of the Senate see fit to do otherwise, I bow to the majority.

I do firmly believe that this election of Mr. CALDWELL was procured by bribery; I believe that it was controlled by bribery. I cannot name the men who were bribed, or but a few of them; but I have seen men convicted of murder when the murdered man had no name that was known to his triers, and I can believe that men were bribed, although I cannot name the men who were bribed.

Mr. CARPENTER. Did the Senator ever know a man convicted of murder when nobody was dead?

Mr. THURMAN. I did not; but that would have been a mere witticism if my friend had asked it. I think there is *corpus delicti* enough here, as my friend from Mississippi [Mr. ALCORN] suggests. I believe that this election is an invalid election; but, sir, my believing that does not preclude my voting to expel upon the same facts, because whether the evidence is sufficient or not to prove the election to be invalid, the turpitude of the member is equal in either case, and the expulsion will be for good cause, and will be in the exercise of the legal discretion of the Senate.

Mr. MORTON. Mr. President, I had not expected to speak to-day, and I am hardly prepared to do so; but as there is much executive business that ought to be disposed of by the Senate, I move that the Senate now proceed to the consideration of executive business.

Mr. THURMAN. I suggest to the Senator from Indiana that possibly—I do not know it to be the fact—there may be some others who wish to speak to-day. I do not.

Mr. MORTON. If there are, I will not insist on my motion.

Mr. THURMAN. If there are no others who wish to speak, I will cheerfully vote for the motion.

Mr. CONKLING. I ask the Senator to forbear the motion for a moment.

Mr. MORTON. I withdraw it.

Mr. CONKLING. I venture to suggest to the Senator from Indiana, although I do not wish to interfere with the convenience of any Senator, that if there are further suggestions to be made or further debate to be had upon the form or order of this proceeding, we had better not lose this day, it being now only one o'clock. If any arrangement is to be arrived at as to the order in which these questions are to be taken, that can be done as well now, although Senators may not be prepared to proceed with their arguments upon the merits of the case. Therefore I hope that we shall not adjourn until any arrangement as to the order of business, or any understanding in that regard which is to be mooted against the amendment shall be disposed of. When we come back on Monday, if the Senator from Indiana has the floor, he does not want to devote his time to considering questions of amendment or questions of the order of business; and as it is now one o'clock, I think if we can employ some time in making an end to any further suggestions as to how the vote is to be taken, it would be economical to do that.

Mr. SCHURZ. If the Senator from Indiana will permit me, I think that suggestion is a very proper one; but I believe the whole matter will depend upon the intention of the Senator from Connecticut. If he insists on his amendment, then the question is solved; then we shall have to vote upon it first. If he does not—if he is ready to withdraw it—that will open the whole question.

Mr. CONKLING. No; I beg pardon; that is not the situation of the case. It depends rather in that regard upon the intention of the Senator from Michigan, who has an amendment which precedes the amendment of the Senator from Connecticut.

Mr. SCHURZ. I understand that.

Mr. CONKLING. There are three propositions pending now, and the first in order is the amendment of the Senator from Michigan.

Mr. SCHURZ. I understand that.

Mr. CONKLING. If the Senator from Connecticut withdraws, the other amendment would fall, though the Senator from Michigan has avowed a willingness to withdraw it.

Mr. SCHURZ. Even if the Senator from Michigan withdraws his amendment to the amendment, it would not clear the track for a vote on the resolution. That would depend on the Senator from Connecticut.

Mr. MORTON. If I may be allowed to make a suggestion, I will inquire what can be done now in the way of making an arrangement. There is no consent; I do not give mine, as I said some time ago. I know nothing now to do but to allow the discussion to go on until the time comes for a vote.

Mr. CONKLING. The Senator asks what agreement can be made. Suppose the Senators withdraw their amendments. Certainly nobody can object to that.

Mr. MORTON. That would not settle anything.

Mr. FERRY, of Michigan. I have several times expressed my willingness to withdraw my amendment, if the Senator from Connecticut withdraws his; but mine is dependent on his, and should rest if it rests; if he withdraws his, mine falls with it. I am disposed to withdraw it, so as to bring the Senate to a vote on the resolution reported by the committee.

Mr. MORTON. I tried to be distinctly understood as stating that I gave my consent to no arrangement.

Mr. FERRY, of Connecticut. That was the reason why I did not withdraw my amendment. Two Senators objected to any arrangement. I am, therefore, compelled to let my amendment stand.

Mr. MORTON. I now, for the reasons I stated, renew my motion to go into executive session. I know there is business enough there to occupy this afternoon.

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

After four hours and fifteen minutes spent in executive session, the doors were re-opened; and on motion of Mr. ANTHONY the Senate (at five o'clock and twenty-five minutes p. m.) adjourned to meet on Monday next at twelve o'clock m.

IN THE SENATE.

MONDAY, *March* 24, 1873.

The Senate met at twelve o'clock m.

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

The journal of the proceedings of Saturday last was read and approved.

RESIGNATION OF SENATOR CALDWELL.

The VICE-PRESIDENT. The Chair will lay before the Senate the notification of the resignation of Mr. CALDWELL as a Senator of the United States. The Secretary will read it.

The chief clerk read as follows:

WASHINGTON, D. C., *March* 24, 1873.

SIR: I do hereby very respectfully notify you, and through you the Senate of the United States, that I have resigned, and do resign, my seat in that body as a Senator from the State of Kansas; and that I have forwarded by mail, postage prepaid, addressed to the chief executive officer of that State, at Topeka, Kansas, a resignation in the following form, to wit:

"UNITED STATES SENATE-CHAMBER,
"*March* 24, 1873.

"SIR: I hereby respectfully tender you my resignation as a Senator of the United States from the State of Kansas, to take effect immediately.

"Very respectfully, your obedient servant,
"ALEXANDER CALDWELL.

"His Excellency the GOVERNOR OF KANSAS, *Topeka, Kansas.*"

I have also delivered in person to Hon. Thomas A. Osborn, the governor of Kansas, now in this city, a duplicate of the paper so forwarded, and whose acknowledgment of the receipt thereof is herewith inclosed.

Very respectfully, your obedient servant,
ALEXANDER CALDWELL.

Hon. HENRY WILSON,
Vice-President of the United States.

WASHINGTON, D. C., *March* 24, 1873.

SIR: I hereby acknowledge the receipt of your letter of this day, resigning your seat in the Senate of the United States as a Senator from the State of Kansas.

Very respectfully, your obedient servant,
THOMAS A. OSBORN,
Governor of Kansas.

Hon. A. CALDWELL, *Washington, D. C.*

WITHDRAWAL OF PAPERS.

Mr. SHERMAN. I ask leave to withdraw the papers of J. P. Rader; also, the papers of Butler, Miller & Co.; also the papers of Hawks, Miller & Co. I understand there has been no unfavorable report on these cases, and the papers are to be withdrawn to be produced before other departments of the Government.

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

On motion of Mr. DORSEY, it was

Ordered, That C. M. Lockwood have leave to withdraw his petition and papers from the files of the Senate.

ORDER OF BUSINESS.

Mr. WRIGHT. I wish to inquire of the chairman of the Committee on Privileges and Elections whether he proposes to take any further steps upon the resolution which has been before the Senate in regard to Mr. Caldwell.

Mr. MORTON. I shall make a statement to the Senate on that subject in a few moments.

Mr. WRIGHT. I desire to say that as soon as that matter shall be out of the way, as I suppose it will be now, I shall call the attention of the Senate to the CLAYTON case, and ask action upon it.

THE CONGRESSIONAL RECORD.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to cause to be printed and bound, with suitable indexes, as soon as practicable after the close of the present session, two copies of the CONGRESSIONAL RECORD for each Senator, have instructed me to report it back with an amendment in the form of a substitute, and to ask for its present consideration.

There being no objection, the Senate proceeded to consider the resolution.

The amendment of the Committee on Printing was to strike out all after the word "resolved" and insert:

That there be printed and bound, with an index to be prepared under the direction of the Committee on Printing, of the CONGRESSIONAL RECORD for the present executive session of the Senate, ten copies for each Senator, five copies for each member of the House of Representatives, two copies for each Executive Department of the Government, five copies for the Library of Congress, five copies for the library of the Senate, five copies for the library of the House, and one hundred copies which may be sold by the Congressional Printer at the cost of paper, press-work, and binding.

Mr. ANTHONY. I propose to modify the amendment by inserting "three hundred" instead of "one hundred" as the number of copies to be printed for sale; also by adding the Vice-President; and if it has been the custom to furnish the Secretary of the Senate and the Sergeant-at-Arms with copies, I would include them also.

The VICE-PRESIDENT. The amendment of the committee will be so modified if there is no objection, and it will be read as modified.

The chief clerk read as follows:

Resolved, That there be printed and bound, with an index to be prepared under the direction of the Committee on Printing, of the CONGRESSIONAL RECORD for the present executive session of the Senate, ten copies for each Senator, the Vice-President, and Secretary of the Senate, five copies for each member of the House of Representatives, two copies for each Executive Department of the Government, five copies for the Library of Congress, five copies for the library of the Senate, five copies for the library of the House, and three hundred copies, which may be sold by the Congressional Printer at the cost of paper, press-work, and binding.

The amendment was agreed to.

The resolution, as amended, was adopted.

VISITORS TO WEST POINT.

The VICE-PRESIDENT. The law makes it the duty of the Chair to appoint two members of the Senate upon the Board of Visitors to the Military Academy at West Point. Under this authority the Chair appoints the Senator from Ohio [Mr. SHERMAN] and the Senator from Kentucky, [Mr. STEVENSON.]

THE CALDWELL CASE.

Mr. MORTON. Mr. President, we have had notice this morning of the resignation of Mr. Caldwell and that it has been accepted by the governor of Kansas. It is hardly competent for the Senate to expel a man who is not a member or to declare a seat vacant that is already vacant by resignation. Under the circumstances, I consider my duty in this case as chairman of the Committee on Privileges and Elections at an end.

CHARGES AGAINST SENATOR CLAYTON.

Mr. WRIGHT. I now move that the Senate proceed to the consideration of the resolution reported by the select committee in the case of the Senator from Arkansas, [Mr. CLAYTON.] I simply wish to get it before the Senate, and then I will give way to other matters if it is desired.

Mr. FENTON. I had intended to address the Senate to-day on both the propositions relating to Mr. Caldwell. I had delayed addressing the Senate, hoping to see in print the remarks of my colleague, [Mr. CONKLING,] to which I wished in part to reply. I shall forbear making the speech that I intended to make, although I believe the resolution is still before the Senate. I rise now more for the purpose of asking the Senator from Indiana what disposition, if any, will be made of the resolution. It has not been disposed of, notwithstanding the resignation of Mr. Caldwell.

Mr. MORTON. I stated to the Senate that under the circumstances I considered my duty at an end in regard to the matter. The resolution has not been formally disposed of; it is on the table for the Senate to take any action that they may think proper to take; but I consider that my duty is performed. I do not wish to interfere with the Senator in any way.

Mr. FENTON. I have no wish to address the Senate now. I hardly think it would be proper, under the circumstances, to continue this discussion.

Mr. WRIGHT. I insist on my motion. I suppose that the Caldwell case is out of the way entirely.

The VICE-PRESIDENT. The Senator from Iowa moves that the Senate proceed to the consideration of the case of Mr. CLAYTON, of Arkansas.

The question being put, it was declared that the motion was agreed to.

Mr. THURMAN. I ask a division of the Senate on the question of taking up that case. I desire to say, in respect to it, that I am in this situation, and I believe it is the situation of nine-tenths of the Senate: I have never found the time to read the testimony in that case. It is very voluminous. If I am not mistaken, there are seven or eight hundred printed pages of testimony in the case; I know there are so many that I have never been able to find time to read it. There have been two reports in this case, I think, one made at the session before the last, and one made at the last session. Now, sir, a vote to adopt the resolution of the committee or not to adopt it, under these circumstances, would be no expression of the opinion of the Senate; it would be simply an expression of the opinion of the majority or the minority of that committee. The Senate has not read that testimony. I think I may affirm that in respect to nine-tenths of them, perhaps; certainly I think I may say it in respect to more than three-fourths of them. Therefore the passage of the resolution or the defeat of the resolution reported by the majority of that committee will be no expression whatsoever of the Senate.

For this reason, I think the matter should go over until the next session, so that Senators may read and decide it for themselves. If there ever was a case, so far as I can see into it from looking into the reports of the committee, glancing at the majority and minority reports, that was simply a question of fact, or rather a multitude of questions of fact, this is one. Therefore, if we are to vote understandingly upon it, if our vote is to be an expression of opinion that will be of any service to anybody, or any disservice to anybody, we ought to have time to look into this testimony and form our judgment upon it; otherwise I say it is nothing but the judgment of the majority or minority of the committee, according as the vote may prevail.

Mr. WRIGHT. The committee was appointed in this case about fifteen months since. The Senator implicated, in his place here demanded this investigation. Near the close of the session, in June last, about the 1st of June as I now remember, a partial report was made from the committee, developing to the Senate the views entertained by the majority upon the questions of fact. That report has been before the Senate from that time until this. About a month since the final report was made, accompanied by the testimony. Why the testimony was not reported before is stated in the partial as well as in the final report. If the testimony is not very fully referred to in the majority report, it is certainly quite fully referred to in the minority report.

I say a month since this testimony was presented to the Senate; and now the Senate is asked by the Senator from Ohio, in the case of a Senator charged with matters that go to his right to hold a seat on this floor, in a case where the charges were made more than a year ago, and where the report was made before the report that we have now been considering, or about the same time, and long before the charges were made against the Senator from Kansas—the Senate is asked to say that these charges shall be still held over the head of the Senator from Arkansas, that we shall adjourn, and the case shall go over until December, because Senators have not had an opportunity to examine this testimony.

I feel well assured that the Senator must be mistaken with reference to the readiness of the Senate to act on this case. It is true that the testimony covers some three or four hundred pages, but it is just as true that any Senator in passing through this testimony can see at a glance, almost, that a very large portion of it has nothing whatever to do with the questions of fact involved; and a discussion here of a few hours, in my judgment, will develop the facts to any Senator so that he will be able to understand them and vote understandingly on the questions involved.

I therefore appeal to the Senate that, as a matter of justice to the Senator from Arkansas, as a matter of justice to this committee, as a matter of justice to the body, as a matter of justice to the country, they shall take up this case and dispose of it before the adjournment. I think it was the understanding when we took up the Caldwell case that this should follow. I think that we expected to dispose of this case before our adjournment. Now, why should there be any hesitation or delay?

So far as I am concerned, I do not propose to say a word in the first instance, notwithstanding I made the report. The report of the majority of the committee does not invoke any action, because they find upon this record that there is nothing to implicate the Senator from Arkansas. If there be any action invoked at the hands of the Senate, it must come from the minority or from those not prepared to agree with the majority. Substantially, all that the majority of the committee ask is that we shall be discharged from the further consideration of the question.

In conclusion, I will say that I supposed, in view of the announcement made by the Chair that the motion had been carried to take up this matter, there was really no question before the Senate. I understand, however, the Senator from Ohio now calls for a division. Before that division is had, I appeal to every Senator here, without regard to party, as he would have justice done himself under like circumstances, as he would deal justice to all men, in justice to this Senator, and in justice to the body, that this case shall be taken up and disposed of.

Mr. CLAYTON. If this case is allowed to go over until next winter, one-third of my entire official term will have been occupied in the in-

vestigation of this case. Such action, in my opinion, will furnish a very practical illustration of the law's delay. I always supposed that when a member of the Senate submitted himself to the adjudication of the body, he was entitled to a speedy trial, as persons are in all other courts and in all other legislative bodies. I think it is due to me; I think it is due to the State I in part represent, or misrepresent, if the report of the minority of the committee be correct. If I misrepresent it, I should be out of this place, and the legislature of the State, which is now in session, should have the privilege of putting some one here to fill my place. The facts have been investigated, and they should be acted upon. It is due to the State of Arkansas that this report should be taken up and final action had upon it. I do appeal to all Senators, as they would wish to have justice done them, not only here but elsewhere, to allow this case to be taken up and disposed of. Why should it be delayed now? It may be said that Senators desire to go to their homes. Is that a reason? Are we not here to transact the public business? It may be said that this case will elicit discussion. That is another reason why it should be taken up now. If it is left to go over until next winter, the other House will be waiting upon our action at a great expense to the country.

I hold, Mr. President, that now is the time to take up this case, and if Senators are not familiar with the testimony let them take time to make themselves familiar with it. I do ask, as my right, that the Senate will act upon this case before it adjourns, let the final result of that action be what it may.

Mr. THURMAN. Mr. President, I certainly feel the greatest reluctance in the world in suggesting the postponement of the consideration of charges made against a fellow-member in this body; and nothing but a desire to do exact justice could induce me for one moment to make any such suggestion. If the Senate has read this testimony and is prepared to vote upon it, I shall not object certainly to its doing so. I can do what will then be my duty; not having read one word of the testimony, I can refrain from voting. If Senators here can say that they have read this testimony and are prepared to vote upon it, well and good; let it be decided, and the quicker the better; but if they cannot say that, if they are in the same category that I am, if they have not read one word of the testimony, or at least not sufficient to form any opinion at all upon it, then I say that if you take this case up, unless you are going to spend sufficient time here to go into all this testimony and consider it all, read it, scan it, and compare it, a vote of the Senate will be no decision of the Senate at all, but simply an acquiescence in the report of the majority or a dissent from that report.

The Senator from Iowa made two remarks that I did not comprehend at all. One was that he thought there was an understanding that this case should be taken up. I never heard of any such understanding. I have seen it stated in the newspapers that it was agreed upon in a caucus of the republican members, to which they failed to do me the honor to send me an invitation, to take up this case; but surely I was not a party to that. Nobody asked me to attend it, and I certainly did not attend unasked; and, therefore, the understanding of which the Senator speaks must be some understanding outside of this chamber. I am quite sure there has been no understanding inside of it.

The Senator made another remark that I did not comprehend. He says the case should be taken up and acted on in justice to the committee. What has the committee to do with this business, that there is justice or injustice to it? Where is the injustice to this committee that we ask time to see whether the committee is right; that, before we follow its judgment implicitly, we do what the Constitution requires us to do, think a little for ourselves? Where is the injustice to the committee? We never have devolved all our powers upon any committee. A committee is the mere instrument of the Senate, and not a supreme arbiter either upon facts or upon law. Each Senator must decide for himself. Although great respect is due to the report of the committee, and none will pay greater respect to it than I will, and it may strongly influence my judgment, although no one habitually pays more respect to the opinions of a committee that has carefully investigated a case than I do, and especially a case of this sort, yet I must, if I discharge my duty at all, have some opportunity to examine it. I have had no such opportunity here. This report, it is true, has been upon our tables for about a month. How has it been since this report was laid upon our tables? The greater part of the last session after this report came upon our tables, I with others of the Senate was upon a committee sitting at the same time that the Senate was sitting, pursuing another investigation ordered by the Senate, and we had no time to think about anything else. We had to neglect our public duties here to attend to that investigation. Since this Senate has convened in special session we have had the whole time taken up with the very interesting case which has just terminated this morning. Nobody has had any time to investigate this case except the members of the committee themselves.

Under these circumstances I do say (and I should say it if I were the member himself who is accused here) that if the decision of the Senate upon this case is to have any weight in the country at all, it must be a decision after the Senate has had time to investigate and possess itself of the facts. Any other decision would be worth very little indeed.

Mr. WRIGHT. I desire to add only one word to what I have already said. In reference to the matter of understanding, I have said upon this floor more than once, at the time and before the Caldwell case was taken up, that I proposed to press the CLAYTON case immediately after the decision of the Caldwell case. I do not know that the Senator from Ohio had anything to do with it, but I know it was understood here, and has been understood from the commencement of this session, that, if we did no more, we were at least to clear the criminal docket; we were to get these criminal cases, so to speak, out of the way, so that we could come back here next session and go to the civil docket, the business that we legitimately and properly come here to dispose of, without any hinderance or delay so far as these cases were concerned.

Now, so far as the matter of justice to the committee is concerned, we having made this report, as I have stated, a partial report, months ago, and afterward having made this other report, I think it a matter of justice to us and to every committee that makes a report of this character, to say nothing of justice to the Senator concerned, that the matter should be got out of the way, and that the committee should no longer have the case upon their hands.

I am not aware that any other Senator is in the condition of the Senator from Ohio. He alone gets up here and says that he is unprepared to decide the case, and therefore he takes it for granted that every other Senator is in the same situation. Now, I kindly and humbly submit to him that while we are engaged in the consideration of the case he can take this record, and go to the privacy of his library, and there, with his pencil in hand, and as sharp as he can make it, read it carefully and note it as he goes along, and I doubt not he will be prepared to decide the case. I will give him all the time necessary for that, so far as I am concerned, and I doubt not the Senate will do the same thing.

I trust the Senate will adopt this proposition; that the vote by which it has already indicated its readiness to take up the resolution will be followed up on the division, and that the resolution will be before the Senate.

Mr. NORWOOD. Mr. President, I regret exceedingly that the Senator from Iowa is pressing this case at this time. By looking at the report, the Senate will find that it was submitted to the Senate on the 26th day of February. The report in the Caldwell case was submitted to the Senate on the 17th day of February. It was here, therefore, nine days before this committee made its report.

The honorable Senator from Iowa complains that this committee should be delayed by the Senate refusing to take action upon its report, when the committee was appointed over a year ago. Suppose it was appointed over a year ago; when did the committee lay before the Senate the result of its action? It commenced this investigation in January, 1872. It did not close the testimony until May 14, 1872. Then the majority of the committee made a partial report, as it was called, and in that report especially requested the Senate to suspend judgment and not to consider the question, and stated that they would subsequently make a fuller report, and that fuller report has only been laid upon the desks of Senators since the 26th day of February last.

As to the reasons why the committee did not act sooner, it is unnecessary for me to state them to the Senate. They are known to the committee, and they are satisfactory to the committee, both the majority and the minority. We had a great deal of labor to do in reviewing this testimony before we could get it in proper shape to lay it before the Senate. That is neither here nor there.

Since the report has been before the Senate, I ask Senators, what time have they had to investigate it? As stated by the Senator from Ohio, it is essentially a case of fact. We have discussed the law for two weeks past applicable to this very case, and now we come to the consideration of the facts in order to apply that law; and I ask any Senator to state whether he has read carefully, from the beginning to the end, the testimony that has been reported by the committee.

The honorable Senator on my right [Mr. SAULSBURY] says he has not had time to read a page of it. We know how business pressed upon us from the 26th day of February to the close of the last session; we know then that upon Thursday following the day of inauguration this Senate assembled, and immediately took up the Caldwell case, and we know that day after day has been devoted to the discussion of the law and the facts in that case alone, and that we have been troubled, vexed as to the delicacy of the legal points involved in that case. And now I say to the Senator from Iowa, and I say to the Senator from Arkansas who is under investigation, that if, under these circumstances, they press this case here, let the judgment of the Senate be *pro* or *con*, the country will say that the decision was not based upon due consideration, if they do not go further and say that it was a snap judgment.

Who is concerned in this except the Senate and the Senator from Arkansas? What has the country at large to do with this question? What has the State of Arkansas to do with this question? She is represented as long as the Senator's seat is filled here. He is entitled to his vote if this case were postponed for three or four years to come; and it is due him, it is due to the Senate, it is due to the precedent that may be set in a case like this, that it should have a full and fair investigation, and that if the Senator from Arkansas is to be acquitted of these charges, he shall be acquitted after we have fully considered the law and the facts, and no other verdict will be received with satisfaction by the country.

Mr. WRIGHT. I wish to make one inquiry of the Senator from Georgia, whether I am to understand that he is not prepared himself to go on with this investigation?

Mr. NORWOOD. I say that, so far as I am individually concerned—

and I intended to make that statement when I got up—I am suffering with as severe a cold as I ever probably had, and I speak with great labor; and if this case is now to go on, the remarks that I intended to submit to the Senate upon it will have to be postponed or foregone. I cannot now submit any remarks upon it at all. I shall have, therefore, to rest content with the remarks which I have made in the views of the minority. I am utterly unable to go on with this case to-day. I perhaps might be able to speak to-morrow, but I cannot tell. When I came to the Senate this morning, I expected, when the Caldwell case was taken up, to go back to my room. Now this matter is precipitated on me, and I am not able to go on with it.

Mr. WRIGHT. Then I understand that the objection of the Senator to going on, so far as he himself is concerned, is from indisposition at present, and not because he is not sufficiently acquainted with the case to go on.

Mr. NORWOOD. I do not place it upon my not being sufficiently acquainted with the facts. I presume that I am as well acquainted with them as any member on this floor, and much better than any, excepting the other two members of the committee. I do not put it upon that ground at all. I put it upon the ground that I do not believe the other Senators here who are to pass judgment as judges and find a verdict as jurors have had time to investigate the facts in this case, and that it is due to them, it is due to the Senator from Arkansas, that the case should not be considered at this session, unless we adjourn over for several days in order to give time for the investigation. The other consideration is personal to myself. I would not be able to speak to-day if the case were taken up.

Mr. WRIGHT. I made the inquiry I did for the reason that, if the case were before the Senate, then for any reason personal to the Senator from Georgia, who is a member of the committee, I should certainly not be disposed to press it if he should ask a postponement; but I want the case before the Senate, and then if he asks that time shall be given him before he presents his remarks, I shall certainly not interpose any objection. So far as other Senators are concerned, I think there is a mistake with reference to the readiness of the Senate to act upon the case.

I now wish to ask the Senator from Arkansas a question, whether there is a session of the general assembly of his State next winter?

Mr. CLAYTON. No, sir; the sessions are biennial.

Mr. WRIGHT. Then there is a reason, it seems to me, which is insurmountable, and one that there can be no good answer to. I understand the legislature of Arkansas is now in session.

Mr. NORWOOD. Why, Mr. President, if the Senator will pardon me, there is only one contingency in which the meeting of the legislature of Arkansas would be of any value as a suggestion here, and that would be if the Senator's seat were declared vacant. If that were the case, has not the governor of that State the appointing power to fill a vacancy?

Mr. WRIGHT. I know that very well, Mr. President; but I know just as well that, in view of the electing power, the body that elects Senators to this body, when you may refer a vacancy to that body rather than to a governor, it is always preferable; and it seems to me that there is an eminently good reason for action now in this fact alone, in view of the position the Senator insists on. He certainly will expect, if his views are concurred in, that the seat will be vacant or the Senator from Arkansas expelled. If that be so, it seems to me the Senate ought to decide the question now and send it to the legislature of Arkansas that they may elect a successor.

Mr. ALCORN. It is true that this is a question of importance. Without professing to be acquainted with the facts in detail, I think we are all agreed that it is a question of very grave importance. Charges were preferred against a Senator in the Congress of the United States; the matter was referred to a special committee; the committee has reported; and, I care not whether the facts may have been shown to be of sufficient importance in the first place to warrant the Senate in taking this course or not, it is nevertheless important to dispose of it on account of the position that it holds here before the country and before the Senate.

Now, it is said on the part of Senators that they are not prepared; that they have not examined the testimony in this case. I ask, what is the duty of the Senate? I submit to the Senate, upon the question of its duty, is it not the duty of the Senate to dispose of this case as one now pressing upon its attention? It is before them; they owe a duty to the country; and that duty is to proceed with the discharge of the business that is pressing upon them before they undertake to adjourn this body.

At the next session of Congress will any Senator come here better prepared to go forward to the decision and adjudication of this question than he is to-day? Where is the Senator who has read the testimony? I apprehend that few have read it. Where is the Senator who understands it? I apprehend there are few who understand it; and I apprehend that when Congress shall meet here next December, the very same state of things will exist then that exists to-day. The Caldwell case was investigated by Senators when the Caldwell case was taken up, and not until then.

Mr. NORWOOD. If the Senator will pardon me, I should like to ask him, will not Senators have more time from now until the meeting of the next session of Congress to examine this matter than they have had since the report was laid on our tables? If they do not examine it, whose fault will it be? It is not our fault that we have not examined it up to this time.

Mr. ALCORN. They will, it is true, have more time, for the reason that the time is longer from now until the meeting of Congress than the time from the laying of this report on our table until this day; but the point I make is, that that time will not be appropriated to this question; that when we go away from here we shall leave the CLAYTON case just where it is; when we come back we shall find it just where we left it, and then we take it up, and, when it is opened, we will go forward upon our separate responsibilities to investigate it. I say that if this case to-day is opened, when the speeches are made on the part of the majority, each and every Senator here can follow the Senator opening the case in his exposition of it, with the testimony before him, and he can acquaint himself with all the facts upon that side, the strong points of the case, and then upon the side of the minority. I apprehend that the honorable Senator from Georgia [Mr. NORWOOD] is not so much indisposed as he imagines himself to be. He speaks this morning with great clearness; he speaks with point and precision; he speaks with that force which is characteristic of that honorable Senator; and I have no doubt that when he hears this case read from the docket, and the statement made that it is now before the Senate, that ailment which he now has upon him, that physical disability of which he complains, will soon be removed, and he will perhaps derive a benefit from the exercise that he will be called upon to undergo in the prosecution of the case.

Mr. NORWOOD. That is a professional opinion, I suppose.

Mr. ALCORN. That is a professional opinion. I give that as an expert. [Laughter.] I have oftentimes advised gentlemen in that way. [Laughter.]

But, sir, there is one other view of the case that I wish to present. Does not the Senate owe something to the Senator who stands here arraigned before the country? It has been long since these charges were made. He has come before the Senate and has pleaded that the Senate might investigate and that they might give their verdict on this question to the country. He sits here prepared to listen to the adjudication of the Senate on that question. Again and again he says, "I stand ready." Is it not, I submit, the duty of the Senate to go forward and render their verdict in his case?

Again, I repeat, I have not read the testimony, and again I say I do not expect to read the testimony in this case until the case is opened; and you may defer it if you please from now until next December, and I do not expect on my part to look at the case between now and December; but when the case is opened on the part of the committee, I expect then to take up the report, as I do in all cases in which I am called upon to cast a vote, and examine it, as the case proceeds, for myself. There is not a member of the Senate who cannot in one day's time, between now and the hour when he will be called upon to vote to-morrow, thoroughly investigate and be prepared to render such a verdict in this case as will be satisfactory to himself, and, I have no doubt, satisfactory to the country; but I say it is due to the Senator from Arkansas that the case should be taken up and disposed of.

I know not, I repeat again, the extent of the charges or the proof that comes forward to establish those charges; but be they questions of great or small importance, nevertheless they are of sufficient importance to bring the charges before the country against him. He stands here under indictment, and he asks that he may be tried, that his case may be passed upon, and I say that, sitting here as we do, it is our duty to come forward and render that verdict to-day, or rather to enter upon an investigation of the question and render our verdict when we shall have been possessed of the facts and made acquainted with all the circumstances, and stand ready to render a verdict in the case.

Mr. MORRILL, of Maine. I do not see for myself how we can avoid giving some consideration to this question at the present time. It seems to me, in the first place, it is due to the Senator from Arkansas that he should be heard at the present time. In the second place, what other time can the Senate of the United States assign to this duty better than the present? When we come here in December I am sure we shall not be in a condition to attend to this case. I shall consider, if the Senate of the United States postpone this question, that it is with an idea that it will hardly get an audience of the Senate at any time. A postponement of the case at the present moment will look to me like a general and indefinite postponement, for I hardly consider that gentlemen will take this testimony home and in vacation post themselves up in regard to it; so that we shall come back here in December just as we leave now, and we shall come back here at a time and under circumstances when, according to my experience, and I submit whether it is not according to the experience of Senators generally, we shall be in no condition to hear this case.

I ask Senators to consider how long this matter has been before the Senate. It was begun in the first session of the last Congress. It went over then under circumstances which I suppose everybody will agree were beyond the control of all parties connected with the transaction. It was not convenient to take it up at the last session. But without revealing anything in caucus or out of caucus, or anywhere else, referred to by my honorable friend from Ohio, I think it might be fairly inferred that this case of Mr. CLAYTON would be among the subjects which were proper to be considered at this extra session of the Senate; and considering that we are here now with no public engagement upon our hands, that this question is properly before us, that the postponement of it to the next session is nearly equivalent,

in my judgment, to an indefinite postponement, I submit whether, in view of the public service and the rights of the Senator concerned, it is not really our bounden duty to proceed to its consideration.

The VICE-PRESIDENT. The Chair will put the question on the motion of the Senator from Iowa.

The question being put, there were, on a division—ayes 28, noes 14.

Mr. BAYARD. I ask for the yeas and nays on this subject.

The yeas and nays were ordered.

Mr. BAYARD. Mr. President, it is perfectly natural in the Senator from Arkansas to desire an early and immediate disposition of his case. I entirely sympathize with his desire that there should be a decision; and if that can be reached even by personal inconvenience, provided that inconvenience is not to extend too far, it seems to me that the claim is entitled to very serious and very favorable consideration.

The Senate are asked to sit in judgment upon the report of a committee asking to be discharged from the further consideration of these charges and exonerating the Senator from Arkansas from any impropriety in connection therewith; but there is also a minority of the committee who have submitted their views and who declare that the charges have been sustained, and propose action by the Senate as indicative of its sentiment on that subject.

This report was made in manuscript, as I remember, and the date bears me out in saying on the 26th of February. How many days after that it was put in printed form on our desks I do not know; I suppose several days after that time; but I do know this, that it came to us in the very last hours of a very busy session, when every hour, almost of night as well as day, was occupied by the pressing consideration of appropriation bills for necessary expenses of the Government.

The special session then ensued. Since that session has continued, we have been gravely, and anxiously, and laboriously considering a totally different case, and I believe that every man who did his duty in the Senate thought of but little else than of the facts and the law in connection with the case of Mr. Caldwell. Now, suddenly, we are asked to take up and dispose of, and dispose of in a very summary way, this grave case, affecting the character, perhaps the seat in this body, of one of our members. Sir, in considering that question we sit as judges. We are to act upon full knowledge of the facts, and we are to administer the law under our consciences and under our oaths. If time is to be taken for a proper examination of these four hundred and odd pages of printed testimony, if it is to be carefully weighed, how long will this session be prolonged, and are the Senate prepared to give that time until every member shall say, "I am satisfied that I now, justly to the party charged and justly to the Senate, can decide upon the questions of law and fact?" If this case is to be decided hastily, and without that opportunity, I shall ask the Senate to excuse me from voting at all on the subject, for I desire to do justice, to stand as much between the party charged and an unjust attack as I desire to do my duty should the conviction of my mind lead me to the belief that the minority of the committee have been right in the view they have taken.

I wish, therefore, the Senate to understand that I desire to act as a judge and to have judicial knowledge of that which I attempt to decide. If this case, after the extraordinary pressure upon our time and upon our health for the last few months, is to be called up and summarily decided, I shall not vote upon it. I would never do injustice to the sitting member; and yet at the same time I would be unwilling to make a declaration in his favor that I did not think was sustained by the facts. From me he shall have even-handed justice, and if I cannot obtain the opportunity to give me the information, that I may so act in my capacity as a judge between him and the Senate, I cannot act at all. And yet I say if the facts and the deductions of the majority are justified by the evidence, he is entitled to the vote of every man to sustain him, and mine he shall have if I can find those facts and find myself justified by the testimony taken by the committee.

But, Mr. President, while I am desirous, and it is an absolute and sincere profession, that any man in this country charged shall have a speedy trial and a speedy opportunity to be exonerated of that which touches his personal character, while my respect for a man increases because of his palpable desire that such opportunity shall be had as soon as possible, the condition of the Senate makes it very doubtful whether you can now give to the case of the Senator from Arkansas that degree of intelligent attention which will make the vote of the Senate decisive of anything.

The judgment, to be of value, must be the result of careful, conscientious examination. If it is made without that, it is valueless to him, it is valueless against him. The question is practically now, can such a judgment be reached; have the Senate the time and the opportunity to reach it? I am of opinion that we have not the proper time. I do not say that if the Senate elect to take this up, I shall abandon the attempt to keep up with the facts; but I do say, in advance, that unless there is the opportunity to understand these facts fully given, I shall not vote at all upon the subject.

Mr. FERRY, of Connecticut. Mr. President, I have read the testimony in this case, and, from the knowledge of the facts derived from that reading, I am convinced that even-handed justice will be reached by taking up the case and disposing of it now, rather than by postponing it till next winter. I have no doubt that in the time which the discussion will naturally take before reaching a vote, the testimony can be read by Senators who are anxious to do so, calmly and intelligently, and a just conclusion reached by their minds.

Mr. WRIGHT. Mr. President, I wish to say one thing to disabuse the mind of the Senator from Delaware. I infer from what he says that he expects that if this case shall be taken up, it will be pressed at once to a determination; that there will be a disposition on the part of the majority of the committee to press the matter at once upon the attention of the Senate and have a vote immediately. Now, I am sure there can be nothing further from my mind than this.

It will be remembered that we were all taken by surprise this morning by the sudden disposition of the Caldwell case. There was nothing left to me but to press the CLAYTON case upon the attention of the Senate, and get it before the Senate for action. Now, when that conclusion shall be reached, that we have the case before us, I am sure the Senators will not see, on my part, any disposition to press it unduly, or to press them to a vote before there is an opportunity to investigate it. I have no expectation that a vote will be taken to-day. Indeed, my desire simply is now to have it before the Senate. When the Senate shall declare, by a vote, that it will proceed with the consideration of this case, I still have no objection, if it is the wish of the Senate, that it shall go over until to-morrow, and, indeed, in view of my feelings at present, I should prefer that course. Nevertheless, I think it due to myself and to the Senate that the vote should be taken getting the case before the Senate, and, when it is before the Senate, there will be no disposition, I am sure, to press a vote against any Senator who shall insist that he is not prepared, after a fair opportunity, to vote upon the question.

Mr. SAULSBURY. I do not intend to oppose taking up this case. I have not had an opportunity to examine the testimony, so as to make up an intelligent judgment upon the merits of the case. I have no objection to the case being taken up, with the distinct understanding that those of us who have not had the opportunity and have not examined the evidence may have full opportunity to do so before we are required to vote upon the subject. I do not want to vote blindly; neither do I want to sit here in my seat and refuse to vote. I want to examine the testimony, every word of it, and I promise due diligence in the examination of the testimony if the case is taken up; but I shall insist that no vote shall be pressed upon the Senate until we have all had full and ample opportunity to examine the testimony and come to a conclusion for ourselves. I shall not feel satisfied to adopt the conclusion, either of the majority or the minority, without having an opportunity to examine the testimony for myself. I do not wish to delay the question; I do not wish to refuse to have the question heard; and I am willing to sit here until the middle of April, if it is necessary. I think we can afford to sit here until that time, as we are paid by the year, to dispose of the case, and I shall not want to see a vote pressed on the case until we have an opportunity to come to a conclusion for ourselves.

The VICE-PRESIDENT. The question is on the motion of the Senator from Iowa, to take up the resolution in regard to the Senator from Arkansas, [Mr. CLAYTON.]

Mr. HAMILTON, of Maryland. In this case I agreed to pair off with the Senator from Texas, [Mr. FLANAGAN,] if after the reading of the testimony I should differ with him upon the question. He was for Mr. CLAYTON, and I, not knowing what my judgment would be about it, agreed to pair with him upon those terms. Upon this question I should vote for a continuance but for being paired. I shall not vote at all under the circumstances.

The question being taken by yeas and nays, resulted—yeas 36, nays 14; as follows:

YEAS—Messrs. Alcorn, Allison, Ames, Bogy, Boreman, Boutwell, Buckingham, Chandler, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Goldthwaite, Hitchcock, Howe, Ingalls, Lewis, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Patterson, Pratt, Ramsey, Robertson, Sargent, Scott, Sherman, Spencer, Stewart, West, Windom, and Wright—36.

NAYS—Messrs. Bayard, Casserly, Davis, Fenton, Gordon, Hamilton of Texas, Kelly, McCreery, Merrimon, Norwood, Saulsbury, Stevenson, Stockton, and Thurman—14.

ABSENT—Messrs. Anthony, Brownlow, Cameron, Carpenter, Clayton, Conkling, Conover, Cooper, Dennis, Edmunds, Flanagan, Gilbert, Hamilton of Maryland, Hamlin, Johnston, Jones, Ransom, Schurz, Sprague, Sumner, Tipton, and Wadleigh—22.

So the motion was agreed to.

The VICE-PRESIDENT. The resolution is before the Senate, and will be read.

POSTAL SERVICE AND RAILROAD COMPANIES.

Mr. WINDOM. With the consent of the Senator from Iowa I offer the following resolution, and ask that it be printed and laid on the table:

Resolved, That the Select Committee on Transportation Routes to the Sea-board be directed to inquire and report to the Senate at the next session as to the nature and extent of the obligations subsisting between the railroad companies and the postal service of the country; and whether any and what additional legislation is necessary to guard the postal service against interruption or injury by hostile action on the part of any or all of said railroad companies.

Mr. FERRY, of Connecticut. I would inquire if the reception and order to print that resolution will prevent my making a point of order upon it when it shall be called up for consideration. I shall certainly make the point of order upon the consideration of the resolution.

The VICE-PRESIDENT. The Chair thinks the present reception of the resolution would not interfere with that.

Mr. FERRY, of Connecticut. I do not object to its being printed. The resolution was ordered to lie upon the table and be printed.

EMANCIPATION IN PORTO RICO.

Mr. MORTON. I ask unanimous consent to offer the following resolutions, to be printed and laid on the table for the present:

Resolved, That the Senate of the United States have received with joy the intelligence that the republican government of Spain have abolished slavery in the island of Porto Rico, and raised the colored people of that island from the condition of slaves to the rights and privileges of citizens of the Spanish republic.

Resolved, That by this act the people of Spain have given new assurance to the world that in establishing republican institutions they are actuated by a genuine love of liberty and sincere regard for the natural rights of all men; and that it will be accepted as an omen of the power and perpetuity of the Spanish republic.

The resolutions were ordered to lie on the table and be printed.

CHARGES AGAINST SENATOR CLAYTON.

The Senate proceeded to the consideration of the following resolution, submitted by Mr. WRIGHT on the 11th instant:

Resolved, That the charges made and referred to the select committee for investigation, affecting the official character and conduct of Hon. POWELL CLAYTON, are not sustained, and that the committee be discharged from their further consideration.

Mr. WRIGHT. I wish to suggest that perhaps it would be proper that the concluding part of that resolution should be omitted. The truth is that the committee fell with the last session of Congress. It is a resolution offered by myself; and so much of it as relates to the discharge of the committee, perhaps, should be omitted, inasmuch as the committee were discharged anyhow by operation of law. There will be no objection to that.

The VICE-PRESIDENT. The resolution will be so modified, if there is no objection.

The resolution, as modified, was read, as follows:

Resolved, That the charges made and referred to a select committee of the Senate at the last Congress for investigation, affecting the official character and conduct of Hon. POWELL CLAYTON, are not sustained.

Mr. WRIGHT. I came to the Senate this morning expecting that we should proceed with the Caldwell case. As I have already stated, my anxiety to get this case before the Senate was only for the purpose of having the case before it, and with no intention of pressing it at this time.

It will be observed that the resolution which is before the Senate does not invoke any affirmative action; and my purpose has been, if a resolution shall be offered by any person invoking the action of the Senate, to hear from the person who might present such resolution, before saying anything to the Senate myself. I have said also that I am not at this time in a condition to proceed with the discussion, or at least to open the discussion, if that would be proper or would be expected at the hands of the majority of the committee. Upon consultation with the member of the committee who agrees with me on this subject, we have not deemed that at our hands it was necessary that we should open the discussion, or say anything in support of the resolution. As I am assured from what has been said here that the Senate is perhaps not prepared to proceed with the investigation to-day, unless the Senator from Georgia shall be disposed to proceed, I think it were better perhaps that we go into executive session and come here prepared to-morrow morning to proceed with the case.

Mr. SHERMAN. Let the report be read.

Mr. WRIGHT. It is suggested that the report be read, so as to get the facts before the Senate. I will then send the report to the desk.

Mr. STEWART. Let the report be read, and if no one wants to talk we can vote.

The VICE-PRESIDENT. The report will be read.

Mr. WRIGHT. Before the clerk shall commence reading the report, I desire to say that he will find some difficulty, perhaps, in view of the manner the report is printed, in distinguishing between the partial report and the report which was made by the majority of the committee and known as the final report.

The chief clerk read the following report, submitted by Mr. WRIGHT February 26, 1873:

The undersigned select committee, to whom was assigned the duty of inquiring into certain charges against Hon. POWELL CLAYTON, *a member of this body from the State of Arkansas, have had the same under consideration, and submit the following final report:*

On the 10th of June last they submitted what they denominated and which was accepted as a partial report, which they here incorporate to avoid repetition, and that the conclusion at which they have finally arrived may be the more readily understood:

"Mr. MORRILL, of Maine, on behalf of the chairman, Mr. WRIGHT, of Iowa, from the committee to inquire into certain allegations against Hon. POWELL CLAYTON, submitted the following report:

"*The special committee upon whom was imposed the duty of investigating certain charges against Hon.* POWELL CLAYTON, *a member of this body, beg leave to submit the following partial report:*

"On the 9th of January, 1872, Mr. SCOTT, from the joint select committee to inquire into the condition of the late insurrectionary States, &c., reported to the Senate that in the prosecution of their inquiries the testimony of certain witnesses (Edward Wheeler and William G. Whipple, of Arkansas) 'tended to impeach the official character and conduct of a member of this body,' but as they held that 'the subject-matter to which said testimony related did not come within the limits of the investigation they were directed to make,' they declined to hear other witnesses, and thereupon adopted the following resolution:

"*Resolved*, That the committee report the testimony taken before the committee affecting Senator CLAYTON and Mr. Edwards, a Representative from Arkansas, to the Senate and House of Representatives, with a recommendation that each House take such action as it may deem proper.

"The testimony of Wheeler and Whipple, referred to in the report and resolution, they also reported to the Senate for such action as might be deemed advisable, and on the same day the Senate adopted the following resolution:

"*Resolved*, That the report of the committee and the testimony accompanying be referred to a special committee of three, with power to send for persons and papers to investigate and report upon the charges therein contained against Hon. POWELL CLAYTON, a member of this body.

"Pursuant to the command of the resolution and the powers thereby conferred, the committee met, on the 18th day of January, and entered upon the discharge of their duties.

"James L. Hodges, esq., of Arkansas, appeared before them and asked leave to prosecute the charges, and was permitted to do so, and accordingly appeared by himself and counsel, S. M. Barnes, esq. Senator CLAYTON also asked to appear as well in person as by counsel, which request was granted, and he designated as such counsel Hon. Thomas M. Bowen and Hon. John McClure, of Arkansas.

"Witnesses were subpœnaed from time to time, upon the request of the parties and as the committee deemed necessary. It is proper to state that the parties each demanded the attendance of many other witnesses, which demand was declined, but not until the committee were thoroughly satisfied that they were possessed of the essential facts touching the matters submitted for their investigation. They held almost daily sessions from the date last named until and including the 14th day of May, when the testimony closed. During this time they examined thirty-eight witnesses, and have before them, in form of documents and the testimony of said witnesses, matter covering about five thousand manuscript pages.

"We are justified in saying that much of it was taken and received *de bene esse*. In other words, for the prosecution, it was claimed that they would be able to show certain combinations, conspiracies, and corrupt agreements which, if established, would make such testimony competent and relevant. For the defense it was insisted that this state of case could not be shown, and in no event could such testimony be admissible under the resolution of the Senate and the matter submitted for our investigation; but, in view of the possibility of its being so held, they submitted their testimony to meet the case supposed by the prosecution.

"As it was impossible to say in advance what, in this respect, the testimony might finally establish, and as witnesses were in many instances here from a great distance and anxious to leave, we deemed it better to take the testimony, leaving the question of its ultimate relevancy to be determined when deciding the whole case. This state of the record rendered it necessary to examine with care the testimony of very many of the witnesses, to enable us to determine just what was and was not competent in view of the issues made.

"This work, to some extent, remains unperformed. It could not well be otherwise when we refer to the time the testimony closed and the other and constant duties pressing upon each member of the committee. As the session is drawing to a close, however, and we hold it but the plainest justice to a member of this body that it should at least be known what was the general result of our investigation, we have deemed it best to submit the same to the Senate. We say this is due him, the Senate, and the country, and shall assume that this will be accepted as true by all without entering into argument in support of a proposition so plain. The charges affect the standing and influence of one who has the equal dignity and responsibility of any other member of this body before the country and his constituency. If not sustained, it is eminently proper that he should be relieved. If sustained, then the Senate owes it to itself, its own dignity, its own purity, its own self-respect, that he should be removed, and the people of Arkansas have upon this floor one who may be their fit, proper, and chosen representative.

"Thus impressed and influenced, though unable, for reasons above stated, to arrange the testimony and report back such parts as they hold to be proper and relevant, and yet able to reach a conclusion, to them satisfactory, from their recollection of the evidence at the time it was being submitted, and their subsequent examination—we say, thus impressed, we have deemed it our duty to submit this partial report, reserving the right, at a time when the pressure of other duties shall not be so great, to submit with the testimony a further and final report.

"If it should be asked, Why not now submit all the testimony? we answer, First, because we know that much of it can have no possible bearing upon the question before us and the Senate, and its publication would involve a large and most unnecessary expense. Secondly, no useful end is to be gained by giving to the country a mass of testimony which only serves to show the bitterness of personal feeling existing between those prosecuting and their friends on one side, and the party accused and his friends on the other, which had its birth in the zeal of opposing political factions, to blacken and disparage the party integrity of those opposing them; which would only tend to still further disturb and distract the citizens of the State where they reside, and render more difficult the restoration of that peace and quiet so essential in all the States, and especially those so lately in insurrection. And this course is the more justified from a conviction, which we cannot now escape, that not a little of it was offered by the parties more with a view of making political capital against each other than in the hope or belief that it could have any influence upon the committee or throw light upon the subject-matter under investigation. We do not propose to be the instrument of a purpose so foreign, and we most respectfully submit that the Senate should not and will not lend itself to the publication in advance of a mass of testimony which in no manner tends to elucidate the real question before them, and which, if published, while it might gratify the malevolence of parties, could not possibly serve any useful end. It would be worse than waste paper.

"We therefore submit this report, at present withholding the testimony, recommending that action shall be delayed until we are able to more carefully arrange the immense record before us, and present it in a form which will enable the Senate to act with greater safety and intelligence.

"And now, having stated something of the work performed and the grounds which seem to us to justify the course pursued, we come to the consideration of those matters which were submitted for our investigation and a statement of the conclusion reached. In doing this it seems to be eminently proper, and, indeed, logically necessary, to ascertain and settle the nature and scope of the charges made and the powers of the committee under the order of reference.

"It will be seen that the report of the committee, which led to the present inquiry, states that the testimony submitted to them tended to impeach the official character and conduct of Senator CLAYTON. The resolution under which this committee is acting directs that the *report of* Mr. SCOTT *and the accompanying testimony* be referred, with power to send for persons and papers, to investigate *the charges therein contained*. We therefore necessarily go to the report thus referred, in the first instance to see what the charges are. But here we find nothing, for it is only stated generally that the testimony before them tended to impeach the *official character and conduct* of Senator CLAYTON. All that is of particular value thus far or in this language is, that the charge related to his *official* character and conduct. This of course must mean his official character and conduct *as a Senator*. With his official acts in other positions we have nothing to do, except as they may bear upon his office as Senator. To illustrate; he was governor of the State of Arkansas up to the time of his election as a member of this body. Now, whether his conduct and character in the gubernatorial office were such as to merit condemnation or praise, whether his administration of that office was honest or dishonest, wise or unwise, corrupt or otherwise, is a matter of no moment whatever, except as it may bear, in some legitimate manner, upon his conduct and character in his present position.

"Assuming for the present that our inquiries are limited to matters subsequent to his election, not, of course, rejecting those antecedents, so far as they reflect light upon subsequent acts, we are led to inquire what these are; and here we are remitted to the testimony of Wheeler and Whipple, for as there are no specific charges in the report itself, the testimony of these witnesses must alone stand in

the place of charges, the information, or indictment. Than this few things could be more indefinite or unsatisfactory. Without, by any means, conceding that any one should be held to answer charges thus made, so entirely wanting in everything approximating conciseness, clearness, or definiteness, we advert very briefly to some matters to which these witnesses most vaguely refer.

"First. It is suggested rather than strongly claimed that Senator CLAYTON was indicted by the grand jury of the United States circuit court for Arkansas, in April, 1871, for a violation of the twenty-second section of the enforcement act, (16 Stat. at Large, p. 145,) in granting a certificate of election, as governor, to General John Edwards, showing his election as a member of the House of Representatives in the Congress of the United States. The facts in connection with the issuing of this certificate will come under review in a subsequent part of this report, and we content ourselves at present with stating conclusions. And, first, the mere finding of the indictment would not of course so tend to impeach his official character and conduct, nor of course actually impeach it, as to demand action at the hands of the Senate. In the next place, if such finding possessed any significance, it would lose it all, where, as the testimony and the record here conclusively show, he was discharged therefrom by the judgment of the court at a subsequent term, (in October last,) under a demurrer to the indictment; not for any formal or technical defect, but upon the broad and substantive ground, to state it briefly, that the governor of a State is not an 'officer of election,' within the meaning of said election. This being so, by the judgment of the court he stood acquitted and discharged of course of all legal wrong. Then, if an officer, and the act was not fraudulent—that is, if he did not 'fraudulently make any false certificate'—there was no criminal liability, and if there was no corrupt conduct or fraudulent act in this connection, it is submitted that all inquiry in this direction may be dismissed. But more of this hereafter.

"In the second place it is suggested, again most vaguely—it cannot be conceded to have the dignity of a specific charge—that he, by himself or friends, tampered with the grand jury finding the indictment. Senator CLAYTON was in Washington City at the time the indictment was found, and there is scarcely a scintilla of evidence that he had knowledge that such a thing was contemplated or threatened. There is certainly no pretense of proof that he, by himself, or others acting for him, or at his instance or request, made even the least attempt to influence the action of the grand jury presenting the indictment, and least of all would it be claimed that anything was done by himself, or any one ever so remotely connected with him, which could by possibility be regarded as either criminally or morally wrong. And when we add that it is worse than the sheerest pretense that anything there attempted was in the least connected with his official conduct or character, we dismiss this part of the case.

"In the next place it is attempted to be shown that he improperly used his official position and influence as Senator to procure the removal of the witness Whipple from his office of district attorney, and General Catterson as marshal of the district of Arkansas. Whipple was district attorney and Catterson marshal at the time of finding the indictment. Both these gentlemen had been more or less active in their opposition to Senator CLAYTON's election to the Senate, through a contest almost unprecedented in its bitterness, whether viewed politically or personally. This was particularly true of Colonel Whipple. Senator CLAYTON may have been influenced, and doubtless was, not a little, in his efforts to procure their removal by their known opposition to him, as also by what he esteemed their unwarranted course in connection with the procurement of the indictment.

"It is not material to inquire whether there was anything in their conduct touching the latter matter to warrant his feelings and judgment, since he did no more than what other Senators are constantly in the habit of doing, touching the displacement of their enemies and the appointment of their friends. That the action of these parties, in connection with the indictment, was not the moving cause of his opposition, is clear enough, from the fact that he was seeking their removal before it was presented, as abundantly appears from their own testimony, wherein the alleged charge is found. In his conduct in this respect we fail to see any official misconduct, and especially so as it appears that since these removals the executive and department of justice have been successively, and more than once, appealed to by Colonel Whipple and General Catterson and their friends for re-instatement, and have been as frequently unsuccessful. Whether it is right or wrong for one in his position to use his official influence to procure removals is not for us to say. We only state and find that he exercised the right or privilege taken by, if not conceded to, others; an act which, if regarded as tending to 'impeach his official character and conduct,' would be equally so, probably, of every member of this body.

"Turning now from these matters arising subsequent to the election of Senator CLAYTON, we come to the case made touching his election, and here a preliminary inquiry arises: What have we to do with that election? Recurring to the resolution raising the committee, and which must be accepted as the charter of our power, we remark again that the report of Mr. SCOTT says that the testimony (and to which we must go to ascertain the charges, for there is nothing else) 'tends to impeach his official conduct and character.' Then, the resolution under which we are acting directs us to investigate the charges therein contained against Senator CLAYTON as a member of this body. Now, giving to the record a fair and just construction, have we anything to do with his election or the circumstances connected therewith? Upon this subject at least one member of the committee entertains the gravest doubts. The argument suggesting and supporting these doubts is as follows:

"In respect to the subject-matter referred to a committee, the rule is that they are not at liberty to entertain any proposition or go into any inquiry which does not come within the direct purpose for which the committee was appointed, as expressly or clearly implied in the authority conferred upon it, or which is not grounded upon some paper which is referred to the consideration of the committee. (Cushing's Law and Practice of Legislative Assemblies, ss. 1906.) This is upon the clear principle that a committee, being a creature of the body giving it life, is bound by, and is not at liberty to depart from, the order of reference. If any other rule were adopted, and it could depart from the order of reference, all business would, of course, be at an end, and endless confusion and contests between the body and the committee would ensue, (ss. 1907.)

"Now, it is suggested that, inasmuch as the report of the joint select committee, by Mr. SCOTT, referred alone to testimony tending to impeach the official character and conduct of Senator CLAYTON, the order of reference took in and contemplated such matters alone, and that the resolution raising this committee must be construed in the light of that report, and the subject-matter of inquiry be thus limited; and hence, when it is directed that the committee shall investigate the charges contained in said report, (including the testimony of Wheeler and Whipple,) it was intended to cover and include only those bearing upon such official conduct and character; for in that report there is nothing said about fraud or illegality in his election. But here it is, perhaps, answered that the proposed inquiry is grounded upon the paper (the testimony aforesaid) referred for our consideration. To this the reply is, true, but that paper must properly be construed as referring to such charges only as relate to or are connected with the principal inquiry; that is, official conduct or character. If not, why did the committee omit all reference to his election and the circumstances attending the same? The answer is, they had power and authority themselves to inquire into all matters bearing upon the state of affairs in the State, including frauds in elections, but not to such as bore upon the conduct of a member of the Senate or House after his election.

"Conceding, however, that this view limits the inquiry unjustly, let us look at the charges themselves. And here the already great length of this report admonishes us to brevity, and especially so as, when the testimony shall be finally summed up, it will necessarily demand a large portion of our attention. This part of the case suggests two inquiries: first, as to matters occurring antecedent to the assembling of the general assembly which elected Senator CLAYTON; secondly, those immediately leading to and connected therewith.

"Upon the first we are not disposed to enter. Our warrant for this is found in the principle obtaining and the nature of the testimony, or rather the absence of it. 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? Or suppose, as in the case before us, that the two houses of the Arkansas legislature, being the judges of the election, qualification, and return of their own members, have heard and investigated all alleged frauds and given the members their seats, can this committee or the Senate go back of that action, and in this inquiry, whether treating it as a proceeding direct or collateral, say that such members were improperly elected, returned by the use of corrupt means, even if originating with Senator CLAYTON himself, and that therefore he was not legally elected? The statement of such propositions furnishes its own answer. Neither legally nor logically could it be claimed that this committee would be called upon to go into a field so boundless, and which, when explored, would throw no legitimate light upon the controversy before us. And, therefore, we now incline to the opinion that all the testimony bearing upon the transactions before the assembling of the legislature, except as it is connected with and gives color to the election of Senator, except as it tends to show that it was brought about by fraudulent and corrupt means then used, may be dismissed. A large portion of the testimony is of this character. As we read the record, Senator CLAYTON received a clear majority in each branch of the general assembly, outside of those claimed to be thus fraudulently elected, and some of those whose elections are thus assailed voted against him, and this alone is all that need be stated upon this subject. The efforts in this direction have been most extraordinary, the statements of numberless persons having been introduced upon the theory that, as they were friends of Senator CLAYTON, friendly to his election and exerting themselves in his behalf, so there was a so-called conspiracy, and what all and each of said conspirators said would bind all. To admit that a conspiracy has been shown in any legal sense would be to set at defiance all the rules of law governing in such cases, and make every candidate, in a bitter and protracted contest of this character, responsible for all that was said and done by all his friends, the foolish and the discreet, the good and the bad, the honest and the dishonest, alike. While we would do nothing to encourage fraud or to shield from responsibility any one seeking official position, and especially a position so high as a seat in this body, we would not enter a field of mere speculation and adopt a rule which is the most doubtful in theory and finds no support in practice or precedent.

"It only remains to inquire into the alleged frauds connected with the election. And here the principal, if not only one, is that Senator (then Governor) CLAYTON issued to Hon. John Edwards a certificate of election to the House of Representatives of the present Congress, upon a corrupt bargain or agreement that he was to receive in return for the same the support of the democratic members of the general assembly. If this charge is not maintained, we hazard but very little in saying that there is nothing left of this case. And a very brief statement will show how utterly groundless it is in fact.

"With the question whether Edwards was or was not in fact elected we have nothing to do. He was accepted and recognized as the democratic candidate for Congress, his competitor being Hon. Thomas Boles. Governor CLAYTON supported Boles in that election by his voice and influence. At one time there were two republican candidates in the district for Congress, (Judge Boles and Judge Searles.) Through the influence of Governor CLAYTON and his friends, Judge Searles was induced to withdraw, leaving the field to Judge Boles, and this, too, notwithstanding Judge Searles was recognized as the more pronounced friend of the governor. That the object was to promote harmony and secure ultimate political success seems to be fairly well established.

"In Pulaski County especially the republican party was divided, one side being the warm and devoted friends of Governor CLAYTON, the other his bitter enemies. To some extent this state of things obtained in other parts of the State. At the election in this county in 1870, and particularly in the city of Little Rock, it was alleged that certain frauds intervened whereby illegal votes were cast for Boles, or if the votes were not illegal they were received and counted by judges selected without authority of law, and that their action was both illegal and irregular. Into all these matters we do not propose to enter, as our purpose in this connection is to state some facts generally, and then leave this part of the case.

"By the statute of Arkansas it is the duty of the secretary of state, in the presence of the governor, within thirty days after the time allowed for making the returns of the election, if the returns are all received, to cast up and arrange the votes from the several counties for member of Congress; and of the governor, immediately thereafter, to issue his proclamation declaring the person having the highest number of votes to be duly elected, and he is also required to grant a certificate under the seal of the State to the person so elected.

"From the returns made to the office of the secretary of state there was no question as to the result. Boles was clearly elected. The duty of the governor under the law is ministerial, not judicial. By strict law he has no power to reject votes, nor to direct the counting of those returned by other than the proper officers. In this case, however, it was brought to his attention that frauds had been perpetrated, or, at least, irregularities had intervened, which should be examined into. In our opinion, under the law he had no power to enter upon such an inquiry; nor do we understand that he did.

"A case was pending in the supreme court of the State involving the legality of the returns made from certain wards in the city of Little Rock and some precincts in the county, the determination of which was regarded important in settling whether Boles or Edwards was elected to Congress. The governor determined to wait, and did wait, that decision. The same question was brought to the attention of the legislature and referred to a committee, and he declared his purpose to await that action. In the wards referred to two polls were opened, one by judges selected by the by-standers, the other by the judges regularly appointed or chosen. At the first the votes were almost unanimously for Boles, at the other very largely for Edwards. Counting the first and excluding the second, Boles was undoubtedly elected; if the latter were counted and the first excluded, and excluding votes for Boles in some other places, which it was claimed were fraudulent, then it was insisted that Edwards was elected.

"By the decision of the supreme court and the report of the committee in the legislature, the elections held by the regular judges were determined to be the only legal ones, and following these decisions in part the governor gave the certificate to Edwards. In this he may have been mistaken. But it would certainly be most extraordinary to say that the executive of a State may not follow the decision of its highest judicial tribunal—that he may not act upon the proceedings of the legislative branch.

"As to the returns and the election, there was intense excitement. Factions were arrayed against each other, and each charging frauds without stint upon the other. If Governor CLAYTON mistook his duty, it was, at least, quite as much on the side of law and order as to have acted without investigation and in disregard of the action of the other co-ordinate departments of the State government. If it is said—this is the effort from the testimony—that the judges and legislature were

actuated by base, unworthy, and corrupt motives; that they were all moved by him and in his interest, we can only answer that a charge so serious is neither probable nor reasonable. It would certainly require the very strongest proof to justify us in believing a charge so sweeping, affecting, as it would, almost the legality and validity of the entire acts of its officers, legislative, executive, and judicial.

"But this is not all. General Edwards was given the certificate on the 20th of February, 1871. Governor CLAYTON was not elected until the 15th of March. True, he was elected at what is known as his first election, on the 11th of January, 1871. But this election he declined. He holds his place now under the second election. At this but one democrat (and he of doubtful political status) in the house voted for him, and he swears most positively that his vote was not influenced by the Edwards matter in the least. In the senate, if any voted for him, he had, without counting them, a clear majority of all, and as to those voting for him, if any, there is no evidence that they cared anything more for Edwards than Boles.

"It appears, then—

"First. That CLAYTON was the political friend of Boles and favored his election.

"Secondly. That in issuing the certificate he discharged what seemed to be, and what he had good reason to believe to be, his duty, in following the decision of the supreme court and the action of the legislature.

"Thirdly. Nothing approximating a corrupt motive in exercising the power to inquire into the legality of the returns is shown.

"Fourthly. He gave Edwards the certificate before he was elected the second time, and after he had announced, at least, a contingent purpose of remaining in the office of governor.

"Fifthly. There was no necessity for a bargain with the democrats in the legislature, for they were but too willing; being in the minority and without hope of being able to elect one of their own political friends, in view of what they considered to be their wrongs and the wrongs of their friends at the hands of the governor, we say they were but too willing to have him elected to the Senate, and thus secure his resignation as governor, trusting and believing that a change could not possibly be worse for them.

"Sixthly. 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.

"Something is said in the testimony of Whipple about railroad subsidies and bonds, and the action of Governor CLAYTON in that connection. This relates rather to his action as governor, with which we have nothing to do, than to the senatorial election. So it is attempted to show or start the theory that he procured the resignation of White as secretary of state, and appointed Johnson, the lieutenant-governor, to the place made vacant by White; also the election of Hadley as president of the senate—all in pursuance of a corrupt arrangement by which he was to be elected to the Senate. It must be admitted that the stroke was a bold and most successful one. Governor Clayton had said to his friends, from the stump and elsewhere, that, while he was a candidate for the Senate and was desirous of success, he would never take an election and leave the State administration in the hands of Lieutenant Governor Johnson. He was elected Senator in January, and an effort was then being made in the courts to remove the lieutenant-governor. This was unsuccessful, and Governor CLAYTON declined the office of Senator. At the first election several of the democratic members voted for him for reasons already stated. At this time and for weeks all parties were excited; the members were leaving the legislature to break a quorum; crimination and recrimination were the order of the day, and each party was struggling for supremacy. Everything was in disorder and confusion. The result no man could tell. At times they were apparently on the eve of an outbreak, if not of revolution. Then it was that White resigned his office of secretary of state. He was the friend of Governor CLAYTON, but apparently not more than of the other side—wanted to and was willing to serve him. Johnson was willing to take that place and vacate that of lieutenant governor, and he was accordingly appointed. Hadley was elected presiding officer of the senate; CLAYTON was made Senator and Hadley became governor.

"If in all these changes there was nothing corrupt upon the part of Governor CLAYTON, then they are as harmless, so far as this investigation is concerned, as if they had occurred years before, or in another State, and without his suggestion or knowledge. The only testimony which tends to show anything of the kind is that of White, who swears that months afterward he received some money through Senator CLAYTON, but he explains what it was for, and states positively that it was not in consideration of his vacating the office of secretary of state.

"But, without more, we here leave the case. In our opinion the charges, if such they can be called, are not sustained. The testimony fails to impeach the Senator's official conduct or character. All which we shall take occasion to show by a fuller reference to the testimony and record, when other duties will permit, and it may be the pleasure of the Senate to receive the same.

"Respectfully submitted.

"GEO. G. WRIGHT.

"I concur in the foregoing, as touching the testimony which 'tends to impeach the official character and conduct of a member of the United States Senate,' reserving a recurrence to the mass of testimony when opportunity offers for a full report.

"LOT M. MORRILL."

Referring to the testimony of Wheeler and Whipple, they extract the following as constituting the charges (if such they can be called) upon which this investigation was instituted:

CERTIFICATE TO EDWARDS.

Extract from the testimony of Edward Wheeler.

"Examined by Mr. BLAIR:

"Question. What was the reason assigned for CLAYTON acting as he did?

"Answer. It was generally regarded that he expected, by supporting Edwards, to gain some democratic votes in the legislature for United States Senator.

"Question. That it was for his own interest, and to secure his own election as Senator?

"Answer. It was so understood; yes, sir.

"Question. That is the explanation of it?

"Answer. That is, the object of the frauds in Hot Springs County was to put Clayton men in the legislature; the object of the frauds in Pulaski County was to put democrats in the legislature, for the Clayton faction had a very small vote in that county, and the democrats were given seats in the legislature. It was claimed, and it has been sworn to by some prominent democrats, that General Edwards was given the certificate upon a trade made by Senator CLAYTON, that certain parties would not contest certain seats in the legislature. That was the testimony developed in the investigation made in the Boles and Edwards contested election case."

Extract from the testimony of William G. Whipple.

"Examined by Mr. BLAIR:

"Question. What was the motive of the governor in giving this certificate to a man who was not elected?

"Answer. Of course it is very hard to tell what his motive was. It is generally understood that it was done in pursuance of a trade.

"Question. Of a trade?

"Answer. Yes, sir; that is the general understanding.

"Question. What was the trade?

"Answer. That the democratic members of the legislature should support him for the Senate of the United States.

"Question. Did they do it?

"Answer. Yes, sir; they did.

"Question. And the governor carried out his part of the bargain?

"Answer. Yes, sir; it seems very plain that he did that.

"Examined by the CHAIRMAN, (Mr. SCOTT:)

"Question. There was a majority of republicans in the legislature that elected Governor CLAYTON to the United States Senate?

"Answer. Yes, sir.

"Question. And when these two divisions came into conflict in regard to electing a United States Senator, you say the CLAYTON men entered into a corrupt combination with the democrats, by which the democrats agreed to vote for Governor CLAYTON for the Senate of the United States, in consideration of Governor CLAYTON giving a certificate of election to the democratic candidate for Congress in the third congressional district of the State?

"Answer. That is believed by many persons.

"Question. You have already stated that here as the general belief in the State?

"Answer. Yes, sir.

"Question. Is that your belief?

"Answer. Well, it is my belief that CLAYTON made some trade with the democrats. Precisely what were the terms of the trade I would not undertake to say.

"Question. You have already put it in that form in your testimony. I want to understand if that is your belief?

"Answer. I do not think I put it in exactly that form.

"Question. You stated that to be the general belief.

"Answer. I think it is the general belief.

"Question. Do you include yourself among those who entertain that belief?

"Answer. Well, I have reason to believe it, and I know of no reason why it is not true."

ELECTION TO THE SENATE.

Extract from the testimony of William G. Whipple.

"Examined by Mr. BLAIR:

"Question. What condition of affairs in Pulaski County was disclosed by the investigation, so far as it went?

"Answer. There were shown many instances of fraudulent registration; parties who were not voters were awarded certificates by the registrars; there were many cases of parties registered in the wrong ward of the city or the wrong precinct in the county. For instance, parties would present themselves in the Second ward to be registered, and would be registered in Big Rock Township. There were many instances of that kind, where parties were registered in the wrong places.

"Question. In whose interest were these frauds perpetrated?

"Answer. In the interest of what was known as the CLAYTON party.

"Question. For the purpose of electing men who would support him for Senator of the United States?

"Answer. Yes, sir; and in many cases to defeat the republican candidates.

"Question. Who would not vote for him for Senator?

"Answer. Who would not pledge themselves to support him for the United States Senate. That was the case in Pulaski County, where the CLAYTON vote was understood to have been thrown to secure the election of democratic candidates for the legislature as against the republican candidates, because the former were expected to support CLAYTON and the latter were not.

"Question. Did they support him?

"Answer. They did support him; yes, sir; they voted for him for United States Senator.

"Question. As I understand, Governor CLAYTON was elected Senator, and declined to accept?

"Answer. Yes, sir.

"Question. What was his reason for declining to accept when first elected?

"Answer. What reason did he assign?

"Question. Yes.

"Answer. The reason he assigned was that the interests of the republican party in Arkansas required that he should remain governor. But that was not the general understanding at all.

"Question. What was the general understanding on the subject?

"Answer. The general understanding was, that he declined the election to the United States Senate because, if he went to the Senate at that time, he could not leave the government of the State in the hands of his friends.

"Question. Who would have been governor if he had not declined to go to the Senate at that time?

"Answer. The lieutenant-governor, James M. Johnson.

"Question. Was he a friend of CLAYTON?

"Answer. He was not a friend of CLAYTON at that time; he was a republican.

"Question. How did CLAYTON subsequently arrange that, when elected the second time?

"Answer. On the eve of the second election, I think the day before, Lieutenant-Governor Johnson resigned his office as lieutenant-governor, and was appointed secretary of state by Governor CLAYTON, Secretary White, the previous secretary, having resigned. Thereupon, Senator Hadley was elected president *pro tempore* of the senate, and became acting governor of the State upon the election of Governor CLAYTON to the United States Senate.

"Question. He is understood to be a friend of CLAYTON?

"Answer. Governor Hadley?

"Question. Yes.

"Answer. Yes, sir; he is understood to be a CLAYTON man, out and out.

INDICTMENT.

Extract from the testimony of Edward Wheeler.

"By Mr. BLAIR:

"Question. Were you a member of the grand jury of the United States court last spring?

"Answer. Yes, sir; and its foreman.

"Question. When was the session of that court held?

"Answer. It commenced on the 10th of April last.

"Question. Were any indictments found by that grand jury under the act of Congress known as the 'enforcement act?'

"Answer. Yes, sir; there were several found.

"Question. Against whom? Who were indicted?

"Answer. There were six or seven different parties indicted in Hot Springs County; judges, and clerks of elections, and registrars; also some six or seven in Clark County for frauds in elections; and Governor CLAYTON, of Pulaski County, was indicted.

"Question. What was the offense for which Governor CLAYTON was indicted, and what was the evidence upon which he was indicted?

"Answer. The evidence was entirely documentary, being the returns in the office of the secretary of state. The witnesses were the ex-secretary of state and the deputy secretary of state. They brought the returns, or a tabular statement of them sworn to, and laid it before the grand jury.

"Question. Those returns were of what election, and in what counties?

"Answer. In the election for members of the Forty-second Congress, and in the counties composing the third congressional district of the State of Arkansas. I do not now remember all of the counties by name. It is the district in which the

county of Pulaski is embraced; our county is one of the counties of the third congressional district.

"Question. What was the action of Governor CLAYTON that led to his indictment?

"Answer. The first that I, or any member of the grand jury, knew of the matter was the bringing of the case to our attention by the district attorney; he came to me with a list of witnesses, three in number, which he wished to have subpœnaed. He said the case had been called to his notice, and he wanted it brought before the grand jury for examination. I subpœnaed the three witnesses: the ex-secretary of state, the deputy secretary of state, and General Edwards, the person to whom the certificate of election for Congress had been given by Governor CLAYTON. It was claimed that Governor CLAYTON had violated certain sections of the enforcement act in giving the certificate of election to General Edwards, when the return, as exhibited to us by the secretary of state, showed that Judge Boles had been elected. General Edwards presented a copy of his certificate of election, and of the proclamation of the governor, stating that, according to the returns on file in the office of the secretary of state, General Edwards had been elected. But the returns, as exhibited to us, showed that Judge Boles was elected by some 2,130 votes, I think it was, on the full vote, counting the votes at both polls. There were allegations of fraud on both sides. But giving the governor the benefit of every doubt, the least majority for Judge Boles, that we could figure out, was some eight or nine hundred; I forget the exact figures. That was according to the returns shown to us; and upon that showing the indictment was found.

"Question. Under what part of the act was the indictment found?

"Answer. I think it was the twenty-second section of the enforcement act. And our State laws require the canvass of the returns to be made by the governor, assisted by the secretary of state; the governor is made the canvassing officer. The law was explained to us by the district attorney, and it was claimed that the governor had violated the twenty-second section, I think it was, of the enforcement act—the one providing that if any officer shall issue a fraudulent certificate of election to any party, he shall be amenable, &c.

Again:

"Question. And the grand jury found that that was a fraudulent certificate?

"Answer. They found that this proclamation of the governor, issuing the certificate of election to Edwards, was not in accordance with the returns in the office of the secretary of state as laid before us.

"By the CHAIRMAN:

"Question. What was the specific offense with which the governor was charged?

"Answer. I think the district attorney, who is in this city, has a copy of the indictment, and he can probably explain these matters much better than I can."

Again:

"Question. The other case of indictment you have referred to is one against Governor Clayton, for giving the certificate you have read?

"Answer. For furnishing a certificate of election to John Edwards.

"Question. The State law, you say, makes the governor the canvasser of the returns?

"Answer. It makes it the duty of the governor, within thirty days after the election, to make a canvass of the votes, make proclamation, and issue certificates of election.

"Question. In the discharge of that duty is the secretary of state associated with him in any capacity which would invest him with authority to decide, or does the governor merely consult him?

"Answer. His duty is merely clerical; the governor is the canvassing officer proper. I think the law states that the canvass shall be made by the secretary of state in the presence of the governor, and the governor shall, by proclamation, announce the result.

"Question. It makes it the duty of the governor to award the certificate to the persons whom he judges to be elected?

"Answer. Yes, sir.

"Question. The responsibility of the decision is upon the governor?

"Answer. Entirely.

"Question. And it was because, upon the evidence presented, you believed that the governor had decided wrongfully——

"Answer. Yes, sir, according to the returns laid before us.

"Question. You found a true bill against him?

"Answer. Yes, sir.

"Question. And that case is now pending for trial in the United States court?

"Answer. Yes, sir."

Again:

"Question. You heard, of course, nothing but the evidence on the part of the Government; there was no defense?

"Answer. Of course there was no defense.

"Examined by Mr. POOL:

"Question. You sought for no facts as explanatory of the governor's action?

"Answer. No, sir; we knew of nothing; we could get at nothing but the returns.

"Question. Was any witness sworn before the grand jury other than the secretary of state, the——

"Answer. The ex-secretary of state. The present secretary of state was not then in the city. He had but recently entered upon the duties of his office, and his chief clerk was made deputy secretary of state, and he was before us in regard to the records.

"Question. In relation to the authenticity and correctness of the report?

"Answer. Yes, sir. And General Edwards was before us as to the correctness of a copy of the certificate which had been furnished us.

"Question. And you examined no witnesses outside?

"Answer. No, sir."

These witnesses testified more at length before the joint select committee, &c.; but the foregoing, it is believed, contains all that is necessary to show the precise charges made. They may be considered under three heads, to wit, certificate to Edwards, election to the Senate, and corrupt bargain.

Without discussing what would be the effect if any or all these charges were sustained, or the propriety or power of this body to consider the same, interesting and important though such a question might be in a proper case, we proceed at once to state our views of the case, as submitted to us, without reaching the inquiry indicated.

First, then, disregarding chronological order, we shall consider the matter of the indictment.

It appears that Senator CLAYTON was indicted for the violation of the twenty-second section of the enforcement act, in fraudulently giving the certificate of election to General Edwards, when, as is claimed, it should have been given to his competitor, Judge Boles. He was governor, and as such did give the certificate of election to General Edwards. The language of said section, so far as here material, is, that "*any officer of any election*, at which any Representative or Delegate in the Congress of the United States shall be voted for * * * * * who shall * * * *fraudulently make any false certificate* of the result of such election, in regard to such Representative or Delegate * * * shall be deemed guilty of a crime," &c. By the law of Arkansas it is provided that the secretary of state shall, in the presence of the governor, or, &c., cast up and arrange the votes of the several counties for persons voted for as members of Congress, and that the governor shall immediately thereafter issue his proclamation declaring the person having the highest number of votes to be duly elected, and that he shall grant him a certificate thereof under the seal of the State.

It seems that the secretary of state did thus cast up and arrange the votes in the election between Boles and Edwards. It also appears that, by the showing thus made, Boles, and not Edwards, had a majority of the votes, and was hence apparently entitled to the certificate.

This canvass of the votes took place within thirty days after the election, (the election being on the 8th of November, 1870,) and yet proclamation was not made nor was the certificate issued until in February, 1871.

Immediately after the election divers affidavits and some documentary evidence were presented to the governor, tending to show that in one of the counties (Pulaski) of said congressional district, frauds had intervened, which, being considered, would exclude a large number of votes cast for said Boles, and thus elect Edwards. About the same time proceedings were instituted in the supreme court involving the validity of said election, and the votes thus claimed to be fraudulent or irregular, and they were afterward, by the judgment of said court, determined to be fraudulent and illegal. To state the claim more particularly, it was maintained in said affidavit and evidence, as also in said proceedings in court, that the polls in some of the wards of the city of Little Rock, (Pulaski County,) and some precincts in this county, were taken possession of by force, violence, and contrary to law, judges of election installed without right, and other illegalities and irregularities practiced, and notwithstanding the proper and legal judges also held an election at the appointed places, the votes received at the illegal polls, and by the judges illegally chosen, were the votes received and canvassed. When the legislature met, the same questions were there made as to the members of the house and senate voted for in said localities at the same time, and claiming seats under such alleged illegal election, and it was determined adverse to their claims. After all this the governor issued the certificate to Edwards.

It is claimed by those prosecuting the charges here that, even excluding the so-called illegal returns, Boles was still elected. This we are not prepared to concede, for it seems very clear that there is one method of canvassing the returns, and not at all without warrant in the figures, if certain facts are admitted, which would elect Edwards. This will be seen in the following statement:

By the returns from all the counties, as canvassed by the secretary of state, it appears that Boles received 10,344 votes; Edwards received 8,211 votes. The governor excluded from the count the votes cast in the First and Third wards in the city of Little Rock, and in certain precincts or townships in the county of Pulaski; in all of which the election had been declared illegal by the legislature, of which excluded votes there had been cast for Boles 2,385, which, being deducted from the above number, counted for Boles, left him 7,959, and of which excluded votes there had been cast for Edwards 202, which, being deducted from the above number counted for him, left him 8,009; thus showing a majority for Edwards of 50 votes.

But conceding that Boles was actually elected and hence entitled to the certificate, it would by no means follow that this indictment was well founded, nor that Senator CLAYTON was consciously and willfully violating his duty or conniving at a violation of the law.

We concede that, in strict law, the functions of the governor, in relation to the proclamation of the result and granting the certificate, were ministerial and not judicial. His duty was simply to declare the result and deliver the certificate of his election to the party appearing to have a majority by the canvass thus made. He had no power strictly to go behind the canvass and inquire into the alleged frauds; for the returns were to all appearance legal and formal, and the evidence *aliunde* was for Congress, if the question was raised of their illegality, and not for the executive. But it by no means follows that he was guilty of the *fraudulent act* forbidden by the enforcement act, if he did go behind the returns.

In the first place, he was not amenable under the statute for this act, because, in our opinion, he was not an "officer of any election" within the meaning of the statute. This was expressly so held by the circuit court of the United States for the district of Arkansas, his honor Judge Dillon presiding—a jurist of the clearest head, the most incorruptible integrity, and the finest legal attainments—when the question came before him in the indictments, and of its correctness we think there can be no reasonable doubt.

But if such officer, the governor might as well in the utmost good faith, though without strict legal warrant, esteem it to be his duty to go behind such returns, if it was brought to his attention that fraud had intervened. A mere mistake as to his powers and duties—the exercise of judicial instead of ministerial powers in that connection—would by no means establish the required fraudulent intent. And when we remember the circumstances that such frauds were brought to his attention; that he supported Boles and not Edwards in that election; that he exerted himself to procure the declination of a third candidate (Judge Searles) who claimed to be a regular republican candidate, and whose candidacy endangered the election of Boles and rendered more probable that of Edwards; that Boles was recognized as the candidate of the party with which the governor has continually acted, and that Edwards was the candidate of the opposition; that at least some evidence was furnished to him of the alleged frauds; that the highest judicial tribunal of the State had declared against the validity of such returns; that the legislature had reached the same conclusion—we say, when all these things are remembered, we should be compelled to overturn all rules of evidence to say that, while he acted without warrant of law, he also acted fraudulently. A party may mistake the plainest legal duty, and yet have no criminal intent. And so we find in this case that the governor, if an officer of election, did not act fraudulently; hence was not guilty of the offense charged, and that thus far there is nothing to "impeach his official character or conduct as a member of this body."

Secondly. Alleged frauds leading to and connected with his election as Senator. We inquire, in the second place, into the charge of fraud leading to and connected with his election as Senator.

By reference to the testimony of Whipple (set out above) it will be seen that this is based upon alleged fraudulent registration, and some supposed bargain or arrangement by which Johnson resigned his office as lieutenant-governor, taking the place of White, who resigned as secretary of state, Hadley becoming governor and CLAYTON Senator. Than this, few things could be more vaguely stated, so far as the testimony of Whipple discloses, and yet this is all, it is believed, to be found therein approximating a charge in this connection. We have sought not to put too narrow a construction upon the language used, nor have we been in the least inclined to limit the investigation within limits even so narrow as the charges here contained under the most liberal construction. And hence, upon the theory of the prosecution, that Senator CLAYTON, with many others, his friends, had conspired, by the use of unlawful and corrupt means, to secure his election to the Senate, much testimony was received as to appointments to office, figuring in and preceding the conventions which nominated candidates for the legislature, the issuing of State bonds to railroad companies, certain influences which it was claimed were brought to bear on members of the legislature looking to his election, and other like matters, though nothing of the kind was charged or pretended in the testimony referred to us.

Of course a most material preliminary inquiry would be to what extent a party thus charged is to be affected by the acts, conduct, admissions, pledges, or promises of his friends, and hence the theory was that there was a conspiracy for the purpose indicated, and that what was said or done by one, in furtherance of the common purpose, was said or done by all, and that upon such hypothesis Governor CLAYTON was bound by all that was said or done by those engaged in the common design.

As stated in the "partial report," much of the testimony was received upon this theory of the prosecution, it being conceded that if the so-called conspiracy

was not established, it was in every respect incompetent. Since making that report we have carefully examined the testimony, and feel bound to hold that it falls far short of establishing the alleged combination, and hence that a large portion of the testimony should be excluded. We therefore report only such as we believe to be competent in this view of its scope and effect.

We shall be pardoned for stating the familiar proposition, that to constitute a conspiracy there must be a combination of two or more, by concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not in itself criminal or unlawful, by unlawful or criminal means. The conspiracy is the gist of the offense, and it is not necessary that any act should be done in pursuance of such unlawful agreement. To make the acts or declarations of another evidence against the party charged, the common design must first be established, and it will not do to connect the party charged, or bring him into the alleged conspiracy, by the admissions of others, without his knowledge, or without at least some recognition by him of their right to speak for or bind him.

In this case the purpose to be accomplished was neither criminal nor unlawful. The parties confederated, if at all, to accomplish a proper purpose by the use of unlawful or criminal means. And the whole of the case is, to put it in its strongest light against Senator CLAYTON, that he is to be bound by all that was said and done by his friends, and simply because they were such, whether at the State capital or elsewhere, in their efforts to secure his election. We do not stop to determine whether these acts were or were not illegal, whether they can or cannot in all respects be defended; we only hold that there is no particle of testimony warranting the conclusion that he ever combined with them to use unlawful or criminal means. And if he is to be held responsible for every indiscreet remark made by over-zealous friends, by every inducement, just or otherwise, held out by them to members of the legislature, for every appliance made use of by political and personal friends in the election of the members thereto, for the alleged combinations made in connection with proposed legislation, for all the alleged frauds in connection with registration in some parts of the State, near and remote alike we say, if this be the rule, few men would want friends in such a contest, or would be safe, however honest and upright their own conduct.

Many things were said and done by friends of Senator CLAYTON which we might not approve. Nor would we for a moment recognize any rule which would not exact or require the highest integrity and most honorable conduct in contests of this character. On the contrary, we would condemn, without reserve, every step, every word, every movement, which would seem to tend to the least fraud or corruption in an election so important. And yet, in view of the duty assiged us, we have nothing to do with mere matters of personal propriety, nor are we to determine whether all the plans, plots, and counter-plots of these opposing factions were in all respects to be justified by a code of ethics ever so desirable, and yet perhaps too seldom practiced. We have to do with the practical question, whether Senator CLAYTON was himself a party to such fraud and corruption as invalidate his election or impea h his official character.

In the whole mass of testimony there is but little to connect him with the various schemes, which it is alleged were corrupt in their inception and consummation, touching his election. Witnesses, it is true, did testify as to what others said, but that they spoke with the knowledge or concurrence of the party charged is left entirely without proof in many instances, and when the proof is supplied, it relates to matters so entirely immaterial or foreign that it is scarcely worthy a moment's attention. One witness (McConnell) undertakes, we know, to bring all the matters detailed by him, or many of them, home to the Senator. But we feel bound to say that, in many respects, his story is improbable, and he stands before us in such an attitute that we are constrained to discredit much that he says. While before us he was almost a wreck from long-continued dissipation, and we were compelled to put him under treatment for several days before his testimony could be completed. Add to this that several witnesses, having the means of knowledge, testify unhesitatingly that his reputation for truth and veracity is bad, and it seems to us that no tribunal would be justified in condemning any one upon the mere recollection of such a witness, months after the transactions occurred.

That which approximates nearest any improper action on the part of Senator CLAYTON, in this connection, relates to the steps taken to induce White to resign the office of secretary of state. It will be seen that CLAYTON was governor and Johnson lieutenant-governor. When the former was first elected to the Senate, Johnson was still lieutenant-governor, and would, if the governor accepted the senatorial position, succeed to the gubernatorial office. CLAYTON had pledged his friends, both before and after the meeting of the legislature, that he would not accept the position of Senator if Johnson were to be left as governor. At the time proceedings were pending in the supreme court of the State to oust Johnson, but the proceedings failed, and thereupon CLAYTON declined the senatorship. He still desired to be Senator, and yet determined to maintain his pledge to his friends. After much consultation among his friends and others, an arrangement was effected by which White resigned. Johnson was appointed by CLAYTON in his place as secretary of state, and then Hadley was made presiding officer of the senate, and, upon CLAYTON'S election again to the Senate, which followed soon after the above resignations and appointments, he became governor. Months afterward White received, as we find, through Senator CLAYTON, $5,000 in money and $25,000 in railroad bonds.

In the resignations and appointment themselves there was nothing wrong. There is no testimony that CLAYTON made use of improper means to bring them about. White, who is the only witness who seems to know much about it, says that he was a friend of Governor CLAYTON—was anxious for the harmony of the party—had frequently expressed his readiness to do anything to bring about quiet and peace; that he had for months, because of the condition of his family, expressed his intention to resign; that he had some business relations with the opposing faction, which was in such a situation that he knew he must suffer, if, by his resignation, Johnson could be got out of the way; that he did thus suffer, and that this $5,000 was paid to indemnify him for this loss. He expressly denies that this money or his resignation was any part of any corrupt or other improper agreement, or prior arrangement touching the senatorial election. To this view of the transaction, there is no direct opposing testimony. Who furnished the $5,000 and the bonds is not shown, except that they were deposited by Jackson E. Sickles to the credit of White, and the certificates of the deposit were sent to him by Senator CLAYTON. To conclude that it was paid in pursuance of a corrupt agreement, under and by which Governor CLAYTON secured his election, we should have to proceed upon presumption in the face of positive statement; and this, too, without any evidence that the vote of any member of the legislature was influenced by it, at least to his advantage; and when, also, it had been demonstrated, more than once, that he had at the time a clear majority of both houses of the legislature. What he wanted was not votes, for he had them, but he wanted such a condition of things as that he could take the office and keep faith with his friends.

By the retiring of White, Johnson would go to an office, more desirable in tenure and emolument than the one he held, which was apparently sufficient to induce the step. The votes of the members of the legislature did not seem to have been involved in the movement, and White was content to see the matter arranged, and to retire from a position that had become irksome to him. There was no necessary connection between the arrangement with White and the votes of members of the legislature. In itself there was nothing either criminal or corrupt. Certainly there is no law, State or national, punishing such an act. If not a part of a corrupt agreement, by which votes were obtained, or intended to be secured, we cannot see how the arrangement can be made to affect his official character. Then, too, it must not be forgotten that the conference touching White's resignation was not with CLAYTON, nor ostensibly on his account, but quite exclusively between Hadley and White, and that Hadley was deeply interested on his own account in bringing about White's resignation, for, in that event, the chances were, if indeed it was not certain, that he (Hadley) would become governor, and while the money passed through the hands of CLAYTON, in view of the other interests involved, we cannot say that others may not have contributed it; and, in a matter so important and so vitally affecting the character and official position of a member of this body, we should not indulge in mere presumptions nor upon impression condemn him. Without giving our approval to the course pursued, we find nothing in it of such a corrupt or criminal nature as to vitiate the election, or to warrant a disturbance of his present official position.

But one matter remains to be considered, and that relates to the alleged corrupt bargain, by which Senator (then Governor) CLAYTON issued the certificate of election to General Edwards, in consideration of receiving votes for his present position in the legislature of Arkansas.

This charge, though the one in which this prosecution mainly originated, has less apparent support than either of the others. Much that has been heretofore said is applicable here. The testimony, instead of showing the corrupt bargain, abundantly establishes that the Senator, (then governor,) though acting from an incorrect view of the law and his duty, nevertheless was carrying out what he had at least fair reasons to believe the will of the people, as expressed by their votes. He had evidence tending to show frauds. He had the solemn judgment of the highest court of his State, and the action of the law-making power touching the very point upon which he seemed to doubt; and he but followed such judgment and action. To say that he acted corruptly or fraudulently under such circumstances, we would have to conclude that not only he had the fraudulent purpose, but that the other co-ordinate departments of the State government were corrupt or governed by a like fraudulent intent. These charges, as applied to the court and the legislature at least, are too grave to be believed upon this record, or in any case where the evidence is not of the most conclusive and satisfactory character. This conclusion should not be based upon mere presumptions—upon the impression of witnesses—upon the understanding of parties influenced not a little by their political and personal feelings and animosities. And yet, divested of all extraneous matter, this is all there is of this claim.

But, going one step further, the charge certainly fails from the fact that there is not a particle of evidence that any member in either house of the legislature was induced to cast his vote in consideration of giving the certificate to Edwards. The claim is that he was to receive the votes of democratic members in return for his action; and yet he received but one vote that can by possibility be classed among the democrats, (and even his political status is left doubtful.) This person was a witness before us, and he says positively that he voted for CLAYTON, but that there was no understanding or agreement that, in consideration thereof, CLAYTON was to issue the certificate to Edwards. And there is no evidence nor a single circumstance in the whole record in the least in conflict with his statement. There is therefore absolutely nothing in the least supporting this charge.

We are therefore brought to the conclusion, after a careful examination of all the facts, that there is nothing disclosed touching the charges made, as found in the testimony of Wheeler and Whipple before the joint select committee, impeaching the official character and conduct of Senator CLAYTON. We accordingly recommend the adoption of the following resolution:

Resolved, That the charges made and referred to the select committee for investigation affecting the official character and conduct of Hon. POWELL CLAYTON are not sustained, and that the committee be discharged from their further consideration.

Respectfully submitted.

GEO. G. WRIGHT.
L. M. MORRILL.

Mr. WRIGHT. I understand it is the wish of the Senator from Georgia, who submits the minority report, [Mr. NORWOOD,] that it shall be read also; but I understand his preference is that it shall not be read until to-morrow, and he proposes, after the minority report shall be read, to present his views in support of it. In view of the understanding we had this morning, having no disposition to press this case to-day, if he shall ask that that course be taken, having conferred with him and understood that he so prefers, I move that the Senate now proceed to the consideration of executive business.

COMMITTEE SERVICE.

Mr. MORTON. I ask the Senator to withdraw that motion for a moment. There is one vacancy left on the Committee on Privileges and Elections, and it is important that it should be filled before the Senate adjourns, and I hope it will be. I ask that the Vice-President be authorized to make the appointment.

The VICE-PRESIDENT. If no objection be made that order will be made, and the Chair will take time to fill the vacancy.

Mr. THURMAN. Does the Senator from Iowa withdraw his motion for the motion of the Senator from Indiana?

Mr. WRIGHT. I understood that was disposed of.

Mr. THURMAN. Not yet.

Mr. WRIGHT. I understood the Chair to say he would fill the vacancy.

The VICE-PRESIDENT. The Senator from Indiana gave notice that there was a vacancy on the Committee on Privileges and Elections, and moved that the Chair be authorized to fill it.

Mr. MORTON. The committee has been increased to nine, and there have been but eight appointments made.

Mr. THURMAN. I was not here when the committees were formed, and I do not know what was the understanding as to who is entitled to this ninth member of that committee. I should like to know how that matter is, whether the opposition is entitled to that ninth member. The opposition now has two on that committee. Whether the opposition are entitled to that ninth member, so as to make it stand six to three, or not, I do not know.

Mr. MORTON. I do not know what the understanding was about it.

Mr. THURMAN. My understanding was that the minority should have as near as possible one-third of the committees, which would give us three on that committee.

Mr. MORTON. Let it pass over until to-morrow, and we will consider it.

Mr. THURMAN. Having said this, I have said all I desire to say; and if the Vice-President finds that it was the understanding that the opposition were to have three members on that committee of nine, then I know very well that the Vice-President will appoint one of

the opposition on that committee. I have only to say that I do not want to be on that committee myself.

The VICE-PRESIDENT. The question is on the motion of the Senator from Indiana, that the vacancy upon the Committee on Privileges and Elections be filled by the Chair.

The motion was agreed to *nem. con.*

EXECUTIVE SESSION.

Mr. WRIGHT. I renew my motion.

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

After one hour and fifty-two minutes spent in executive session, the doors were re-opened.

CHARGES AGAINST SENATOR CLAYTON.

Mr. CAMERON. Mr. President, as the doors are now open, and what I say will be put before the public, I desire to state that I was told to-day for the first time that an important witness in the case of the Senator from Arkansas [Mr. CLAYTON] is a person called McConnell, and I learned, too, that he belonged to the State which I have the honor in part to represent. He belongs to a very respectable family there, a family of great ability. Nearly all of them have great talents, but sometimes they do not use them for the best purposes, though most of them, I think, do. He is a native, I think, of the town of my colleague. But I remember this of him, that he is perhaps the most unreliable man that ever was born in the State of Pennsylvania. [Laughter.] We have some bad men there, but I do not think anybody quite so bad as he.

I desire only to tell you one or two facts in regard to his conduct. Some years ago there was a gentleman, governor of the State of Pennsylvania, who was not particularly my friend, and if I were to mention his name you would think he never was my friend, and I ought not to defend him here. But he had, among other good qualities, the quality of hospitality. One evening a person came into his house without any invitation, and made himself exceedingly agreeable to everybody there, on the occasion of a party of ladies and gentlemen. He made himself so agreeable that he attracted everybody's attention. After awhile, about the time when he ought to have gone away, he suddenly became very sick and asked the hospitality of the governor's family to remain there all night. He remained all night. The next morning he was still very sick, and he remained sick for four or five days. In the meanwhile he stole the affections of the governor's daughter, and he stole out one evening and got a justice of the peace to marry them. Of course the governor, and especially his excellent wife, were terribly shocked that a person of that kind should become a member of their family; but on his return, immediately after the performance of the ceremony, he was driven out of the house. The legislature met directly afterward. So much wounded in his feelings was the governor that he went to Cuba and remained there until the legislature divorced them, and this young man went out into the world again. After awhile I heard of him in Philadelphia, and he committed about the same sort of act in Philadelphia, in the house of a friend of mine.

I therefore desire to say now, as I cannot be here to-morrow, that I should place no more reliance upon the word of that man than I would upon the word of a man who had been a hundred years in the penitentiary, for I think the fellow ought to be there at least half of that time. I refer you now to my colleague for something in regard to that person.

Mr. THURMAN. May I ask my friend, before he takes his seat, whether this witness about whom he is speaking is a Pennsylvanian?

Mr. CAMERON. I am sorry to say that he is.

Mr. THURMAN. It is the first unworthy Pennsylvanian I ever heard of, in the opinion of the Senator. [Laughter.]

Mr. CAMERON. And the first I ever knew of. [Laughter.]

Mr. ALCORN. I would ask the honorable Senator whether this man's father was a good man?

Mr. CAMERON. I believe his father or his grandfather was a good man. I remember one of his uncles once voted for me when I wanted a vote very much. [Laughter.]

Mr. SCOTT. Mr. President, my colleague has referred to me. I do not know that I can state anything corroborative of what he has already stated, of my personal knowledge, for his knowledge of this young gentleman is much more intimate than mine. He may have been born in the town in which I reside; I do not know whether he was or not; but his ancestry did live there, and were highly respectable people. My impression is that he is a native of another county, on the western side of the Alleghanies, Indiana County, to which his father removed.

Mr. CAMERON. I believe my colleague is right.

Mr. SCOTT. I have not such personal knowledge of this young man as my colleague has, owing to the fact that he lived for some months, or years perhaps, around the city of Harrisburgh.

Mr. CAMERON. O, no. [Laughter.]

Mr. SCOTT. But the reputation which my colleague has given him is the one which the public give. I do not know him personally at all; I do not know that I ever met him; but I have heard of him frequently. His reputation is not an enviable one, no doubt about that.

Mr. SHERMAN. I move that the Senate adjourn.

The motion was agreed to; and (at four o'clock and thirty-six minutes p. m.) the Senate adjourned to meet to-morrow at half past ten o'clock a. m.

IN THE SENATE.

TUESDAY, *March* 25, 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.

THE CONGRESSIONAL RECORD.

Mr. ANTHONY. Mr. President, yesterday I reported from the Committee on Printing a resolution for printing the CONGRESSIONAL RECORD, which was passed. I should have reported it as a resolution that had been passed by the Committee on Printing, and that was submitted to the Senate for the information and for the judgment of the Senate, so that if, informally, any Senators had objection to it, they might make it known. I supposed that, under the act of the last session of Congress, this whole subject was referred to the Committee on Printing, and that the resolution of the Committee on Printing was final upon the subject, although, of course, it would be modified if the Senate disapproved of it in any way. Besides, I have some doubt whether, under the general law, it would be competent for the Senate alone to pass a resolution of that kind, which requires additional printing costing more than $500. I do not deem it necessary, however, to move to reconsider the resolution, as its adoption by the Senate cannot make it invalid, at any rate. If any Senator thinks differently, I have no objection to a motion to reconsider.

WITHDRAWAL OF PAPERS.

On motion of Mr. DORSEY, it was

Ordered, That James H. Carleton have leave to withdraw from the files of the Senate his petition and papers.

EMANCIPATION IN PORTO RICO.

Mr. MORTON. I move to take from the table the resolutions I submitted yesterday, in regard to the abolition of slavery by the Spanish republic in Porto Rico.

The motion was agreed to; and the Senate proceeded to consider the following resolutions, submitted yesterday by Mr. MORTON:

Resolved, That the Senate of the United States have received with joy the intelligence that the republican government of Spain have abolished slavery in the island of Porto Rico, and raised the colored people of that island from the condition of slaves to the rights and privileges of citizens of the Spanish republic.

Resolved, That by this act the people of Spain have given new assurance to the world that in establishing republican institutions they are actuated by a genuine love of liberty and sincere regard for the natural rights of all men; and that it will be accepted as an omen of the power and perpetuity of the Spanish republic.

The resolutions were adopted.

ORDER OF BUSINESS.

The VICE-PRESIDENT. The question now before the Senate is on the resolution submitted by the Senator from Iowa [Mr. WRIGHT] in regard to the Senator from Arkansas, [Mr. CLAYTON.]

Mr. WRIGHT. The understanding yesterday was that the Senator from Georgia [Mr. NORWOOD] would address the Senate this morning. He desired to do so and he expected to be present. I do not know why he is not here. He expected to have the views submitted by him, as a minority report, read this morning, and then to follow up the reading of his report by some remarks in support of it. I suggest that the clerk commence the reading of the minority report.

Mr. ANTHONY. I have a resolution which I wish to offer.

Mr. WRIGHT. Very well.

AGRICULTURAL REPORT.

Mr. ANTHONY. I offer the following resolution:

Resolved, That twelve hundred copies of the report of the Commissioner of Agriculture be printed for the use of the Senate.

This is the amount which the Senate has a right to order without the concurrence of the House of Representatives. As no extra copies have been printed, this will give Senators about ten or fifteen copies apiece of this document.

Mr. FERRY, of Connecticut. I wish to know what we are going to do with them.

Mr. ANTHONY. I think we can get rid of ten or fifteen apiece without the franking privilege. I do not care anything about it myself; but some Senators want it done.

Mr. FERRY, of Michigan. I do not know how it is in Connecticut; but I know I have had repeated applications from my State for this document. In the western part of the country there is a great demand for this report.

Mr. FERRY, of Connecticut. Will they pay for it if sent to them at their expense?

Mr. FERRY, of Michigan. I cannot tell. That will be decided by the trial. Let us provide for the copies and then we can test whether the people are willing to pay for them or not.

Mr. ANTHONY. I will relieve the Senator from Connecticut by taking his share of the quota if he does not desire them.

Mr. DAVIS. I hope the order will be made by unanimous consent. It can be done in that way.

Mr. ANTHONY. It requires unanimous consent to consider it now.

Mr. DAVIS. The people very generally want this report.

Mr. CASSERLY. I hope there will be no objection to the resolution. It is only $500 worth, and my impression is that in the State of California the people will be very much disappointed if they do not see this report in some way or other.

Mr. FERRY, of Connecticut. I make no objection.

The resolution was considered by unanimous consent and agreed to.

COMMITTEE ON LEVEES OF THE MISSISSIPPI.

Mr. ALCORN. I ask to call up the resolution which was introduced by the Senator from Louisiana, [Mr. WEST,] on the subject of the levees of the Mississippi River, with a view of offering a substitute for it. It will be remembered that it was objected to by the honorable Senator from Connecticut [Mr. FERRY] as being out of order, and the Chair ruled it out of order. I took an appeal from the decision of the Chair. That appeal I have no disposition to press. I simply wish to call up the resolution with the view of offering a substitute for it. I do not think the Senator from Connecticut will have any objection to it.

Mr. WRIGHT. The Senator from Georgia [Mr. NORWOOD] is now in his place, and is entitled to the floor by agreement.

Mr. ALCORN. If the Senator from Georgia will yield, it will only take a moment to dispose of this matter.

Mr. NORWOOD. I yield.

Mr. FERRY, of Connecticut. I should object to proceeding to the consideration of the resolution referred to by the Senator from Mississippi, even for the purpose of offering a substitute. If the Senator from Mississippi has another resolution to offer, I can consider that after it has been read; but I must object to the consideration of the resolution which is lying upon the table.

Mr. ALCORN. I will offer the resolution which I intended to offer as a substitute for the other, and allow the honorable Senator to hear it read for information. I desire to say a few words upon the subject.

Mr. DAVIS. Let it be read for information.

Mr. ALCORN. Yes, and then I desire to offer this as a substitute for the other resolution:

Resolved, That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess of the Senate.

I do not think any Senator can say that that looks out of the field of legislation at all. If the Senator will allow me, I will merely show what has been the action of the Senate during this session.

Mr. FERRY, of Connecticut. I have no objection to hearing the remarks of the Senator, subject to objection to the resolution.

Mr. ALCORN. On the 10th of March the Senator from Indiana [Mr. MORTON] offered the following resolution:

Resolved, That the Committee on Privileges and Elections be instructed to examine and report, at the next session of Congress, upon the best and most practicable mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions connected therewith, with leave to sit during vacation.

The resolution was considered by unanimous consent and agreed to.

On the 12th of March the Senator from New York [Mr. CONKLING] submitted the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire and report, at the next December session of the Senate, whether the Union Pacific Railroad Company, or any company authorized to build a branch road to connect therewith, or any assignee of such company, will be entitled to lands or bonds for any road which such company may hereafter construct; and that until said committee shall report, the executive officers of the Government are requested to issue no bonds or patent certificates that may be claimed for roads constructed and reported after this date.

The resolution was considered by unanimous consent and agreed to.

On the 13th of March, the Senator from Wisconsin [Mr. HOWE] introduced the following resolution:

Resolved, That the Committee to Audit and Control the Contingent Expenses of the Senate be continued and authorized to sit during the recess of the Senate.

The resolution was considered by unanimous consent and agreed to.

Again, on the 13th of March, the Senator from New York [Mr. CONKLING] offered another resolution, as follows:

Resolved, That the Committee on the Revision of the Laws have leave to sit during the vacation.

The resolution was considered by unanimous consent and agreed to.

Now, Mr. President, I offer a resolution proposing that the Committee on the Levees of the Mississippi River have permission to sit during the vacation. I will state that this is a subject of very great importance to the country. It has been held to be of sufficient importance for the Senate to create a special committee on the subject. It is a subject upon which there is really no information here. The information on the subject is altogether local. The country has not been informed in regard to the merits of this question. It is one, every gentleman will admit, of very great importance. If the Government intends to do anything with it, it ought to do whatever it may do under all the light that an intelligent investigation of the subject can bring to the question.

If the Government does not intend to do anything on the subject, let it arrive at that conclusion in the light of intelligent information on the subject.

The cotton-producing interest of this country is one that interests every man. It is not one that belongs to the Mississippi Valley alone; it is not one that belongs to that overflowed district alone; but it is one that affects every man in all the broad land who desires cheap cotton, and every man who wears a cotton shirt is interested in the question of cheap cotton. Those who advocate the construction of levees on the Mississippi River believe that this is the means whereby the cotton monopoly of the United States can be maintained in the foreign trade of this nation. It has been a trade to which the Government has looked to sustain and support its financial balances in the past. We believe it is necessary to maintain this trade and its supremacy in the cotton markets of the world, in order that the financial balances of this country may be maintained in the national exchequer.

Now, sir, I ask that the Senate may give unanimous consent to the committee to sit during the vacation, and I do not think the money which will be thereby expended will be misspent. The subject was neglected at the recent session of Congress, for the reason that Senators were absent who were upon that committee and were not here to consult together until the session had partly elapsed, and when they came they were without that information which would enable them to make up a judgment on the subject.

This committee is composed of gentlemen from different portions of the country; and if they are permitted to go to the region where levees are needed, they will come to the Senate at the next meeting of Congress with all that information necessary for the Senate to have before they proceed to legislate upon a question of so much importance to the country.

Having said this much, I leave the matter with the Senate.

Mr. FERRY, of Connecticut. I must make the point of order as I have made it on the other resolutions of this kind. In reference to the precedents cited by the Senator from Mississippi, [Mr. ALCORN,] it will be observed that they are all precedents of the adoption of resolutions by unanimous consent. This is not that case. The present resolution provides on its face for the sessions of the Committee on the Levees of the Mississippi River during the vacation; and the resolution creating that committee provides for the duties of that committee and for the report of bills and resolutions, and anything else that they may choose to do in the discharge of those duties. So that after all a resolution authorizing the committee to sit during vacation is in substance the same as the resolution which was objected to the other day. I therefore again raise the point of order.

The VICE-PRESIDENT. The Senator from Connecticut raises a point of order on the reception of the resolution.

Mr. FRELINGHUYSEN. I ask the Senator from Connecticut if there is any other objection than that the resolution cannot be considered on the day it is introduced?

Mr. FERRY, of Connecticut. Certainly there is, on the ground upon which the decisions were made last week, I think in two instances, by solemn vote of the Senate, that at this session measures contemplating legislation were not in order.

Mr. FRELINGHUYSEN. Well, Mr. President, I do not remember those precedents; but I can clearly see why any steps in legislation would not be proper, because we are not a legislature; but the mere appointment of a committee to gather information in reference to a national subject, one of importance, it seems to me is clearly within our province. This is a matter which relates to the Senate alone, not to Congress. It is to get information for this body. Surely we can do that, and I think it is very important that we should have the information. I sympathize entirely with the measure.

The VICE-PRESIDENT. The Chair will submit this question to the Senate, to be determined by the body whether it is in order to receive this resolution or not.

Mr. FERRY, of Connecticut. As the matter is to be submitted to the Senate, I will say a few words upon the point of order distinctly. The Senator from New Jersey admits that action at this session of a legislative character would be improper; in other words, that motions or resolutions looking to such action would be out of order, because we are not a Congress.

Now, the objects of this select committee, as defined in the resolution creating the committee, are to propose measures for the consideration and action of Congress, and that which this committee is to do in vacation, if it is to do anything, acting under the resolution creating it, must be something contemplating legislation by Congress, nothing by the Senate. The Senate can do nothing, no matter what this committee may do in vacation. And, therefore, in accordance not only with the decisions of the Senate, twice made upon the yeas and nays at the present session, but in accordance with the admission of the Senator himself, the resolution would be out of order.

Mr. WINDOM. Mr. President, I am unable to conceive upon what grounds this resolution can be declared out of order. I shall vote to receive it. It seems to me that, if it be in order to appoint committees at all during such a session as this, there can be no objection to allowing those committees to gather information. But what I rose to say is, that as there is no quorum of the Senate present, and as one or two other questions of the same kind are pending, I should hope the Senator from Mississippi would not press the matter until there is a full Senate.

Mr. ALCORN. I will yield to the honorable Senator from Minnesota. I see there is perhaps a question upon the point he makes.

Mr. FERRY, of Connecticut. I perhaps ought to say to the Senator from Mississippi that, at present, I make the point of order. If the point of order shall be overruled, and the present resolution offered as a new and independent one, I should be compelled to take the other point of order, that it must lie over one day before it can be acted upon. I will state to the Senator from Mississippi again that it is not in reference to this resolution alone that I am so pertinacious, or may seem to be pertinacious; but there are three or four resolutions of a similar character, one of which, in my judgment, is of so very bad a tendency that I wish to prevent the adoption of any precedent under

which that resolution possibly could receive the sanction of the Senate.

Mr. ALCORN. I desire to make an inquiry, whether the resolution which I have introduced this morning cannot be offered as a substitute for the resolution previously offered, and of which notice was given. That was the effort I made when I was arrested by the remarks of the Senator from Connecticut. I proposed that this resolution should be offered as a substitute for the other in order to avoid that question.

Mr. FERRY, of Connecticut. You propose, then, when the proper time comes, to call up the other, so as to offer this as an amendment to it?

Mr. ALCORN. As a substitute; and I apprehend that will not have to lie over a day.

Mr. FERRY, of Connecticut. If the other comes up at all, this can be offered as a substitute; but when the motion is made to take up the other for consideration, I shall raise the point of order that I have already, that it cannot be considered at all at this session. The question on the point of order will then be taken on that.

Mr. ALCORN. Let it go over for the present and we will call it up hereafter. Let the resolution be regarded as an original resolution, to lie over one day.

CHARGES AGAINST SENATOR CLAYTON.

The Senate resumed the consideration of the following resolution, submitted by Mr. WRIGHT:

Resolved, That the charges made and referred to a select committee of the Senate at the last Congress for investigation, affecting the official character and conduct of Hon. POWELL CLAYTON, are not sustained,

Mr. NORWOOD. Mr. President, I do not rise to make a speech. I am physically unable to do so. I desire, however, that the views of the minority be read, and after that I may make a very few remarks.

The VICE-PRESIDENT. The Secretary will read the views of the minority of the select committee.

The chief clerk read as follows:

VIEWS OF THE MINORITY.

Mr. NORWOOD submitted the following as the views of the minority:

As the minority of the committee of three appointed by the Senate to investigate and report upon certain charges made against Senator CLAYTON, I have been unable to agree with the majority in the conclusions to which they have come, and I therefore beg to submit to the Senate the conclusions to which I have arrived after a careful review of all the facts.

I regret that a majority of the committee did not see fit to lay before the Senate, embodied in their report in abstract form, more of the facts, as it would have enabled me to express my views in much shorter compass. I will, however, embrace none which I do not consider necessary to a correct understanding of the case as made.

The general charge made against Senator CLAYTON is, that he used corrupt means to secure his election to the United States Senate. This general charge embraces several specifications, to wit:

First. That he corruptly used his executive power as governor of Arkansas in 1870 in appointing registrars of election to register votes for members of the general assembly, by which he was elected a United States Senator, who, as his friends and in his interest, would register with a view to elect candidates in favor of him for the Senate.

Secondly. That, when primary meetings were being held in the counties to nominate candidates for that legislature, he went about the State and, in person and by his friends and agents, manipulated these nominations in his own interest; and, to effect this end, used his executive patronage to intimidate candidates opposed to his election to the Senate.

Thirdly. That he, either in person or through his friends and supporters for the Senate, made a corrupt engagement, express or understood, by which his influence was to be given in favor of the election of General John Edwards, the democratic candidate for Congress, in consideration of the support to him of Edwards and his supporters for the Senate.

Fourthly. That, in pursuance of this understanding, he issued to Edwards the certificate of election in the face of a clear majority, according to the official election returns in his (the executive) office, in favor of Judge Boles, the republican candidate opposing Edwards.

Fifthly. That, being under a pledge publicly and privately made to his political friends, that he, if elected United States Senator, would not leave the governorship in the hands of Lieutenant-Governor J. M. Johnson, a conservative, he corruptly instituted through his friends and supporters a proceeding by *quo warranto* to depose Johnson from office in order to clear the way to the Senate.

Sixthly. That, being elected Senator while the *quo warranto* was pending, when that was decided in favor of Johnson, he resigned the Senatorship, and afterward secured his re-election by inducing R. J. T. White, secretary of state, in consideration of a large sum of money, to resign, and inducing Johnson to take White's place.

Seventhly. That he corruptly procured the votes of many members of the legislature, in support of himself for the Senate, by paying money; by appointments of themselves and friends to lucrative offices; by granting to them and their friends State aid to railroads in which they and their friends were interested.

Before proceeding to state the testimony bearing upon and sustaining these specifications, I will remark, in order that the Senate may appreciate the extent to which Senator CLAYTON must have wielded his executive power, the energy he must have displayed, and the means he must have employed to make sure his election, and to increase the probability of the truth of witnesses who detail these means, that his contest for a seat in the Senate extended over a period of two years. This fact he states near the close of his own testimony, when endeavoring to explain the statement made by H. L. McConnell, his former private secretary and political supporter, that CLAYTON told him the day after the second election "the fight had cost him [CLAYTON] in the neighborhood of $20,000." His extreme desire to be a Senator likewise throws much light on many acts whose full force might not otherwise be realized. In a conversation held by CLAYTON, Lieutenant-Governor Johnson, Thomas M. Bowen, Joseph Brooks, and J. L. Hodges, a short time before CLAYTON's second election, Brooks and Hodges both testify that CLAYTON stated he had long earnestly desired to be a Senator; that it was the dream of his life; that he was as ambitious as Cæsar; and that had he his way he would sway the scepter of universal empire.

I would further state that by the laws of Arkansas, under her new constitution, the governor is clothed with unusual power and patronage. It is sufficient in this connection to say that, with all the other power and patronage incident to the executive of each State, he has the power of appointing judges, sheriffs, and justices of the peace. We will have frequent occasion to remark with what vigor, if not rigor, such power, energized by such desire and ambition, was brought to bear in his senatorial contest on friend and foe.

The contest was exclusively republican. CLAYTON had two opposing aspirants, McDonald, former United States Senator, and a negro named White, both republican. The legislative, executive, and judicial officers were all republican. There was no hope for a democrat to succeed. Of eighty-one members of the house in 1871, fifty-eight were republicans and twenty-three democrats, as stated by Tankersly, the speaker. The oppressive disqualification of votes excluded a sufficient number of democrats from the polls to throw the power (except in a few counties) into the hands of the republican party. And such was and is the extraordinary power confided to registrars of election to receive or reject a voter's name—and to the board of review to retain or erase the names of voters registered—that the control of a governor over an election, by appointing his friends and supporters on those two boards, was only limited by his own integrity and that of his appointees.

In this contest the republican party, being overwhelmingly strong, split by its very weight into two factions. They came to be known respectively by the names of "Brindle-tails" and "Minstrels." Either claimed to be the elect. Governor CLAYTON led the latter, while Joseph Brooks was the acknowledged head of the former. The hostility felt toward each other was very bitter. Around either leader were gathered many ardent defenders. And as exemplars of the characters who were from first to last the warm and confidential friends of Governor CLAYTON, I beg to give what the evidence shows to be the *morale* of the most prominent of those whose acts and sayings, during the senatorial struggle, are very important in determining the charges made against Senator CLAYTON. For, from their confidential relations to him, from their constant conference with him during and before and after the session of the legislature which elected him, from their interest in his success and dependence on him for office and other favors, we are enabled to decide to what extent their acts and sayings were the acts and sayings of Governor CLAYTON. We learn also with what kind of men Governor CLAYTON used to accomplish his purposes.

His chief adviser and constant attendant was Thomas M. Bowen. There is scarcely a witness who testifies to an interview with Governor CLAYTON during that contest, extending through two and a half months, who does not speak of Bowen being present. He attended all the caucuses of CLAYTON's friends, was a regular lobbyist, during the session, for Governor CLAYTON, was most of his time in the executive office, and was present at several long, protracted interviews, held at night between Governor CLAYTON and others of the opposition, whom Governor CLAYTON was endeavoring to appease. Judge Bowen's motto, as testified to by Brooks and Hodges and undenied, was, "*politics is but a game*," and that the admission or non-admission of a contestant for his seat in the legislature *is a mere question of party policy*. This declaration of political ethics will be seen bearing its fruit in the subsequent conduct of its author.

Another adviser and confidential friend was John McClure, chief justice of the supreme court, the appointee of Governor CLAYTON. The testimony shows that he was frequently with Governor CLAYTON during his contest; that he was editor of a partisan gazette in Little Rock, advocating Governor CLAYTON's election to the Senate while occupying the supreme bench; that as such editor he accepted a large sum of money from the friends of a bill to silence his opposition to the bill; and that he, during that time, engaged, or offered to engage, for a large sum, to lobby a bill through the legislature. These facts, except the last, he establishes by his own testimony in this investigation.

A third warm and zealous co-worker for Governor CLAYTON's election was Judge Bennett, also of the supreme court of Arkansas, and appointed by Governor CLAYTON. The testimony of W. R. Rogers throws much interesting light on his character. He was a hotel-keeper in Illinois, failed, joined the Federal Army, went to Arkansas as a captain, resigned and read law; was appointed about a month after his admission to the bar by Governor CLAYTON as circuit-court judge, and was soon after (during the session of that legislature) appointed by Governor CLAYTON to the supreme bench. His influence with Governor CLAYTON was supposed (says Rogers) to be greater than that of any man in the State, and hence, during that session of the legislature, while Bennett was on the supreme bench, he accepted from Rogers, and others interested in a large railroad bill, a proposition to use his influence with the board of railroad commissioners (composed of Governor CLAYTON, White, secretary of state, and one Thomas) to procure a grant of State aid to the road, and charged $70,000 ($1,000 per mile) for his influential service. His influence was effective. The aid was granted, the bonds were issued, and Bennett received from Mr. Dorsey (interested with Rogers) $35,000. During the senatorial contest he was very often in Governor CLAYTON's office and on the floor of the house.

Another scarcely less conspicuous character, and equally zealous supporter of Governor CLAYTON for the Senate, was Charles W. Tankersly. He is a Virginian; joined the confederate army; deserted; joined the Federal Army; "misappropriated public property," (a horse;) was dismissed the service, and retired to private life in Philadelphia till the war closed. He then went to Arkansas; enlisted under Governor CLAYTON in his contest for the Senate; was elected a member of the legislature; was nominated by CLAYTON's friends for speaker and elected. McLane swears that Tankersly told him Governor CLAYTON sent for him (Tankersly) before the legislature assembled and requested him to run for speaker. It will be seen that in this contest he was not a deserter, but was true to his colors, and received, after CLAYTON's election, his reward in his appointment as superintendent of the penitentiary.

Another and very prominent actor in these scenes, and a devoted friend of Governor CLAYTON, was O. A. Hadley. He was a senator in that general assembly. He was Governor CLAYTON's agent to make the offer to R. J. T. White to pay him a large sum of money to vacate his office, and thus remove an insurmountable obstacle to CLAYTON's election to the Senate, as I shall show hereafter. That being accomplished, Hadley was elected president of the senate, (*vice* J. M. Johnson, who took White's place,) and while governor he continued to preside over the senate until certain bills (such as the levee and others) were passed. As this dual service as president of the senate and governor was contemporaneous, and the first office was resigned just after these immense money bills were passed, it may not be amiss to state that the witness McLane swears that Chancy Stoddard, who paid McLane a large sum ($5,000) in bonds to silence his newspaper and to get his services as a lobbyist for the levee bill, and who, by his own testimony, stands convicted of bribing other members of the legislature to vote for the levee bill, told him (McLane) that he (Stoddard) paid Hadley $20,000 in bonds for signing the levee bill. This Hadley denies, while Stoddard says he does not know the name of but one member, named Prigmore, who got the bonds, though he had reason for knowing that others shared them. As, however, the fact is not denied by any witness, not even by CLAYTON or Hadley, that Hadley bought off White, it is not much of a strain on even human charity to believe that a man in the market to buy will not arouse a sleeping conscience to stand guard against his being bought.

There are other actors in this drama whose moral figures would not compare unfavorably with those already, but partially, delineated; but as I have sketched the chiefs, I leave the others to speak for themselves through their own and the mouths of other witnesses, and will now proceed to a summary statement of the facts. And in doing so, as a matter of convenience, and to economize time and space, after once introducing a party or witness by his full name, I will employ only his surname.

I will take the specifications in the order in which I have arranged them, and while I treat each separately for the purpose of grouping like facts, that they may be seen at one view, as will be seen hereafter, I resolve the seven specifications into three charges, all and each of which I think the testimony and evidence sustain.

And, first, as to the corrupt appointment and use of registrars. It is not un-

reasonable to assume that Governor CLAYTON after the canvass of over a year, according to his own statements, prior to the summer of 1870, (for in March, 1871, he stated that it had extended for two years,) with his ambition to be a Senator, selected his own friends to register the electors of the general assembly, and of other officers to be elected in November, 1870. This assumption is borne out by the testimony.

In the county of Pulaski he appointed James V. Fitch and E. H. Chamberlain registrars. There is much evidence *pro* and *con* as to the fraudulent registration made by that board, and without stopping to settle the point of veracity, it is sufficient to say that without any prior announcement of his intention, Chamberlain, who was one of the most zealous of the partisans of CLAYTON, and worked from first to last for his election, and who was introduced as CLAYTON'S witness in this investigation, just after registration closed, and within five days of election, on the 8th of November, announced himself as a candidate on the CLAYTON ticket for the legislature; and while by the returns as set forth in the testimony of the witness J. L. Hodges, he (Chamberlain) received but 1,892 votes from the counties of Pulaski and White, constituting his district, out of a vote of about 5,000, he was returned by the secretary of state to the lower house as one of the members-elect, and obtained his seat. And from that time to the end of the disgraceful struggle, carried on in and out of the legislature for near two and a half months, for the election of United States Senator, he was not only the supporter but the confidential agent and adviser of Governor CLAYTON. James V. Fitch was rewarded by an executive appointment to the office of circuit clerk of Pulaski County and clerk of the criminal court, which court was created at that session of the legislature.

The witness, A. A. C. Rogers, says that in Columbia County CLAYTON appointed a boy from Illinois, named Ryan, registrar, and that in Hot Springs County he appointed Z. L. Cotton as registrar, who, it was generally understood, lived in the county above and out of the district, though by the law of Arkansas the governor is required to appoint a resident of the county, who has resided in the county six months before the registration.

The witness Met. L. Jones states that CLAYTON appointed a man named George A. Wilkins registrar in Columbia County, and that Wilkins was afterward appointed justice of the peace. A justice of the peace in Arkansas has jurisdiction up to $500, and the fees of office are high. That W. H. Atkins, registrar for Union County, was also afterward appointed a justice of the peace.

The witness Jones states that Cotton was a resident of Mount Ida, Montgomery County, while acting as registrar in Hot Springs County, and was afterward appointed clerk of the Montgomery County court.

As evidence of the sympathy existing between these registrars and Governor CLAYTON, I refer to an interview detailed by the witness Met. L. Jones between himself, Governor CLAYTON, and Judge Bearden. He says, such were the frauds being committed by the registrars in Columbia and Union Counties that many citizens of those two counties met in convention, and appointed Jones and Bearden a committee to wait upon the governor and make complaint and petition for redress. He stated the case; told Governor CLAYTON that he had affidavits of fifteen substantial men in his county to the facts. Governor CLAYTON said, at first, that was *ex parte*. Witness offered to put them in proper form. Governor CLAYTON then said it was too late to investigate, (though the witness states the interview was fifteen days before the election, and the law of Arkansas is that registration closes only ten days before the election.) Jones then asked him to remove the registrar. CLAYTON replied he did not have the power; to which Jones rejoined he had already removed some. CLAYTON said he had, but that he thought he had transcended his authority, and that he would refer the matter to the courts. When asked if he would not interfere then, he said he would after the election. Jones said then he would apply to the courts, and CLAYTON told him he would not submit to that interference by the courts before the election; and if he (Jones) attempted to arrest the registrars before the election, he would treat the act as insurrectionary, and would employ force, if necessary. Met. L. Jones was an intelligent man and a lawyer.

In this connection I will give the first and second sections of the act of July 15, 1868, regulating registration of electors in Arkansas, page 52, Statutes of 1868, and will state that there is nothing further in the whole act, or any other law of Arkansas, brought to the notice of the committee, which abridges the power therein conferred on the governor:

"SECTION 1. That on or before the 1st day of August, 1868, and every two years thereafter, the governor shall, with the advice and consent of the senate, appoint three loyal, competent, and discreet citizens in each county, who shall have *resided at least six months in the county next preceding their appointment*. Said persons shall be styled and called board of registration, one of whom shall be designated by the governor as president of said board: *Provided*, That in case no such person can be found in each county within the State, then and in that case they shall be appointed from the county most convenient thereto, each of whom shall serve two years, *unless removed as provided hereinafter: And provided further*, That the governor, in lieu of one of the citizens to be appointed as above provided for in this section, may designate a justice of the peace, notary public, or constable as one of the members of the board of registration, who shall, in every such case, be designated as the president of said board; and every justice of the peace, notary public, or constable that may be designated by the governor as a member of said board for any county in this State shall, in addition to the duties now imposed upon him by law, discharge the duties of president of such board of registration according to the provisions of this act.

"SEC. 2. The governor shall fill any vacancy occurring in any of the appointments made by him, and may, in his discretion, remove any one so appointed by him, for incompetency or other sufficient cause. The secretary of state shall cause notice, by certificate, to be given to each of the persons, and shall also transmit to the clerk of the county court of each county the names of the persons so appointed as board of registration."

With this act before him, and the fact brought to his notice that he had already removed some of the registrars, he stated to Jones as a reason for not desiring to interfere with that alleged fraudulent registration in Columbia and Union Counties, that he did not have the power to remove them. His first answer was, it was too late; second, I have not the power; third, go to the courts for redress; and, fourth, you shall not resort to the courts until after the election, and, if you do, I will consider you an insurrectionist, and put you down with a military force.

To show the discretion and power of these registrars, as well as to illustrate the beneficence of the then existing government in Arkansas, and the freedom of opinion thereby tolerated at that time and now, so far as I am advised, I will quote the eleventh section of the act above referred to:

"SEC. 11. That no person shall be registered who during the late rebellion took the oath of allegiance to the United States, or gave bond of loyalty or for good behavior, *unless he shall show by satisfactory evidence that he has ever kept this said oath or bond inviolate, or that he has openly advocated or voted for the reconstruction measures of Congress, or voted for the constitution at the civil polls at the constitutional election of* 1868."

I will remark this act was passed during Governor CLAYTON'S term of office, and was of course approved by him. Referring to the words in the last section quoted and italicized by me, I challenge all Christendom to produce its parallel for anti-republicanism and tyranny.

It is very easy to see how, with such harsh and at the same time mobile power, lodged in the discretion of the instruments and favorites of a governor acting in the capacity of registrars, they could manipulate the election of a legislature to secure an overwhelming majority.

As evidence as to how Governor CLAYTON was disposed to use that power, I refer to the statements of the witness A. A. C. Rogers. Rogers was a candidate for Congress against O. P. SNYDER at that election. In August, 1870, before Rogers entered the race, knowing, as he says, how registration had been conducted in the former election for Congress, in 1868, he called upon Governor CLAYTON to know if the people of Arkansas would have a fair election. He says CLAYTON smiled, and said that depended very much on circumstances. What those circumstances were will appear hereafter. Rogers states that, about two weeks before the election, he complained to Governor CLAYTON of the abuses in registration in his district; told him that out of about 2,200 voters in Union County there had been registered but about 700 to 800, and that in Chicot County they were registering about 1,200 railroad hands, non-residents, who were there employed by one Jackson E. Sickles, a railroad contractor. Rogers states, as does Sickles also, that Sickles was a personal and political friend of Governor CLAYTON, and desired him to be Senator. Governor CLAYTON said to me, "I have no control over my registrars, and I cannot do anything with it." Rogers replied, "Governor CLAYTON, you have attempted to control; in two or three instances you have removed registrars and appointed others, and now you tell me you cannot do it." To which CLAYTON replied, "Damn it, I do not know but what I did wrong, but the damned rebels there ought not to vote anyhow." Rogers replied, "Governor CLAYTON, you are not the constitution of the State. It is your business to enforce the law if it dooms every man in the State, and when you assume to be the constitution you assume too much." Rogers called his attention to two hundred sworn certificates of persons debarred the right to register. CLAYTON replied, "I have not time to correct it now." Rogers says this was about nineteen days before the election. Much more was said, with which I will not encumber my remarks, but which illustrates the manner in which Governor CLAYTON conducted that registration. Governor CLAYTON admits the conversation and does not deny the language, but explains by saying that he referred to Ku-Klux outrages existing at the former election, in 1868, and that he said to Rogers that if they were to be repeated he would control the registration to prevent them, or words to that effect. The Senate will be enabled to judge between the two statements when this conversation is given more in detail. Rogers states that CLAYTON removed Judge Alexander, in Ouachita County, *after registration was complete*, and appointed a man named Thompson *registrar* who *lost the registration-book* and ran away; that he removed Hicks, a registrar in Hempstead County, and appointed Beldin, the uncle or father of D. P. Beldin, senator from Hot Springs County, who was one of CLAYTON'S strongest friends during his senatorial contest.

The second specification is as to how the nominations for members of the legislature were manipulated by Governor CLAYTON and his friends in his own interest. On this point I will be brief, contenting myself with reference to one transaction by way of illustration. The witness, Judge Story, testifies that he was a candidate for the legislature from Columbia County; that a man named Archer, a supporter of CLAYTON, came into the county and said that Governor CLAYTON did not desire him to go to the legislature, and asked him if he intended to persist in his candidacy; he replied that he did. Archer then produced from his pocket an order or proclamation issued by Governor CLAYTON and threatened Story that if he did not desist, and allow CLAYTON'S friends to be elected, that the public printing, which Story, a republican, was then doing in the Magnolia Flower, (a gazette of which he was editor,) would be taken from him and given to another paper. He was then doing the public printing for two counties, Union and Columbia. The public printing was afterward given to the South Arkansas Journal, printed at Camden, Ouachita County, forty miles off; not more than fifteen copies of which, the witness states, were taken in his county. This patronage consisted of publication of notices from the probate courts, executors' and administrators' sales, &c., and for the two counties was worth to Story $3,000 per year. This printing was taken away after the delegation from that county reached the legislature and persistently opposed the election of Governor CLAYTON. The witness asked Governor CLAYTON why it was done. He gave no reason, but referred to the course the delegation had taken toward him. Several other witnesses besides Story also testify that while the primary meetings were being held for nominations throughout the State, CLAYTON was going about the State providing for the nomination of men favorable to his election. The witness, J. T. White, testifies that after the nomination was made in his county, CLAYTON appeared there and insisted upon a renomination, which was carried out, and the ticket elected. The witness who was nominated the first time was retained on the ticket as a friend of Governor CLAYTON.

The third and fourth specification charges a corrupt agreement with the democrats, and particularly with General John Edwards, democratic candidate for Congress, in pursuance of which the democrats were to support Governor CLAYTON for the Senate, and Governor CLAYTON was to aid in the election of Edwards, and to give him the certificate of election. The inception of this transaction occurred in October, 1869, as testified by the witness A. A. C. Rogers. He says that at a meeting of the most prominent democrats in Little Rock, assembled to consider the political situation of the State, Judge T. M. Bowen appeared with a written proposition from Governor CLAYTON to form a combination with the democrats for their support. He said he was right from Governor CLAYTON, who approved it, and that he was there in CLAYTON'S interest. His proposition was that Governor CLAYTON would *control the election so as to secure a legislature favorable for him for the Senate*, and that CLAYTON, in consideration of the democratic support, would recommend to the legislature such measures as would relieve the people from the disfranchisements of the constitution; that in the counties where CLAYTON'S friends had the majority, he was to name the candidate; in the counties where the democrats were so greatly in the majority that he could not control them, they were to name the candidates. There was no republican present except Judge Bowen. Bowen said that the witness Rogers was to acquiesce in this arrangement. Another meeting was held at Mr. Garland's office that night, and a consultation ensued. Rogers dissented to CLAYTON'S proposition, and withdrew from the meeting. Witness met Governor CLAYTON the next day at the fair-grounds. CLAYTON referred to the meeting the night before; said that the arrangement proposed was "about the best thing that could be done." Bowen stated distinctly, in answer to an inquiry propounded by A. H. Garland, one of the democrats present, that this proposition and the terms upon which it was made came directly from Governor CLAYTON. The proposition shows very clearly two things: first, his anxiety to combine with the democrats for his election, and, secondly, that he was perfectly willing to use the executive power in manipulating the election of members of the legislature to the same end. It also reflects much light upon the two charges made against him, that he did conduct the registration for that election unlawfully, and, therefore, corruptly, if to secure his election; and that he agreed to issue the certificate of election to Edwards, in consideration of the support of democrats.

As Governor CLAYTON required that the witness Rogers should accede to this proposition, and as he dissented, there is no evidence before the committee that the combination then proposed was ever carried out in that form; that is to say, there is no evidence that the democrats allowed him to name their candidates. But as to whether his purpose was carried out as revealed in that proposition, will be seen when we come to consider his conduct and motives in issuing the certificate to General Edwards.

There are other similar facts disclosed in the evidence, but I will now proceed to collate the facts bearing upon the charge of issuing the certificate of election to General Edwards.

There were two republican conventions held at Fort Smith to nominate candidates for Congress. E. J. Searle was nominated by the other. Judge Thomas Boles was nominated as the regular republican candidate. Edwards states that he ran as an independent candidate—a *quasi* republican—but supported by the democrats and conservatives. In a short time Searle withdrew, leaving Boles and Edwards to run the race. The majority of this committee in their report assume as an uncontroverted fact that Governor CLAYTON supported Boles, the regular republican; but there is hardly any fact in the whole investigation about which witnesses differed more, as I will now proceed to show, and if the evidence does not establish the fact

that CLAYTON was supporting Edwards, it undoubtedly shows that if supporting Boles, Edwards was the subject of much well-plied coquetry; for Edwards and his friends were certainly under the impression that Edwards had the executive favor. The witness H. L. McConnell swears in terms that Governor CLAYTON supported Edwards. And just here, as an attempt was made, in consequence of the strength of McConnell's testimony against CLAYTON on this and other points, to impeach his veracity, and as a majority of the committee, in arriving at their conclusion, have entirely ignored his testimony, I will state the reasons why I give credence to his statements. He went to Little Rock in 1869, with a letter of introduction to Governor CLAYTON, going from Leavenworth, Kansas, where Governor CLAYTON formerly resided. Being an editor, and evidently a very intelligent man, he was engaged by Governor CLAYTON as his private secretary. He commenced advocating, in a public gazette, Governor CLAYTON'S election to the Senate, and continued in both capacities until Governor CLAYTON'S election. These facts are not denied by CLAYTON himself. They were certainly on the most intimate terms. Sustaining those relations to Governor CLAYTON for two years, he certainly had full opportunity to ascertain during that time whether McConnell was a man of veracity; for let it be borne in mind that his testimony is not discredited by contradiction, but, on the other hand, is corroborated in many points by several witnesses. The attempt to discredit him was made by introducing two or three parties, unknown to the committee, who swear that McConnell's reputation while in Leavenworth, and afterward in Little Rock, for veracity was bad. That he was the holder of the political secrets of Governor CLAYTON is fully sustained by CLAYTON'S own testimony, for, some time after the senatorial election, and, in 1871, two witnesses, Mr. and Mrs. Parish, whose voluntary affidavits were admitted in evidence by consent, swear that Governor CLAYTON, during McConnell's absence from his room, which was in Parish's dwelling, entered McConnell's room, opened his trunk, ransacked it, and examined a large number of letters therein, and took away a large bundle of papers. The witness says they were letters which would show Governor CLAYTON'S relations to Edwards. CLAYTON says they were letters which he had given to McConnell to answer, and which McConnell had not answered. McConnell, who says that he occasionally—two or three times a year—gets on a drunken spree, was at that time drunk and had been absent from his room for a day or two. Their relations were certainly extremely confidential, not only from the testimony of other witnesses but from the admissions of Governor CLAYTON himself; besides, as to several material statements, Governor CLAYTON corroborates the testimony of McConnell. As, for instance, McConnell testifies that CLAYTON offered Grady, a member of the legislature, the sheriffalty of his (Crawford) county to vote to impeach Lieutenant-Governor Johnson, and about that CLAYTON says, he has an indistinct recollection of McConnell's speaking to him about the sheriff's office of the county, but does not remember that he made any promise or pledge.

Again, McConnell says that CLAYTON told him his election had cost him $20,000. CLAYTON admits he told him that it cost him a great deal of money, and explains in what way he spent it; and it is most noteworthy in determining the credence to be given to McConnell, that Governor CLAYTON, while testifying in his own behalf, and being represented by two counsel supposed to be learned in the law, and to understand how to conduct a defense, to wit, John McClure, chief justice of the supreme court of Arkansas, and Thomas M. Bowen, ex-justice of the same bench, (McClure appointed by CLAYTON, no doubt on account of his judicial learning,) did not in all of his testimony refer, by denial, to any of McConnell's statements, which are numerous and very damaging if true, except the two instances that I have referred to above.

And now to resume the evidence bearing upon Edwards's case.

McConnell, who by editorials and correspondence was advocating CLAYTON'S election, and was on such terms of intimacy with CLAYTON, publicly and privately opposed Boles and advocated Edwards's election. He produced five letters written to him by Edwards during the campaign, the first dated as early as the 19th of January, 1870, in which he says, "We are bound to sweep the State and *elect* CLAYTON *to the Senate;* most of the *democrats will vote for us.* I am glad you are with *us for* CLAYTON." The second, dated November 25, 1870, says, "If we can succeed in getting the returns of the legal polls sent up, *I am satisfied* the governor will disregard the bogus returns and *give me the certificate.*" In another letter, written before CLAYTON'S first election, Edwards says, "I have succeeded admirably in squelching out several contests in other counties, urged on by the 'Brindle-tails,' in order to *compromise* the contest from Pulaski."

* * * * * * *

"If CLAYTON should count the five townships, and give Boles the certificate, a howl would be raised by *conservatives and republicans* that would let in Brooks and Hodges, [two republican candidates for the legislature, who were contesting for their seats, and opposed to CLAYTON, one of them, Brooks, a very influential man,] and keep out the others who had publicly pledged to his support." The fourth letter says, "CLAYTON has the inside track; can be elected, and, above all, will receive the support of all the conservatives; but if he should fail to give me the certificate, such a howl as will go up you never did hear." In the fifth letter, dated February 12, 1871, and which was written after CLAYTON'S first election, (January, 1871,) and before Edwards got his certificate, (February 20, 1871,) Edwards says, "From the vote ousting the great high priest, Joe, [meaning Joseph Brooks, the senator who had been turned out of the senate by CLAYTON'S supporters,] I shall be under *more obligations* to the governor for the certificate than any one else, and I think I can, in turn, render him essential service, as they intend making war on him on his taking his seat." I call attention to the letter dated November 25, 1870, in order to state in this connection that Edwards swears that he went from Fort Smith, his home, to Little Rock within ten or fifteen days after the election, which was held on the 8th of November, to see Governor CLAYTON about his certificate; that CLAYTON then and there said that he, CLAYTON, would be governed in issuing the certificate by the action of the courts and legislature. This statement shows that CLAYTON already had the returns before him, and knew the result of the returns. Boles swears that he first called on Governor CLAYTON to see about the certificate, after the expiration of thirty days from the election, which must have been after the 8th of December, and that CLAYTON then told him that he had not examined the returns because he had not been well; that CLAYTON said nothing about the result of the election as shown by the returns, but said that Boles *might go to Washington;* he, CLAYTON, guessed the certificate would be all right.

Boles testifies that he was the regular republican nominee for Congress; that Searle was the nominee of the other faction; that CLAYTON considered him (Boles) opposed to CLAYTON'S election to the Senate.

Edwards, witness for CLAYTON, testifies that he was an independent republican candidate; that CLAYTON favored Boles's election; that *he* (Edwards) *was in favor of* CLAYTON *for the Senate.*

The returns, it is admitted on both sides, in the executive office showed that Boles was elected over Edwards by a large majority; but CLAYTON refused to give the certificate to Boles. The law of Arkansas requiring the governor to issue the certificate is as follows:

"It shall be the duty of the secretary of state, in the presence of the governor, within *thirty days* after the time herein allowed to make returns of elections to the clerks of the county courts, (*i. e.*, five days after the election,) or sooner, if all the returns shall have been received, to cast up and arrange the votes from the several counties, or such of them as have made returns for such persons voted for as members of Congress, and the governor *shall immediately thereafter* issue his proclamation declaring the persons having the *highest number of votes* to be duly elected to represent the State in the House of Representatives of the Congress of the United States, and *shall grant a certificate* thereof under the seal of the State *to the person so elected.*" (Statutes of Arkansas, 1868, page 325, section 50.)

Governor CLAYTON refused to issue his proclamation declaring Boles elected, and never did issue to him the certificate of election. His only excuse for refusing to comply with the law above quoted is that a few days after the election *certified copies* of affidavits, accompanied by a petition purporting to be signed by several candidates for the legislature in Pulaski County, asking him not to count the returns from that county, on account of alleged frauds, were laid before him. These certified copies are signed by Stoddard (brother of Chauncey Stoddard, who bribed Prigmore) and other members of the legislature. When CLAYTON was on the stand he could not recognize the handwriting of but two of these petitioners, though he knew them all well, and these two are Howard (a democrat) and Chamberlain, (a conservative, who was his political friend and voted for him for Senator.) Why *certified copies* of affidavits were used no witness explains. Why only the signatures of Howard and Chamberlain are proved (and that by CLAYTON only) to be genuine the committee are not informed. But here comes in an extraordinary fact which may be, and in my opinion is, the key to the mystery. No one ever saw those affidavits and petition until this investigation commenced, though CLAYTON says he received them the 17th of November, 1870, so far as the testimony shows, except CLAYTON and Chamberlain. R. J. T. White, secretary of state, swears he never saw them. Barton, CLAYTON'S private secretary and brother-in-law, and his witness, makes no reference to the existence of these affidavits and the petition. And when CLAYTON was asked how these papers came to be in his possession now, his significant reply was that when he vacated the executive chair he retained them, "deeming they would probably be of some importance in the future." Boles also swears that in his interview with CLAYTON, thirty days after the election, (about 8th December,) when CLAYTON told him to "go on to Washington, he (CLAYTON) guessed the certificate would be all right," CLAYTON did not even refer to the existence of these affidavits and this petition.

Another part of this history necessary to be known is this: Chamberlain and Howard were beaten by the returns first made from Pulaski County. The clerk of the county, McDiarmid, had received two sets of poll-lists; had rejected one and certified the other and sent it to the secretary of state. The one certified defeated Edwards and elected Boles—defeated Chamberlain, Howard, Gantt, Mitchell, and others, and elected J. L. Hodges and others.

It was all-important, therefore, in order to justify issuing the certificate to Edwards, that the rejected polls in Pulaski should be counted, and the polls certified to the secretary of state should be rejected. When Edwards called on Governor CLAYTON, about ten or fifteen days after the election, they and Chamberlain held a conference, and it was then and there agreed that steps should be taken to get the returns excluded by McDiarmid sent up. Chamberlain sued out from the supreme court, then consisting of McClure, Bowen, and Wilshire, (another adherent and appointee of CLAYTON,) a *mandamus* to this clerk. A case was made, and the court decided that the excluded polls were the legal votes. But still the certificate was not issued, though this decision was rendered two days before the legislature met. The election for Senator was yet to take place, and the support of Edwards and the democrats was to be given. The election occurred on the 11th of January, 1871, and all the democrats except five voted for CLAYTON. He accepted the position as Senator, and still would not issue the certificate. Two of the candidates for the house in Pulaski County, Gantt and Mitchell, had proposed to CLAYTON, Edwards, and their friends that they would desist from this contest for seats if CLAYTON would issue the certificate to Edwards. When CLAYTON was elected on January 11, as above stated, Gantt (who was authorized by Mitchell to act for him) complained because Edwards was not commissioned. On January 27 Gantt addressed the following letter to the house:

"*To the honorable the house of representatives of the State of Arkansas:*

"I learn from the published proceedings of the house of representatives, in the city papers of this date, that it was announced in your honorable body on yesterday that I had retired from any contest for a seat therein, and that the protest and papers presented on the first day of your session by Hon. L. B. Mitchell and myself had been withdrawn in accordance with our offer to abandon our contest on condition that a certificate of election, as member of Congress, was issued to General John Edwards. I certainly understood this to be fully assented to, and in compliance with that agreement prepared a formal abandonment of the contest, in writing, to be used only after such certificate should have been issued to General Edwards.

"Believing that General Edwards had been legally elected a member of Congress, and that he could render efficient service in that capacity, but fearing that the issuance of his certificate of election was likely to be delayed, if issued at all, and desiring that it should be issued, we consented to surrender our individual rights in the premises for what we considered to be the public good.

"Hon. L. B. Mitchell and I are able to show, by the most indubitable evidence, that we were legally elected representatives from the tenth district, and respectfully ask that we be afforded on opportunity of doing so; that the papers connected with our contest be re-referred to the committee on elections, and that we may have a fair and impartial hearing.

"R. S. GANTT."

Before the date of Gantt's letter the court had decided that the excluded polls were the legal votes in Pulaski County, which gave Edwards a majority of fifty, and the legislature, by joint committee, had decided the same question in the same way. This result, let it be remembered, was all CLAYTON said he desired to decide to whom he would issue the certificate. Hence Gantt complained, because the agreement had been carried out by him and the other democrats, and CLAYTON had not issued the certificate to Edwards.

I will now state some facts which furnish an explanation of this delay or refusal. The fact is sworn to by many witnesses on both sides; indeed, it is admitted by CLAYTON that during the canvass for the election for the legislature and Congressmen, he pledged himself to his political friends that he would not, if elected Senator, accept the position and leave Lieutenant-Governor Johnson in office to become governor. This pledge was on him at his first election in January. He, as is alleged, had a proceeding *quo warranto* instituted against Johnson to turn him out of office, on the *sole* ground that Johnson, who was elected with CLAYTON in the spring of 1868, and had been in office for over two years, and presiding over the senate by virtue of his office, *had not taken the oath of office as lieutenant-governor within the time prescribed by law.* This was more than even the supreme court of Arkansas, constituted as I have shown it was, could stand. The *quo warranto* failed, and CLAYTON kept his pledge by resigning the Senatorship.

The democrats and conservatives then became furious. Gantt sent in his letter to the house. Articles of impeachment were preferred against CLAYTON in the house, and fourteen of the friends of CLAYTON, to prevent their presentation to the senate, deserted the senate and "took to the brush." The certificate was issued to Edwards, and Gantt and Mitchell gave up the contest for their seats. From this time to the date of CLAYTON'S second election, on the 15th March, 1871, two other means were adopted to secure his election. They constitute the foundation on which the sixth and seventh specifications rest.

I will now proceed with the evidence bearing on the CLAYTON-Edwards agreement.

Boles testifies that CLAYTON was unfriendly to his nomination; that during the canvass CLAYTON asked for his support for the Senate, and he told CLAYTON that he must stand neutral between him and McDonald.

Edwards, witness for CLAYTON, as has already been shown by his letters to McConnell, was supporting CLAYTON. He says in substance, "CLAYTON, Chamberlain, and I agreed on the investigation, which was to change the result in Pulaski County, by which I would get a majority. Chamberlain agreed to take the matter in hand. Chamberlain *may have told me* that he was moving in the investigation *at the instance of* Governor CLAYTON. CLAYTON and I agreed on the matter as any two would agree to any proposition. I always saw CLAYTON privately. Chamber.

lain told me that he had talked with CLAYTON and that CLAYTON desired the investigation to go on—just such an investigation as afterward took place. [Investigation here referred to was the one afterward conducted by a joint committee of both houses, Samuel Mallory, senator, chairman, for the double purpose, first, to furnish a ground for issuing a certificate to Edwards; and, secondly, to exclude certain candidates from Pulaski and other counties who were opposed to CLAYTON'S election, and who, by the returns then in the executive office, were elected.] Chamberlain always said he desired CLAYTON'S election. I left home, on my way to Washington, about the 23d of February; was informed by letter before leaving home that I would get my certificate. [Certificate was issued the 20th February.] I heard a rumor of this bargain between CLAYTON and myself before the certificate was issued; denied it privately, but not publicly. Gantt told me that if the investigation (by Mallory committee) was made, I would go to Congress, and he and Mitchell would, in that case, withdraw from their contest. The polls which McDiarmid, the clerk of Pulaski County, had excluded were counted by the Mallory committee, and those he returned were rejected; this gave me fifty majority. The Mallory committee reported after CLAYTON'S first election. No one ever approached me on the subject of a bargain further than as to the withdrawal of Gantt and Mitchell. I probably wrote letters urging CLAYTON'S election. My first interview with Governor CLAYTON, about my certificate, was ten or fifteen days after the election. He said in that interview he would be governed by the action of the courts and the legislature. Democrats and CLAYTON republicans told me the same thing. Both CLAYTON and White, secretary of state, told me the election returns were late coming in."

McConnell says: "Governor CLAYTON supported Edwards in the election. He told me he would issue the certificate to Edwards. Neal, democrat, told me that there were great complaints among the democrats that CLAYTON had not given the certificate to Edwards. I told CLAYTON of the complaint. There was at that time a coalition between the democrats and Brindle-tails to unseat CLAYTON men in the legislature. I told him Whitesides, elected sheriff of Crawford County, had not received his commission, and suggested that he commission Whitesides to conciliate the democrats. CLAYTON assented, and informed me that he would issue the certificate to Edwards. He said, however, that commissioning Whitesides would raise a howl among the ultra republicans. I saw Gantt on the morning of CLAYTON'S second election; told him CLAYTON had fulfilled his pledge by issuing the certificate to Edwards, and that he (Gantt) ought to do something for him; Gantt said he would go out and do what he could. Judge Walker, of Washington County, sent word by Edwards to CLAYTON that, if he treated Edwards right, Walker would urge his representatives, Owen and Caraloff, and others, to vote for him.

"While the impeachment was pending against CLAYTON, Edwards told me he could not do much to relieve him unless he, Edwards, got his certificate, and asked me to tell CLAYTON that Edwards says that CLAYTON had promised to give him the certificate and was only waiting for a report from the Mallory committee; that the report had been made and the decision of the court in the *mandamus* case rendered, and that he wanted his certificate. I told CLAYTON, and the certificate was given the same or the next day. The impeachment was on the 16th and the certificate was issued on the 20th of February. I was acting as the medium of communication between CLAYTON and various parties."

Chamberlain, witness for CLAYTON, says: "Gantt placed the matter of his resignation, to assist Edwards, in my hands, and said that he represented Mitchell also. By changing the returns from Pulaski County, Edwards would be seated. I proposed this to Edwards, and, with his approval, saw Governor CLAYTON about it. When the legislature met, a resolution was introduced to raise a committee. Judge Bowen, Tankersley, and Judge Bennett were present when I saw CLAYTON. CLAYTON told me to hurry up the *mandamus* case, and to get the other returns from Pulaski County. I was a supporter of CLAYTON, and opposed Boles. Edwards was urgent for the investigation. *Judge Bowen furnished the names of the committee* to me, and I handed them to Tankersley, the speaker. Tankersley left off C. C. Waters, and put on Mr. Ham, because Waters was dilatory about the matter. Judge Bennett, then circuit judge, went into the house, and urged Waters to act. Soon after Bennett was appointed supreme court judge. Judge Watkins brought a paper to me from Gantt, proposing to decline a contest for his and Mitchell's seats, if CLAYTON would issue a certificate to Edwards. Bennett took the paper to CLAYTON, returned, and said CLAYTON would not *sign* it. Gantt sent in a letter to the house, stating he would claim his seat unless the agreement to issue the certificate to Edwards was carried out. The certificate was issued, and Gantt and Mitchell withdrew. Saw paper from Gantt in Judge Watkins's hands, containing his proposition about Edwards, and stated the fact to CLAYTON, Bowen, and Bennett. This was not long before the Mallory committee was raised. I supposed Bennett to be one of CLAYTON'S confidential advisers and friends; almost always saw him *in* CLAYTON'S office, and saw him frequently on the floor of the house. The main object of the investigation was to seat Edwards in Congress; this was understood all round. *It was understood by me in advance*, and, I supposed, also *by Bowen*, that the committee of investigation, whose names Bowen gave me to hand to Tankersley, would report *so as to seat Edwards*. Bowen was then supreme judge, and I think Judge Bennett knew all about the committee. Edwards left the matter of the investigation with me, requesting me to do all I could, which I promised to do. I told him he might go home and *rest perfectly easy; that he would get his certificate*. I told Tankersley that those were the names of men *he was desired* to appoint on the Mallory committee. I think I told him that Bowen sent them.

Battle, democrat, says: "I voted for CLAYTON on his first election; after the election my friends told me they had pledged me to CLAYTON, to vote for him before the election; I voted for CLAYTON to make Johnson governor."

White, secretary of state, says: "Had no evidence of the election in my office, except the returns; the returns in every view showed Boles had a majority; the governor produced no papers on which he relied in issuing the certificate to Edwards; I issued it under his direction. The clerk in my office first informed me that Governor CLAYTON had decided to issue the certificate to Edwards; I asked him on what ground—if the governor had given any reason. He said none; and I told him to make a written memorandum of the transaction, which was done. There were no affidavits or petition touching the election brought to my notice by Governor CLAYTON."

W. S. Olivir, witness for CLAYTON, says: "CLAYTON advocated the election of Boles and the republican ticket for the legislature in Pulaski County; CLAYTON advocated the election of Brooks and Hodges in that county in all his conversations with me." (We will see directly what measures CLAYTON advocated to keep them from their seats, when it was known they were opposed to his nomination for Senator.)

Catterson says: "Isaac C. Mills was democratic candidate for sheriff in Pulaski County in 1870; he was supported by CLAYTON'S political friends; was afterward appointed United States marshal for the eastern district of Arkansas, by President Grant, on CLAYTON'S recommendation. Harrington, now United States district attorney for Arkansas, supported and worked for Mills, and was generally understood to have supported Edwards in his contest for his certificate."

Having presented these facts to show the intention of Governor CLAYTON in issuing the certificate to Edwards, I will now give, very briefly, the action of the Mallory committee, which was raised in the legislature to investigate the elections in Pulaski County, and framed, as Chamberlain's evidence clearly shows, with a view to decide in favor of Edwards. Being a joint committee, they appointed Senator Mallory chairman, and pretended to proceed with the investigation.

Joseph Brooks was contesting for his seat as senator, and held a certificate of election from the county clerk.

J. L. Hodges, Gantt, and Mitchell were contending for their seats, and held certificates. Chamberlain, Goad, and Pilkington were also contending as opposing candidates. The latter were known as CLAYTON men. General Upham was appointed clerk of the committee. I should say that, by the returns, the CLAYTON men were defeated, so the investigation had a double purpose—to seat Edwards in Congress, and to seat Chamberlain, Goad, and Pilkington, who favored CLAYTON'S election.

Chamberlain, CLAYTON'S witness, says: "The following-named witnesses, whose testimony appears in the report of the Mallory committee, were never examined by the committee, to wit: J. W. Raybun, Calvin Pemberton, Milo Arbuckle, John W. Mooney, Isham White, Harvey Harrison, and R. R. Carlisle. I took their affidavits myself. I took some in the office of Mr. Fletcher, who was a democrat. General Upham, secretary of the committee, who was a warm friend of Governor CLAYTON, told me he desired a quiet place to take the testimony of certain witnesses. He said many desired to testify whose testimony he did not want, among them Joseph Brooks and J. L. Hodges. I got the key to the law-office of Faust & Ratcliffe, at Upham's request. The office was in a room in the rear of the building, approached by a dark passage, in which there was no light. One member of the committee came that night, Mr. Cohn, I think, member of the house, devoted to CLAYTON, and who was afterward appointed clerk. The committee had met before in Upham's office, across the street from the State-house." (The witness does not say whether any witnesses were examined.)

Hodges says: "I endeavored to get before the Mallory committee to testify, but never could succeed. I was never notified of the time and place to take proof. I went one night by appointment of the committee, but there was no member of it present. Failing in my efforts to get before the committee, I called upon General Upham, the secretary, and proposed that, as I could do no better, he should take my testimony. After making my statement for some minutes, I discovered he was taking down what I had not said. I charged it upon him, but he would not allow me to make the corrections. The testimony reported by the Mallory committee as mine was not given by me."

Battle says: "Was a member of the joint investigating committee of which Mallory was chairman. The committee sat a few times, examined *Chamberlain, Hartman*, Webster, John Reigler, N. L. Pears, *S. R. Harrington*, Hagan Green, and *James V. Hitch*. [It will be observed that the witnesses whose names are italicized were no doubt very swift. Fitch did the registration that they were investigating. Chamberlain, after advising with CLAYTON, Bowen, Bennett, and Edwards, got up the investigation at Edwards's and CLAYTON'S request, and furnished the names of the committee to Tankersley, the speaker, and the committee called in those special friends of CLAYTON, whose names are italicized, to do the swearing.] The witness says Hodges was not examined before the committee. I did not know that the report of the committee was going to be made until it was announced in the house. I did not unite in it, nor approve it. It was made by C. C. Waters, in the house, who was afterward appointed judge of the criminal court in Phillips County. Waters was never present when the committee sat."

Joseph Brooks says: "In an interview held by Governor CLAYTON, Lieutenant-Governor Johnson, Judge Bowen, J. L. Hodges, and myself, just before Governor CLAYTON'S second election, that Governor CLAYTON then stated to him that the Mallory committee and its proceedings were projected simply for the purpose of a counter pressure to a fight, which he understood we were putting up on him in Washington." Brooks told him "that he and Hodges had been wrongfully and outrageously and unlawfully kept out of their seats, through his influence chiefly, through the power of the star-chamber Mallory committee." These statements are corroborated fully by the witness, Hodges, and are not denied by Governor CLAYTON. To the account of this interview, as given by Brooks, who is a very intelligent man, I especially invite the attention of the Senate.

As the fifth and sixth specifications of charges both relate to the means employed to remove Lieutenant-Governor Johnson from office, and thus remove the last obstacle to CLAYTON coming to the Senate, I will treat them both together.

The proceeding by *quo warranto* has already been referred to. It was instituted for no other purpose than to fulfill the pledge which CLAYTON had given his friends repeatedly, that he would not accept the Senatorship until he had made way with Johnson. When that proceeding failed, his friends holding him to the pledge, he resigned, under the first election. In the mean time much bitterness had been engendered and division taken place among his friends and opponents in the legislature, growing out of, first, the indignation of some at his attempt to overthrow Johnson on so frivolous a pretext; secondly, the attempt made by his partisans to impeach Lieutenant-Governor Johnson; thirdly, his resigning the Senatorship; and, fourthly, his delay in carrying out the agreement with General Edwards. The impeachment of Johnson, which was another effort made to get rid of him, was based upon a ground as frivolous, if possible, as the ground upon which the *quo warranto* was instituted. The charge against Johnson was that he was guilty of "high misdemeanors and maladministration" because he swore in Joseph Brooks as a member of the senate on his certificate of election, which he presented, after having appealed in vain to Senator O. P. Snyder and Senator O. A. Hadley, zealous partisans of CLAYTON, to present his certificate to the senate.

And just here I will break the thread of my views in order to show how this matter was manipulated by Governor CLAYTON. Brooks says, "I held a certificate of election as senator; I asked both Snyder and Hadley to present my certificate, and they declined; I was kept out of the senate until after CLAYTON'S first election; was then sworn in on presenting my certificate; I moved the reference of my credentials to the committee on privileges and elections; the committee reported unanimously that I was entitled to my seat. Eight days after I was admitted I offered several bills; one was to make a disposition of the swamp-lands, estimated at several millions of dollars. There was before the legislature what was called the levee bill, intended to appropriate the same lands for railroads. Just after I introduced the bill Senator Mallory moved a recess; it was taken, and at two o'clock p. m., when the senate assembled, Senator Young, from the committee on privileges and elections, made another report to unseat me and to seat my opponent, Riley, a democrat. No evidence had been taken by that committee. I had not received any notice of contest by Riley. The previous question was at once ordered on the resolution to unseat me. I appealed for an opportunity to be heard. I wrote a note to Senator Sarber (a supporter of CLAYTON) to intervene for me. He said he would *consult with Governor* CLAYTON, and let me know if I could be heard; he went and returned, saying he had seen Governor CLAYTON, who was in his office with Judges Bennett, Searle, and Bowen, or McClure, (not certain as to which of the last two named,) and that they were consulting on the subject; that the governor signified he would let him know in a few minutes; that he would go again and *inquire of the governor if they might adjourn* the question over till morning. I heard nothing more from Sarber. I then sent a message to CLAYTON by Joseph Myers, who returned no answer. The question was not adjourned over, and I was ejected from the senate that evening."

The above is a mere abstract of a pitiful story told by a man of great intellect, remarkable intelligence, and quick conscience, who, on account of his opposition to CLAYTON'S election and disapproval of his conduct, was thus ruthlessly crushed without even a hearing. But to resume.

These two efforts to depose Johnson having failed, another election being necessary, and his friends being resolved not to vote for CLAYTON until he got Johnson out of office, another plan was devised. Strategy now came into play. A conference was held. Brooks and Hodges were invited to meet CLAYTON, Bowen, and Johnson. They met, and the following is Brooks's account of the interview:

"CLAYTON stated that he was pledged not to resign and leave Johnson to become governor; that some arrangement must be made so that he could carry out his promise, in order that he might go to the Senate. The meeting was called to make an adjustment with Hodges and myself and our associates on the ticket in Pulaski

and White Counties, and with Johnson. He repeated his often-expressed desire to be United States Senator; the earnest efforts he had put forth to secure it; that it was more than the dream of his life; that he was very ambitious; his heart was set upon it; that he was as ambitious as Cæsar; that he would not only be United States Senator, but that, if he had the opportunity, he would sway the scepter of universal empire. I answered, he knew full well that we had been opposed to his election; that it was a new development in political tactics that the successful party (himself) had to be conciliated; that, though he had secured his election by means we did and could not approve, he should quietly take his seat and we should be permitted to take ours in the general assembly. Bowen seemed equally interested with Governor CLAYTON, and to represent CLAYTON'S views and feelings. One condition necessary to adjustment, they both said, was that they should expect and require that our friends in the house, not only those who were to be admitted, but other friends of ours who were then members of the house, should vote and act on the Hot Springs contest with the CLAYTON men. (This was a contest for seats in the legislature.) One of them said that I would be expected to use my influence with those colored members with whom I was supposed to have some influence, to have them vote against the contestants in the house. I said they were sworn representatives of the people, and under obligations of the most solemn character to vote and act in that and every such matter in conformity with the facts and evidence as they understood them when presented; that if they found, in their unbiased judgment, that the contestants, agreeably to the testimony, were the members-elect, I could not, of course, counsel them to perjure themselves; for myself I claimed to be lawfully elected; stated to the governor I thought he knew I was. If I was lawfully elected then I claimed the seat without conditions and without pledges; that I believed myself to be a republican, not only unquestioned, but unquestionable; that if admitted to my seat, on all political questions I would undoubtedly act and vote with Senator CLAYTON'S friends if they were republicans; with respect to general legislation, I did not regard myself under obligations to Governor CLAYTON or anybody else, except my constituents. Johnson expressed his wish for an adjustment, so that CLAYTON might go to Washington and take his seat. CLAYTON and Bowen then suggested that CLAYTON might retire and let Johnson try his hand as governor. I answered that I thought CLAYTON'S friends were not the men to be consulted with respect to the State administration; that I felt a very great aversion to any such horse-swapping on the subject; that Johnson was as much lieutenant-governor as he was governor; that he had been elected, after the fashion he had been, United States Senator; I thought the law ought to take its course; that we required no conciliation except for CLAYTON to go on as Senator, let the constitution and laws of the State take their course, and for them to suspend what I designated their star-chamber performances through the Mallory committee; that Hodges and I and our associates on the ticket had been denied the right of a hearing there, and that there could be no harmony or restoration of friendliness of feeling unless they either gave us a chance to be heard fully and fairly before that committee, or the committee dissolved and their *ex-parte* proceedings were cast into oblivion. CLAYTON replied that he thought, if other matters could be arranged, that there would be no difficulty with respect to that committee; that it was projected simply for the purpose of a counter-pressure to a fight which he understood we were putting up on him at Washington. I replied no fight had been put up on him, nor was any contemplated; that we and our friends were entirely content that he take his seat unmolested; that while we believed we had been outrageously kept out of our seats, *through his influence chiefly*, that was past. CLAYTON expressed the opinion that if our delegation (from Pulaski County) had been admitted at the organization of the general assembly he *would have failed of his election*. Finally, late in the night, perhaps day-dawn, Bowen asked me if I would be satisfied with any adjustment made between CLAYTON and Johnson. I replied I had nothing to do with such an adjustment, and would make no trouble about it. We separated about the crack of day without any further adjustment than I have named.

"I understood Governor CLAYTON'S remarks, that I have in part stated, to be to the effect that the Mallory committee was projected by himself, and its proceedings carried forward under his direction, with a view, as he stated it, to furnish counter-pressures against a supposed fight of ours against him in Washington."

The foregoing statement of Brooks is confirmed entirely by Hodges. This proposition, made by CLAYTON and Bowen to influence votes to seat members without respect to their rights, and, in consideration of such influence to be exerted by Brooks and Hodges, graciously to consent that Brooks and Hodges might take their seats, not being accepted, still another device was hit upon, and that was to secure his seat by the use of money. O. A. Hadley was then delegated to wait upon R. J. T. White, secretary of state, and after a few blandishments he made the direct proposition to pay him $5,000 in money and $25,000 worth of first-mortgage bonds of the Mississippi, Ouachita and Red River Railroad Company to resign his office. It is hardly necessary to say that this masterly stroke was successful. This was just before CLAYTON'S second election. It had been previously arranged that Johnson, who was all along the stumbling-block, if White would vacate his office, would resign and accept it; O. A. Hadley would be elected president of the senate, become *ex-officio* governor; CLAYTON would be re-elected, and accept the place of Senator. Hadley says that White's resignation, Johnson's resignation and appointment to White's place, and CLAYTON'S nomination, all occurred within less than an hour of each other. Why these events occurred in such rapid succession and so immediately before CLAYTON'S re-election we will better understand when we come to consider the last charge.

Now, as to a few facts bearing upon the purchase of White. I will let Mr. White tell his own story, premising by saying that it is not only uncontradicted by any witness, but not even referred to by CLAYTON when on the stand. Referring the Senate to his testimony for the whole story, I content myself with mentioning the material facts.

O. A. Hadley called to see me. He said it was understood and agreed if I would resign I should not suffer pecuniarily, and that parties with whom he had conferred had agreed to see me out, if I suffered pecuniarily, and he mentioned the sums which they supposed I would be a sufferer. He named a sum, $5,000 and $25,000 in $1,000 first-mortgage bonds of the Ouachita and Red River Railroad Company; we separated there. I called on Johnson to know if the thing, as represented, was true. He said so, and it seemed to turn out that way afterward. I do not think I saw Hadley any more on the subject. I never called on Governor CLAYTON. He once passed me and asked me whether Senator Hadley had spoken to me on the subject, and I told him he had. We parted, and there was nothing more said. I resigned my office soon after. I met Governor CLAYTON in New York a short time after that, and spoke to him on the subject; *the matter was lightly touched, a mere passing remark*; and some time afterward I received a letter from him, inclosing a certificate of deposit on a bank in New York for $5,000, and twenty-five $1,000 first-mortgage bonds of the Mississippi, Ouachita and Red River Railroad. The letter was signed by Governor CLAYTON, and contained nothing but, "I inclose you" thus and so. When asked if he understood what they meant, he says, "I did; the papers showed for themselves what they meant." The witness attempts to show that other matters entered into the consideration for accepting this money and these bonds, but it is a most "lame and impotent conclusion." He admits that when Hadley called on him the subject of conversation was about his losses, by resigning his office, and says that his salary and fees of office given up by him under this agreement were worth from $6,000 to $7,000 per annum. The value of the bonds received by White may be estimated by the statement of the witness McLane, who says that he sold the same number of railroad bonds ($25,000) at 32½ cents on the dollar. White's pay for resigning his office, at this estimate, would be over $13,000. By buying off White, and appointing Johnson to his office, an obstacle, otherwise insurmountable, in CLAYTON'S path to the Senate was removed. To appreciate the value of this success, we have only to bear in mind that witness after witness who voted for him testifies that unless he had removed Johnson he could not have been elected. *His own party friends would not have supported him*, because they were resolved to do no act that would result in making Johnson governor. So, by removing Johnson, by paying White to resign, and appointing Johnson to his place, he virtually bought the votes of his own friends.

The seventh and last charge is, that Governor CLAYTON purchased his election by appointment to office of many of the members of the legislature, and by paying them money. It is answered to this charge, so far as relates to the appointments to office, first, that no such agreement was made, and, secondly, that the appointments, which are not denied, were made by Governor Hadley, who succeeded CLAYTON. Before stating the facts, I will remark that CLAYTON was elected on the 15th of March, and Hadley was installed as governor on the 17th of March. This will explain why most of the appointments were made by Hadley. CLAYTON was certainly too shrewd to "pay the piper before the dance was over." Hence he made but few appointments before the votes were delivered. Besides, some of these appointments were made to offices created during that session of the legislature, and some of them by acts passed after CLAYTON'S election, though they and the persons to fill them had been agreed upon in caucuses of the CLAYTON men before his election. From the split which occurred among his friends in the legislature, from the causes which I have already mentioned, and the decided opposition of the "Brindle-tails," or Brooks faction, and most of the democrats, his second election was very doubtful. This is shown by the herculean efforts which he and his friends put forth for some time before the second election. Frequent caucuses were held, conferences at night were numerous, and continued up to a late hour the night before the election. The doubtful issue of the contest is further shown by the vote on the second election.

In the house, first election, (house journal, p. 74:)

Votes cast	78
Of which CLAYTON received	71
Necessary to a choice	40
Majority	31

In the house, second election, (house journal, p. 715:)

Votes cast	78
CLAYTON received	42
Necessary to a choice	40
Majority	2

In the senate, first election, (senate journal, p. 44:)

Votes cast	25
CLAYTON received	23
Necessary to a choice	13
Majority	10

In the senate, second election, (senate journal, p. 272:)

Votes cast	23
CLAYTON received	15
Necessary to a choice	12
Majority	3

Thus it appears that his first majority (41) was reduced on the second election to 5.

Let us inquire now whether there were more than five members of that general assembly voting at that last election who received lucrative appointments from Governor CLAYTON or from Governor Hadley by agreement with CLAYTON. We will first take Hadley's own testimony on this point. He says:

"I appointed the following-named members of the legislature to office:

"S. W. Mallory, senator, commissioner of claims and director of the Mississippi and Ouachita Railroad Company.

"John W. Sarber, senator, trustee of the Industrial University.

"P. H. Young, senator, to same position.

"Conway Barbour, representative, assessor of Chicot County.

"E. H. Chamberlain, representative, a justice of the peace.

"M. A. Cohn, representative, superintendent of public instruction.

"I. P. Grady, representative, sheriff Crawford County.

"George Haddock, representative, assessor of Clark County.

"W. C. Hazeldine, representative, circuit judge.

"G. H. Joslyn, representative, county and probate judge of Lincoln County.

"Herbert Marr, representative, circuit school superintendent.

"Thomas Orr, representative, assessor of La Fayette County.

"J. A. Robinson, representative, assessor of Desha County.

"C. C. Waters, representative, circuit judge.

"E. R. Wiley, representative, justice of the peace.

"C. W. Tankersley, representative, superintendent of penitentiary.

"A. Hemmingway, senator, was appointed commissioner to locate county-site for Lincoln County.

"G. W. Prigmore, representative, circuit court clerk of Jefferson County, March 17, 1871, the day Hadley was installed. [Hadley says he does not remember whether he or CLAYTON appointed him.]"

I will next take the testimony of E. A. Fulton:

"D. P. Belden, senator, was appointed justice of the peace in Hot Springs County.

"E. D. Rushing, senator, appointed justice of the peace.

"A. O. Espey, representative, appointed justice of the peace.

"Carl Pope, representative, appointed justice of the peace.

"T. G. T. Steele, representative, circuit court judge.

"J. M. Alexander, representative, justice of the peace.

"James V. Fitch, representative, circuit clerk of Pulaski County, and clerk and recorder of criminal court of same county."

These offices (Fitch's) are regarded as the best paying in that county, and are worth about $10,000 per year. This criminal court was created by the same legislature that elected CLAYTON. The act creating the office of superintendent of the penitentiary, to which Tankersley was appointed, was also passed at the same legislature.

We have here the names of nineteen representatives and six senators—twenty-five members of that legislature in all—who were appointed to lucrative offices, and all of whom are recorded in the journals of the house and senate as voting for Senator CLAYTON in his second election. Of the fifty-seven men who elected him nearly *one-half* were appointed to office. The very pregnant question arises just here, how did this come about? Was it by design or by accident? Hadley appointed most of them, but why? What interest had he in rewarding men from whom he

had received no favors, so far as the testimony shows? But we are not left entirely to conjecture in solving this question. There is much positive testimony which shows that many of these votes were obtained by contract. Hadley admits that he appointed some of them at the suggestion of CLAYTON. Some of these appointments were *arranged in caucus before* CLAYTON'S election. And just here I will remark that, while CLAYTON says he never attended a single caucus during the session of the legislature, his own witness, W. S. Oliver, says that CLAYTON was generally present at *all the caucuses*. He attended them himself, and saw CLAYTON there. Chamberlain, also his witness, says he attended a caucus of republicans when CLAYTON and Bowen were present. The levee bills, the penitentiary bill, and certain railroad bills were agreed upon in caucus; so was CLAYTON'S nomination.

Scales, a democrat, who voted for CLAYTON on the second election, says that in an interview he had with Governor CLAYTON, before his election, and in talking on that subject, CLAYTON told him, if he would name good men to fill the office of magistrate in his county, he would appoint them. Hadley was present, and said he would agree to whatever CLAYTON said he would do. That was in the event Hadley became governor. This was after Johnson was appointed secretary of state, and before the election of CLAYTON. Had a conversation on the same day with Isaac C. Mills, who was supporting CLAYTON. I think I told him I had assurances from CLAYTON and Hadley that these appointments would be made; told him I would support CLAYTON, and told Mills of my conversation with CLAYTON. I voted for CLAYTON, and *considered when I voted for him* that these vacant offices in my county *would be filled*. I gave the names of some seven or eight democrats and republicans to Hadley and he appointed them. CLAYTON *appointed some* before he resigned. Hadley did not appoint some I recommended, and that is the only complaint I made against him. Neal, a democratic member of the house, voted for the articles of impeachment against CLAYTON. When the resolution was passed, fourteen senators, as before stated, to break the quorum of the senate, and thus to prevent action on the articles of impeachment, "took to the brush," (using the language of the witness,) and were gone a week, remaining during that time at the dwellings of W. S. Oliver and Judge Bowen, and visited while there by CLAYTON. Meanwhile Neal had evidently been manipulated, for the committee managing the impeachment in the house was changed and Neal appointed by Tankersly, the speaker of the house, chairman of that committee. The committee on the second or third day after Neal was appointed, without taking any evidence to support the articles of impeachment, except to examine some records in CLAYTON'S office, reported back to the house that they could find no evidence on which to sustain the charges. Neal had two measures of much importance to him pending before the legislature. He wanted two courts established, and desired CLAYTON'S influence to pass the bill. The bill was afterward passed. Neal did not vote for CLAYTON, and gives the reason why he did not vote at all, that the election came off at eleven o'clock instead of twelve o'clock in the day. The house journal shows, page 715, that the election was held in accordance with the provisions of the act of Congress, which designates twelve meridian as the hour.

McLane swears that he was in the house when the election was going on, and that he saw Neal during the roll-call get up and leave the chamber. Neal was also interested in a railroad for which he wanted State aid, which could only be granted by the board of commissioners, of which CLAYTON was one of three members.

The negro, White, senator, was also a competitor of CLAYTON'S in the election, and was instructed by his constituents to vote for himself. He did so, but before the announcement of the result of the ballot, he rose and said, "I change my vote to POWELL CLAYTON."

McConnell says that CLAYTON and Bowen called at his room at a late hour the night before the election and stated that they had just seen White (this senator) and another member of the legislature named Mason, and had fixed the matter with them, but that they were very expensive.

McLane swears that White told him he was visited after twelve o'clock the night before the last election of CLAYTON, by CLAYTON and Hadley; that they staid with him an hour or two and fixed the matter up.

Fulton swears that White boasted that he had got $25,000 worth of stock in a railroad while he was senator.

Another witness testifies that White was charged at a public meeting where he was present with having received $25,000 in bonds for his vote, and did not make any denial.

McConnell testifies that CLAYTON told him to say to Steele, (senator,) who was considered doubtful, that he (CLAYTON) would appoint him judge of the circuit court, if he would vote for CLAYTON for Senator. Steele voted for CLAYTON and was appointed judge of that court, *vice* Searle, resigned.

Chamberlain, (projector, with CLAYTON and Edwards, of the "star-chamber committee,") and CLAYTON'S witness, says: "CLAYTON asked me to vote for him on his second election; said if I would he would make out for me a *commission as justice of the peace right then*. I voted for CLAYTON, and got my commission afterward from Hadley." He states, however, that he did not vote in consideration of the commission. *Per contra*, let it be remembered that between the first and second senatorial elections Chamberlain had broken out of the traces. The impeachment of Johnson to depose him, and thus fulfill CLAYTON'S pledge, no man can doubt, was CLAYTON'S own work. Here Chamberlain broke. He opposed that assault and voted against it. Hence the necessity for his recapture. McConnell says that Chamberlain told him CLAYTON had not treated him right, and if CLAYTON expected his support he must pay for it.

McConnell says CLAYTON told him just before his second election that Johnson was going to be impeached, and he felt sure of success, and asked witness to assist. Witness saw J. P. Grady, representative, and reported to CLAYTON that he thought Grady was "bull-headed," meaning stubborn. CLAYTON said, "Tell Grady he can have the sheriff's office, or anything reasonable;" that he *must have his vote*. Mr. Grady voted against the previous question when it was ordered on the motion to impeach Johnson, (house journal, 231;) but he afterward voted for CLAYTON at his second election, and received *the appointment of sheriff*. The same witness says that CLAYTON told him, in the presence of Mills, district attorney, that Scales's (democrat) vote could be got by giving him the patronage of his county.

To show that these appointments were all agreed upon before the senatorial election, I will state that McLane testifies he was informed before the election by Tankersley that he (Tankersley) would be appointed superintendent of the penitentiary; by Sarber, that Mallory would be appointed commissioner, and that Neal would get his railroad aid and county bills, and that Waters would be appointed judge of the criminal court.

Thus it will be seen that five members of the legislature, to wit, Scales, a democrat; Chamberlain, a conservative, who ran on the ticket in Pulaski County, which was supported by the democrats; Steele, who was considered doubtful as to his vote; Grady, who had refused to vote for CLAYTON'S measure impeaching Johnson; and White, a rival candidate for the United States Senate, are shown by direct testimony to have given their votes for CLAYTON, as Senator, at the election under which he now holds his seat, under promise of a valuable consideration, which they afterward received, while the opposition of Neal, a democrat, was overcome by some magic influence, supposed to be a grant of State aid to his road by Governor CLAYTON. CLAYTON'S majority on that election was five; the men whose names are given above, excluding Neal, were five in number, and all voted for CLAYTON.

There is another very important fact to which I now call attention. It is, that even the majority he received would have been overcome had the delegation from the Hot Springs district and Pulaski and White Counties been allowed to take their seats. They were undoubtedly excluded by the iron hand of CLAYTON, and to prevent their opposition to his election. He had but one purpose, as shown by the evidence, to accomplish through the aid of that body, and that was to come to the Senate. Everything was subsidized and subordinated to that end.

McConnell says that CLAYTON told him (when he took Haymaker to see CLAYTON about his, H.'s, levee bill) that there were four levee bills before the legislature; that they were good to use for political purposes; that he would keep out of the fight for a while, and then favor the bill best *suited for political purposes*.

Various witnesses testify that many of CLAYTON'S friends and supporters, in the legislature and outside of it, were interested in these bills and several railroad bills. Neal was interested in a railroad; so was Sarber; so was Judge Bowen. Judge Bennett was interested to the extent of a fee of $70,000. And all these were looking to the governor for State aid and his influence.

By the returns in the secretary's office the delegation from Pulaski and White, opposed to CLAYTON, were elected. But White, the secretary, sent in the roll of members-elect with the names of CLAYTON'S supporters from those two counties upon it. Among those opposed to him and left off the roll were Hodges and Brooks. We have seen that Brooks told CLAYTON in that remarkable interview that he knew that Brooks and Hodges were opposed to his election, and that he told him further he knew the delegation from Hot Springs district, three in number, were also opposed to him, and that he (CLAYTON) had originated the Mallory or star-chamber committee, for the express purpose of keeping these opposition candidates out of the legislature; that CLAYTON did not deny the charge that he raised the committee, but simply stated it was raised to countervail their opposition to his getting his seat at Washington. We further know the proposition that CLAYTON then made—that *he would consent* to admit those two delegations in order to remove all obstacles to his election. That he prevented their being seated to secure his election is shown by the following facts: The Hot Springs delegation, after being kept out of their seats through the report of the Mallory committee from the 2d day of January until after CLAYTON'S election on the 15th of March, were finally received into the house. Brooks, of the Pulaski delegation, the most powerful opponent, intellectually and morally, that CLAYTON had, was kept out until after the first election, was after the election declared by the committee unanimously to be entitled to his seat, was, without notice or hearing, before the second election, on the report of the committee on privileges and elections, ejected from the senate, and Riley, his democratic opponent, seated, while Hodges and the other candidates for the house from the Pulaski district were never permitted to take their seats. The complexion of the delegation from Pulaski and White, who were seated, is somewhat motley, not to say significant. They were C. A. Whittemore, a democrat; Robert A. Howard, democrat; E. H. Chamberlain, democrat or conservative J. W. House, democrat; and Pilkington and Goad, republicans. The seats of Goad and Pilkington were contested by Gantt and Mitchell, democrats, who, it will be remembered, withdrew to insure the certificate of election to Edwards. Goad and Pilkington voted for CLAYTON.

There are many other facts which illustrate this contest for power and place, but having already extended this review further than I expected, I will refer to but few more.

At the organization of the legislature an armed force took possession of the State-house, and no one was allowed to enter the house or senate except those who held certificates of election. Tankersley entered, as several witnesses say, almost on a run, and took his seat in the speaker's chair before he was nominated. The two houses were organized on the roll furnished by the secretary of state, who, it will be remembered, excluded from the list of members-elect some who, by the returns in his office, had a majority, but who were opposed to CLAYTON'S election. When the articles of impeachment were about to be presented against CLAYTON, or had been preferred, his attached friends, members of the legislature and some outside, formed a military company for the purpose of offering resistance. CLAYTON ordered arms from the arsenal at Little Rock sufficient to arm from one hundred to one hundred and fifty men, and these arms were placed in the executive office ready for use. Even his own witnesses testify that Johnson, who was then considerd the head of the opposition, was a very peaceable man, and that they saw no demonstrations of force on the part of either Johnson or any of his friends. One witness, Brooks, says that this armed power had a very discouraging influence on the members who had been appointed to conduct the impeachment. CLAYTON and his friends, as a pretext for this, threatened bloodshed, saying that they feared Johnson and his friends would endeavor to depose the governor from office in advance of a compliance with the laws of the State, but no witness testifies to any act which showed such an intention.

However much we may differ on the demurrer to these facts, on a calm survey of this whole testimony there is one conclusion as to which, I think, all men will agree. It is that Senator CLAYTON is responsible for all the acts of that legislature, through its committees and otherwise, which were done to promote his election. He was the doer of many of them, and all the others were done by those who either stood in the most intimate personal relations to him, and were in almost daily conference with him, or others who were bending every energy to accomplish his one purpose. Bowen was the omnipresent and ever present, his Mentor and monitor, his man Friday, his very shadow. Hadley was his creature, was made governor by him, and obeyed his mandates to the letter, as shown by the appointments Hadley made. Storey said that when he applied to have the public printing restored to him, Hadley answered that he could not do so until he consulted Senator CLAYTON then in Washington.

Judge Bennett, appointed by CLAYTON circuit judge a month after his admission to the bar, for his zeal and labor in this contest, was promoted during that legislature to the supreme bench by the same benefactor. He, of course, was subservient. Judge McClure, the recipient of a like favor, was alike devoted. Judge Searle, who withdrew in the congressional race, received like honors. Tankersley, whom one witness calls CLAYTON'S candidate for speaker, devoted to the end, was rewarded by being assigned, through mistake, to a place *over* the penitentiary. And so with many others. Who can doubt that their acts and sayings were CLAYTON'S own, so far as they related to his election? Who can doubt, not only from these circumstances, but from the positive evidence in this case, that the five votes of Scales, Chamberlain, White, Grady, and Steele were procured directly by Governor CLAYTON for a valuable consideration? Who can doubt that he is directly responsible for the exclusion of those members, ten in number, whose votes were pledged against him, and who, if admitted, would have defeated his election?

Is not the conclusion irresistible that the appointment of those members of the legislature to office by Hadley was the act of CLAYTON himself? And, going one step further, who does not believe, considering the history of this transaction and the extraordinary fact that nearly one-half of the members who voted for CLAYTON were, during the session of that legislature and soon after his election, appointed, some to the most honorable and some to the most lucrative offices within the executive patronage, that these appointments were the price of their votes?

Recurring now to the transaction with R. J. T. White, is there any room left for doubt that White sold out and that CLAYTON bought him? Hadley made the arrangement, CLAYTON recognized it, by a simple word or wink from White, and then CLAYTON paid the price in the *very amount of money* and of bonds, and the very *class* of bonds, (first-mortgage Ouachita and Red River Railroad,) which Hadley told White would be paid. And CLAYTON, by the use of this money, secured the votes of his own party friends, three or four of whom, on this investigation, have sworn they would not have voted for him unless he had removed Johnson. Johnson was removed by removing White. If this be true, then it is clear that CLAYTON obtained his election solely through the power of money. If he had removed Johnson by the *quo warranto*, on the judgment of a competent court, there would have been nothing corrupt in it; or if the impeachment had resulted in deposing him, after a fair trial, it might have been considered very sharp but not corrupt practice. But when these failed, and he had no other means left by which to obtain a seat in the United States Senate, except the power and influence of gold, used and applied as it was, I cannot regard that means as other than cor

rupt. The circumstances of the bargain show that he and White were of the same opinion. CLAYTON'S emissary approached White at a late hour of night, after White had gone to bed—made the proposition. The interview was "short, sharp, and decisive." White said he would consider. When he and CLAYTON met on the street, CLAYTON referred to the subject and passed on. When they met in New York, after the election, White renewed the subject with a single remark; CLAYTON signified his obligation, and when CLAYTON inclosed the money and bonds, instead of sending his own draft, (which would have an ear-mark,) he sent a certificate, reading that *Jackson E. Sickles* had deposited to White's credit in a New York bank $5,000.

Taking a retrospective glance over the field of this contest, brought on by ambition, made fierce by party strife, and ending in shame, what a sad spectacle do we behold! CLAYTON'S plan of battle was laid while his enemies slept, and long before the day of action. Through executive power he commanded the situation, held it, and won, but with irreparable loss. We see executive power cruelly brought to bear on Storey, party ties subrogated, friend and foe falling without discrimination. We see legislators obeying his beck and crushing Brooks and others at his nod. We see the representatives of the people seated and unseated at his pleasure. And all these to put him in the Senate! We see registrars appointed and protected by him when charged with fraud. We see overtures to his enemies to join hands and wage war on his friends. We see friends and foes, democrats and republicans, following his banner, each confident he was their leader, and each, like the irate knights, seeing a different color on either side the shield. We see an inoffensive citizen, honored by his people with the next highest State office in their gift, (and given simultaneously with the highest, which they conferred on CLAYTON,) assailed without cause, by *quo warranto*, to gratify ambition. We see a plain law—so plain that he who runs may read—violated, and a certificate of election issued, under a bargain made for his own promotion, to one not entitled to it. We afterward see this democratic favorite ejected from his seat in Congress, obtained on that certificate, and his opponent, a republican, seated by a rebuking majority vote. To furnish an apology for this act, we see him raise a packed committee to investigate alleged frauds, and "to report in favor of Edwards." We see the certificate of election withheld for more than two months after it should have been issued, and more than one month after the report of that committee. This ambition, still foiled, we see it turn again on Johnson with ferocity increased by disappointment, and attack not only Johnson's position, but his honor. Here we see the mercenaries of this leader of two opposing parties discover the reverse side of his banner and desert. A few of their opponents desert and join them and turn upon their former leader. To escape defeat, he withdraws his adherents to the headquarters of his first lieutenant, Bowen, where they are quartered for six days. Strategy meantime is active. One of the opposing leaders, Neal, is captured—joins the enemy—carries a few followers, and the combined forces return, and Neal reports against impeachment. Still ambition is not sated. Still foiled by its foe, Johnson, it curbs passion, abandons the open field, and, encouraged by its success with Neal, again resorts to strategy. An armistice ensues, and Johnson is invited to a council. We there see this ambition tender gold to White and office to Johnson, and its hitherto unconquerable foe surrenders. Though the opposing chief surrendered, his followers did not, and victory was not assured. The stragglers, who had sworn they would not advance under CLAYTON against the opposing forces until their commander, Johnson, had been either killed or captured, hearing of his capture, returned to the ranks. This ambition, still fearing a field engagement, tried again the skill of strategy. Gold and promotion to office were tendered to a few of the enemy; they grounded their arms, joined CLAYTON, and, thus reenforced, he conquered.

Is it not clear, on a full review of all these facts, that money, or its equivalent, alone gave CLAYTON his majority of *five*? Taking the buying of White, by which Johnson was overcome; the votes of the republicans opposed to his election if Johnson remained lieutenant-governor, (three or four of whom testify here that they would not have voted for him except on that condition, and who further swear they did vote for him,) and counting those with whom he bargained to give them lucrative offices for their votes, it is demonstrable by figures that he got more than five votes (his majority) by these two means.

The only remaining question, granting the facts, is, what is the law? On this head I shall be brief. I consider it unnecessary to cite precedents or quote authorities; for the single question is, was using money and lucrative offices in that way fraudulent and corrupt? If so, they make the election void, and the Senate may declare the seat vacant. If, in the judgment of the Senate, such conduct was not corrupt and fraudulent, there is no case made out. This I understand to be the generally accepted rule of law in such cases.

I know there are some who go to the extreme of holding that the Senate has no jurisdiction over a Senator for any offense he may have committed prior to the moment of his election, even though the act was bribery in securing his election. And it is founded on the doctrine of State rights. To my mind this rule is not only unsound, but repugnant to State rights. For I can conceive of few higher rights the people of a State, who are the sovereign power of that State, have, than to be represented by a Senator who is chosen in conformity to law. The legislators are but the agents of the people. They cannot exceed their delegated power. A part of their delegated power is to elect Senators for their principal, the people—the sovereign. An inseparable incident of that power thus delegated is that it shall be exercised fairly and honestly. The law will never imply that even a private agent is authorized to act fraudulently in transacting the business of his principal. His agency ceases the instant he commits the fraud, and he makes himself individually responsible for the act. He not only cannot act fraudulently, and bind thereby his principal, but he cannot bind his principal by a lawful act done *extra* the scope of his agency. This being true of a private agent, the rule is even more rigid as to public agents, for reasons I need not stop to enumerate. A legislature is a public agent. And while a court cannot inquire whether a statute was passed by a bribed majority of the people—the principal—to be bound by the statute may. For instance, if a charter for a private corporation should be obtained by a bribed majority, the people, through their legislature, may annul the contract by repealing the charter.

To apply this rule to the election of a Senator. He represents the State. He is in no sense the representative of the legislature. He is elected by the legislature as an agent delegated for that purpose. The agent must act strictly within the limits of his delegated power. Fraud lies outside of that power. 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. And a man thus elected (to use a solecism) was never elected. The election is void and the seat vacant. And when the fact is judicially ascertained by the Senate, it is only necessary to declare by resolution the seat vacant. I say further, that in such case it is the imperative duty of the Senate so to do, and for the reason that no other power can. The legislature of his State cannot. The people in sovereign character cannot. For the Senate alone, under the Constitution, can judge of the *election* and qualifications of its members. If the election is void, there has been no election, and the State is *pro tanto* unrepresented in the Senate. She is entitled to two members in this body, and it would be the duty of the Senate to say one seat was vacant, that the State might fill it. Hence, in my opinion, the power of the Senate to judge of the *election* of its members necessarily includes the right to go behind the moment and form of an election, in order that it may determine whether that election was procured by bribery.

Again, the Senate is expressly clothed with power, by the Constitution, to judge of the elections, returns, and qualifications of its members. The "qualifications" of a Senator are prescribed in the Constitution. The "returns" spoken of are the formal evidence of his election. But the power to judge is not confined to "qualifications" and "returns." It extends to the election itself, and *in terms* is unlimited. Is it without limit, or, in other words, may an election be declared void for any cause for which a majority of the Senate in their discretion may see fit to avoid it? Certainly not. It is not a question of discretion, but of parliamentary and constitutional law. A cause which, according to parliamentary law, consistent with the Constitution, avoids an election, is a sufficient cause. But according to parliamentary law, both in England and the United States, an election may be avoided for bribery. The provision in the Constitution is a transcript of the parliamentary law of the English House of Commons, as it existed when, and long before, the Constitution was adopted. And it is to be observed that the same clause that makes the Senate the judge of the election of a Senator, makes the House the judge of the elections of its members. The clause is as follows:

"Each House shall be the judge of the elections, returns, and qualifications of its own members."—*Article I, sec. 5.*

The power of the two Houses is, therefore, the same, and no one has ever doubted that the election of a Representative may be set aside for bribery.

I see no reason for a distinction between the electors who choose a member of the House and those who choose a Senator. The members of a legislature, in choosing a Senator, act as a body of electors, just as the people act as a body of electors in choosing a Representative. Either class may be bribed, and the reasons for holding that bribery avoids the election in the one case apply with equal force to the other.

And hence I say that this right, so far from infringing on State rights, is necessary to their protection. In the case supposed, the State would be defrauded by the election of a corrupt man to the Senate without the power to vacate his seat. For with two members of the Senate admitted as her representatives, and one in a seat obtained by bribing her agent, she could not elect a third to take his place without action by the Senate, declaring his seat vacant.

My conclusion on the specifications, which, as before stated, I resolve into three distinct charges, is—

First, that while the evidence satisfies me that a combination did exist between CLAYTON and Edwards, by which, for the support of democrats, CLAYTON agreed to issue the certificate to Edwards, and did accordingly so issue it; yet, that not having obtained his seat by the election held on the 11th of January, at which he received these democratic votes, the act is one not cognizable by the Senate;

Secondly, that the charge made of procuring his seat by the corrupt use of money in the transaction with White is sustained by the evidence; and

Thirdly, that he obtained five other votes, which make 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.

T. M. NORWOOD.

MISSOURI SENATORIAL ELECTION.

Mr. MORTON. I ask the consent of the Senate to submit a report from the Committee on Privileges and Elections, which I desire to have read. It is very short.

The VICE-PRESIDENT. The report will be received and read, if there be no objection.

The chief clerk read as follows:

The Committee on Privileges and Elections, to whom was referred the memorial of thirty-seven members of the legislature of Missouri in regard to the election of LEWIS V. BOGY to the Senate of the United States from that State, have had the same under consideration.

The memorial sets forth that the recent examination by a committee appointed by the house of representatives of the legislature of Missouri, touching the corrupt use of money in the election of Mr. BOGY, was imperfect; that it was not full and fair, and in the opinion of the memorialists, if the investigation had been conducted with more vigor and with a purpose of revealing the real facts of the case, other and more important evidence would have been produced showing that there was corruption in Mr. BOGY'S election.

The memorial, however, does not state what additional facts can be proven, nor indicate with any certainty the character of the new evidence that may be produced.

The committee understand that the only duty which they have, upon this reference, is to report to the Senate whether the memorial presents such facts as would justify the Senate in instituting an examination in regard to the election of Mr. BOGY, and are of the opinion that it does not. Such a proceeding is of a grave character, and should not be set on foot without such a statement of the evidence that could probably be produced as would appear to make it the duty of the Senate to proceed to an investigation.

The evidence taken by the committee of the legislature of Missouri also accompanies the memorial, and has been examined by the committee. It is not the province of the committee, upon this reference, to inquire whether the judgment pronounced by the house of representatives of the Missouri legislature upon this evidence was correct; but they express the opinion that the evidence is not of a character to require of the Senate an investigation.

The committee, therefore, ask to be discharged from the further consideration of the memorial and the evidence touching the election of LEWIS V. BOGY to the Senate of the United States.

Mr. MORTON. I ask the action of the Senate on discharging the committee.

The VICE-PRESIDENT. The question is on discharging the committee from the further consideration of the subject.

The motion was agreed to.

PAY OF COMMITTEE CLERKS.

Mr. CARPENTER. Before the Senator from Georgia commences his remarks, I ask him to allow me to introduce a resolution, and I ask for its present consideration:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and required to pay to the clerks of the several standing committees of the Senate their usual per diem compensation from the 1st to the 30th day of April inclusive.

The VICE-PRESIDENT. The resolution will be referred to the Committee to Audit and Control the Contingent Expenses of the Senate, under the rule.

PAY OF PAGES.

Mr. WINDOM. While this subject is before the Senate, I ask leave to introduce the following resolution, and if there be no objection I ask that it be put on its passage:

Resolved, That the Secretary of the Senate be directed to pay the pages of the Senate for the month of April at the rate of $3 per diem.

Mr. SHERMAN. Mr. President, unpleasant as it is, I think I shall feel compelled to object to going beyond the present month. I have

no objection to paying both the pages and the clerks of committees for this month.

The VICE-PRESIDENT. Objection is made to the resolution.

Mr. CARPENTER. I ask the Senator to compromise on the 15th of April.

Mr. SHERMAN. I have no objection to the consideration of the resolution, for I feel as kindly toward the pages and the gentlemen employed here as clerks of committees as anybody; but I think this is going beyond the precedent established in such cases. We usually pay for the whole of the last month of a session, that is, the current month. I am perfectly willing to do that now. If there was any precedent for this, I should perhaps not interpose an objection.

Mr. CARPENTER. We can make one.

Mr. SHERMAN. I think we are disposed to be too ready in making precedents of this sort.

Mr. CARPENTER. Let us compromise on the 15th of April.

Mr. SHERMAN. I do not think we ought to do it.

The VICE-PRESIDENT. Under the rule, the resolution will be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. CARPENTER. The Committee on Contingent Expenses report back the resolution favorably.

Mr. SHERMAN. The worst of it is that it comes from the Committee on Contingent Expenses, my friend from Wisconsin being the chairman of the committee.

Mr. CARPENTER. If that is so, if the resolution was referred to that committee, I beg leave to report it back favorably, and ask for its present consideration, [laughter,] and I move to amend it by inserting the 15th of April instead of the 30th.

Mr. THURMAN. There is only one thing that I can conceive of that would seem to justify the passage of this resolution, and that may be entitled to some weight. The franking privilege, as we all know, expires on the 1st of July. Heretofore we have been accustomed to have our documents, a large number of them, sent home, and at our leisure during the summer and fall we distributed them. Now we are obliged to distribute them by the 1st of July, and most of the Senators, I suppose, will want to do it before they leave this city. There may be something in that to make this an exceptional case. I rose to ask my friend from Wisconsin whether there was any appropriation out of which this money could be paid.

The VICE-PRESIDENT. Is there any objection to the consideration of this resolution at this time?

Mr. SHERMAN. If the Senator will make the modification to the 15th of April, I will not object.

The VICE-PRESIDENT. The Chair hears no objection to the consideration of the resolution.

Mr. CRAGIN. How does the resolution stand now?

The VICE-PRESIDENT. The resolution will be read for information.

The CHIEF CLERK. The resolution, as modified, now reads:

Resolved, That the Secretary of the Senate be directed to pay the pages of the Senate to the 15th of April next, at the rate of $3 per diem.

Mr. CARPENTER. That modification is intended to apply to clerks of committees as well as pages; to pay them all to the 15th of April.

Mr. CRAGIN. There is no reason that can be given why the resolution which has just been read should pass. We have been in the habit of extending the pay of these employés to the close of the month during which we adjourn, never beyond; the precedent cannot be found for going further, and, as applied to the pages, there is not the slightest reason for it. The reason given by the Senator from Ohio, applying to the clerks of committees, may be a good reason as to them; that is for the Senate to say. This session will close considerably before the end of the month of March, and why we should run over into April and pay the pages who are employed here on the Senate floor till the middle of that month I can see no reason in the world for. Having been upon the Committee on Contingent Expenses for several years myself, and been chairman of that committee, I am quite confident there is no precedent like this.

Mr. WINDOM. I may have been under a misapprehension as to the precedents; but when I offered the resolution, I thought it had been the rule always to make this payment for a month after the close of a session. I know when we adjourn on the 4th of March this pay always runs through the month, which is substantially the same thing. However, I merely submit the matter to the Senate. I accept the amendment, of course.

The VICE-PRESIDENT. The question is on the amendment proposed by the committee, which is to limit the payment to the 15th of April.

The amendment was agreed to.

Mr. CHANDLER. Does not that put the clerks of committees in?

The VICE-PRESIDENT. The question now is on the resolution as amended.

Mr. SHERMAN. Let it be read as it now stands.

The chief clerk read as follows:

Resolved, That the Secretary of the Senate be directed to pay the pages of the Senate to the 15th of April next, at the rate of $3 per diem.

Mr. CHANDLER. The amendment as to committee clerks is not in.

Mr. CARPENTER. What has become of the resolution in regard to clerks of committees?

The VICE-PRESIDENT. It was referred to the committee.

Mr. CARPENTER. The committee reported it back and asked for its present consideration. That is what I reported back.

The VICE-PRESIDENT. This resolution was the one taken up. The other will come up next.

Mr. CARPENTER. I thought it was offered as an amendment to the other.

The VICE-PRESIDENT. Is the Senate ready for the question on this resolution as amended?

The resolution, as amended, was agreed to.

PAY OF COMMITTEE CLERKS.

The VICE-PRESIDENT. The Senate will now proceed to the consideration of the resolution reported by the committee.

The chief clerk read the resolution, as follows:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay to the clerks of the several standing committees of the Senate their usual per diem compensation from the 1st to the 30th of April inclusive.

The VICE-PRESIDENT. The question is on the amendment to strike out "30th" and insert "15th."

The amendment was agreed to.

The resolution, as amended, was agreed to.

M'DONALD'S MANUAL.

Mr. BOREMAN. I ask permission to offer a resolution, and I will explain it if any explanation is necessary.

The VICE-PRESIDENT. Does the Senator from Georgia yield the floor to the Senator from West Virginia?

Mr. NORWOOD. I am perfectly willing to yield for anything. I do not expect to make a speech. I have a very few remarks to make, but I am perfectly willing to yield to any business that the Senate may desire to transact.

The VICE-PRESIDENT. The resolution of the Senator from West Virginia will be received and read.

The chief clerk read as follows:

Resolved, That the chief clerk revise and make such corrections in the Manual as may appear necessary in consequence of recent amendments to the laws, &c., and that one thousand copies of such revised and corrected edition be printed for the use of the Senate.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. BOREMAN. I will state that several of the acts which are printed in the Manual have been repealed. The acts relative to the franking privilege, for instance, have been repealed; the apportionment act has been amended and changed, and there are some other corrections which are necessary. I believe the edition heretofore printed is exhausted. I think it is well that a resolution of this sort should be passed, so that we may be supplied.

Mr. THURMAN. I do not know that I have the least objection to the resolution; but does not the rule require it to go to the Committee on Printing?

Mr. BOREMAN. I consulted the chairman of that committee in regard to it.

Mr. THURMAN. And does he say it is not necessary to refer it?

Mr. ANTHONY. This is not an extra number; this is even less than the usual number. The Senate have a right to print the usual number of a document without a reference to the committee. This is not even the usual number. The usual number is fifteen hundred, and this is only a thousand.

Mr. CASSERLY. I think there is no objection to this resolution. I say that from my understanding of the subject at former dates.

The VICE-PRESIDENT. The question is on the adoption of the resolution of the Senator from West Virginia.

The resolution was agreed to.

EX-SENATOR PATTERSON, OF NEW HAMPSHIRE.

Mr. ANTHONY. I did not understand what the Senator from Georgia said when the last resolution was introduced; but if it will not in the least interfere with him, there is a resolution, that I presume will pass unanimously, that I should like to have taken from the table. It will be recollected that at the close of the last session there was a report recommending the expulsion of Mr. Patterson, then a member of this body, who has now ceased to be a member, but it was impossible to consider the question during the last session without a sacrifice of all the public business, and rendering an extra session of Congress necessary. Mr. Patterson had the floor, and was undoubtedly entitled to go on at such length as he saw fit, but he gave way, in deference to the universal wish of the Senate, and with an understanding that the subject should be taken up and considered at this session. It is not the judgment of the Senate, I believe, that it is competent for the Senate to consider the matter at this session; but I introduced a resolution, which on my motion was laid on the table, authorizing Mr. Patterson to file a statement, which should be entered in the CONGRESSIONAL RECORD. If there be no objection to that, I would ask to have that resolution taken up.

Mr. NORWOOD. If it be agreeable to the Senator from Rhode Island, I would prefer going on and saying what I have to say, and letting that resolution come up afterward.

Mr. ANTHONY. Very well; only I hope Senators will not adjourn without taking action upon this matter, which is but fair, after the understanding we had with Mr. Patterson.

Mr. NORWOOD. I make that suggestion, because it is passing to a different matter and is not mere routine business.

CHARGES AGAINST SENATOR CLAYTON.

The VICE-PRESIDENT. The Senator from Georgia is entitled to the floor on the resolution submitted by the Senator from Iowa, [Mr. WRIGHT.]

Mr. NORWOOD. Mr. President, if I had the ability to speak to-day, the circumstances are very unpropitious. The Senate is feverish for an adjournment. A spirit of impatience has taken possession of Senators as we are just now upon the eve of our adjournment; and I therefore am loath to say anything. It was because I was not able to fully discuss this question upon its merits that I had my views, as the minority of the committee, read to the Senate, and indeed I would say nothing now if I felt satisfied that every Senator in this chamber had read the report, and the evidence which accompanies it, with the views of the minority also. But I do not believe there are many on this floor who have read either; and it is not so much their fault as it is owing to the circumstances under which we have been placed. We have had the consideration of Mr. Caldwell's case before us ever since this extra session commenced. That terminated yesterday morning very suddenly and unexpectedly, and we were then brought face to face with this case. It was brought upon us by the majority of this body against the protestation of the minority, and before we had time to look into the merits of the question.

My views have been submitted. The conclusions to which my mind has been brought are therein given, and I believe, if I had time, I could demonstrate, to the satisfaction of those who hear me, that those conclusions are correct; that the facts, which are scattered, disconnected, to a very great extent, through the volume of testimony, will support those conclusions. But, Mr. President, I feel that my labor in this case is over, my task is done. I have had a laborious, responsible, and painful duty to perform. I was placed upon that committee against my desire; but, being upon it, I endeavored to discharge my duty to the best of my ability, and the result is before the Senate. I feel, therefore, that there is no further obligation resting upon me than is common to all Senators on this floor; and I would not say anything, were it not for the fact that, being on the committee, I must necessarily be better acquainted with the facts of the case than other Senators, except the two who were associated with me.

In reading a report of the length of that submitted this morning, it is of course very difficult to keep the train of thought and the facts in mind, and for that reason alone I propose to make a *résumé* simply of the principal facts. The legal questions I do not propose to touch. They have been discussed in the Caldwell case; and, if the allegations of fact are true, those principles apply to this case as well as in the Caldwell case.

My conclusions, Mr. President, are these: that Senator CLAYTON, then Governor CLAYTON, holding in his hand the executive power of the State of Arkansas, wielded that power in a manner that, to use a mild term, was far from being right, from the very beginning to the close of the canvass for his election as Senator; that it commenced in the registration of the voters of that State; that, with the almost unlimited power that was placed in his hands by the constitution of Arkansas and by the laws passed pursuant thereto in establishing boards of registrars, and in the appointment of those registrars, and in the discretion of the executive to appoint and displace, he exercised that power with a view to secure the election of members of the legislature who would be favorable to his election as a Senator; that when the registration was completed, when the nominations for the legislature came on, he descended from his high executive seat and dabbled in the pool of politics for the express purpose of having men nominated who would be favorable to his election as a Senator; that he went around the State, from county to county, and had nominations made with that view; that in one instance, by his executive control, he compelled a nomination that had been made to be changed and other parties nominated because they were favorable to his election; that in the case of one person, named Storey, the executive power was exerted upon him to compel him to decline his candidacy, because he was known to be unfavorable to Governor CLAYTON'S election to the Senate, and in order to put another party in his place favoring his election; and when Storey stood firm and would not yield to this demand, executive patronage, in the form of public printing, was taken from him for the purpose of punishing him for not yielding in his candidacy; that, when the legislature met, various measures were devised, and the testimony satisfies my mind from having heard it detailed in the committee-room, and having studied it very carefully since, that Governor CLAYTON instituted proceedings for the express purpose of securing his election to the Senate which were not only unjustifiable, but which were unlawful and subversive of the government of Arkansas. I refer, for instance, to the case of Lieutenant-Governor Johnson. He had been elected at the same time with Governor CLAYTON in 1868. He took the oath of office and entered upon the discharge of his duties; he presided over the senate of that State; he signed the minutes of that body; and no human being ever whispered that he was not legally elected and installed until Senator CLAYTON'S race commenced, and, indeed, until the legislature met in 1871. But, as Governor CLAYTON was under a promise, made during the campaign, reiterated time and again, in public and in private, that he would not come to the Senate, if elected, until Lieutenant-Governor Johnson had been made away with, it being necessary that Johnson should be gotten out of the way, these proceedings were instituted. They were instituted through the sworn friends of Governor CLAYTON, men who, from first to last, were working zealously and earnestly in his behalf and for his election. A *quo warranto* proceeding was instituted, and for what purpose? For no other than to break Johnson of his office, in order that he might be removed out of the way of Governor CLAYTON to the United States Senate. That proceeding failed, and, that failing, another was instituted, which not only attacked Johnson's position, but attacked his honor, as I have stated in my views. He was charged with high misdemeanors, and an attempt was made to impeach him, for the express purpose of removing him out of Governor CLAYTON'S way to the Senate; and that, too, failed. That failing, other means were resorted to which I consider more reprehensible than those.

Hadley, who was a senator, and one of the most ardent friends of Governor CLAYTON in that contest, then proceeded, at the request of Governor CLAYTON, to make a proposition to White, the secretary of state, which, in my judgment, was corrupt in its inception and in its consummation. These other measures failing to get Johnson out of the way, the proposition was then made to buy him out of the way. The proposition was not made directly to Johnson, but Johnson was induced to take the position of White, if White could be got out of the way, White being the secretary of state. Hadley approached him, made the proposition, and it was accepted. Hadley offered $5,000 in money and $25,000 in the first-mortgage bonds of the Mississippi, Ouachita and Red River Railroad Company. That proposition, I say, was accepted. White resigned as secretary of state; Johnson then resigned as lieutenant-governor, and took White's place. Governor CLAYTON was then elected Senator. Hadley was then elected president of the senate, and became governor of the State.

Governor CLAYTON was under a pledge that he would not come to the United States Senate as long as Johnson held the seat of lieutenant-governor, and his friends having declared that they would not vote for him until Johnson was removed, as testified to by Hadley, by Snyder, and by two or three other witnesses, who gave it as their opinion that the other friends of Governor CLAYTON never would have voted for him unless Johnson was removed, Johnson must be removed. Is it not a fact, then, that Governor CLAYTON did not come to the Senate except by removing Johnson, and that he did not remove Johnson by any other means than by the power of money? I have stated that Senator CLAYTON paid that money. White states that in his own testimony. He says that, some time after he resigned, he met Governor CLAYTON in New York, and referred to the subject. They had a little conversation on it, and Governor CLAYTON acknowledged the obligation.

Mr. SAULSBURY. Was that after his election to the Senate?

Mr. NORWOOD. Yes, sir; this was some two months after the election of Senator CLAYTON. A short time after this interview in New York, White, who was then residing in Loudoun County, Virginia, (for he left Arkansas immediately after resigning the secretaryship,) received a letter from Governor CLAYTON inclosing $5,000, the exact amount of money which Hadley had proposed, and $25,000 in bonds of the Mississippi, Ouachita and Red River Railroad Company, which were the identical bonds that had been promised by Hadley; and that letter was signed by Governor CLAYTON.

There is the proposition by Hadley; there is the acceptance of the proposition by White; there is the consummation of the contract on the part of White for the benefit of Governor CLAYTON; and there is the price paid by Senator CLAYTON transmitted by a letter signed by himself. Mr. President, I do not profess to be pure above other men, but if that is not a corrupt transaction, I concede that my moral ideas are greatly at fault; and it being corrupt, if his election was secured by that corrupt conduct, I say that this Senate has the right, and it would be the duty of the Senate, to declare that Governor CLAYTON was not entitled to a seat in this body.

Again, Mr. President, there is testimony showing that at various times propositions were made by the intimate friends of Governor CLAYTON, and particularly by Thomas M. Bowen, for the purpose of bribing members of that legislature, and upon this point I refer to one fact, which is not set forth in the printed views I have submitted. I quote from the testimony of a man named Fulton, on page 91:

By Mr. MORRILL:

Question. State anything you know in regard to any corrupt arrangement on the part of Governor CLAYTON with anybody tending to his election to the Senate.

Answer. I know that his friends tried to induce me to vote for him, and offered me a position if I would vote for him and act with his wing of the party right straight through.

Question. State who made that offer to you.

Answer. Judge Bowen.

Question. Judge Bowen who is here as counsel?

Answer. Yes, sir.

Now, on page 92:

Question. Was not Judge Bowen then one of the judges of the supreme court of the State of Arkansas?

Answer. Yes, sir.

Question. Was he not notoriously known and understood to be, together with Judge McClure, the regular manager and leader of Governor CLAYTON in carrying out this enterprise?

Answer. Yes, sir; I understood him to be "fixing up the job" to carry it through.

On page 93 he says:

Question. State what you know in reference to it.

Answer. I do not know, except what Judge Bowen offered me and told me by whose authority he offered it, and so on.

Question. State what he said.

Answer. He told me at the time I had the talk with him in regard to the position on the railroad—

That was a proposition made to the witness to give him a position on a railroad in consideration of his vote—

that if I did not want that, any appointment in my county that Governor CLAYTON did control I could have, and that if I doubted his sincerity he would produce it in writing from Governor CLAYTON. That was at the same time, the same night that he offered me this position on the railroad. Other men came to me with money, saying it came from Judge Bowen.

This testimony from beginning to end shows that Judge Bowen was the acknowledged representative of Senator CLAYTON in that race, and that every act that Judge Bowen did in the furtherance of that election was done with the knowledge and consent of Governor CLAYTON. He was with him all the time. Hardly any witness speaks of an interview with Governor CLAYTON who does not say Bowen was present. He lobbied on the floor of the house continually; he was with Governor CLAYTON on the streets; he was with him when Governor CLAYTON was calling at the houses of members, as testified by some of the witnesses. Whatever Bowen did in connection with this transaction, any fair jury would say, without hesitation, was the act of Governor CLAYTON.

There are other facts which are referred to in my minority views—propositions made for the purpose of giving offices to certain parties if they would support Governor CLAYTON for the Senate, as in the case of J. P. Grady, giving him the office of sheriff. McConnell testifies—the witness about whom so much has been said—that Governor CLAYTON asked him to go and see Steele, a member of the legislature, whose position was doubtful on the senatorial contest, and make a proposition to him, that if he (Steele) would vote for him for Senator he would appoint him to a judgeship. McConnell went and made the proposition. Steele voted for Governor CLAYTON and received the appointment of judge.

There are many other facts of this kind in this testimony; but I find that I am not able to proceed; and I therefore must close with this very brief reference to only a very few facts upon which my conclusions have been based.

The question is now with the Senate. My responsibility is now only that which is common to all members of this body. I therefore, without any further remarks, leave this question to the Senate.

Mr. WRIGHT. Mr. President, I feel very greatly embarrassed by the circumstances surrounding me at this time. I am conscious that every Senator upon this floor is anxious for an adjournment, and perhaps equally anxious for a vote upon this question. Under the circumstances, I scarcely know what is my duty. If I felt that the Senate considered themselves prepared and would come to a vote upon the question at once, I should be very strongly inclined not to say a word; and yet it is, perhaps, due to the committee as well as to the Senator implicated, and to the members of the Senate who have not had an opportunity to fully examine this testimony, that I should at least say something in support of the views presented by the majority of the committee, and at the same time show the mistakes or errors into which I am sure the Senator who has just taken his seat has fallen.

The case is one of such a character, turning largely if not entirely upon the facts, that I could occupy hours in their examination; and those facts are so interwoven and the determination of the case depends so much upon their interdependence upon each other that no one can do justice to himself if he undertakes to present the case hurriedly. And yet I feel that it is my duty to present it thus hurriedly in view of the circumstances.

I desire to say, Mr. President, that my impressions of this case have entirely changed since I undertook the examination of the facts. That is to say, when the report was made by the joint committee to inquire into the condition of affairs in the South, which was referred to this select committee, in view of what had been said in the public prints, and in view of the rumors that obtained, I had an impression that there must certainly be something wrong in the State of Arkansas in connection with this election. I never had made the acquaintance of the Senator implicated until he took his seat in this body. It was said in the public prints that he was a bold, bad man, that he had obtained his election by fraud and corruption; and with these rumors and these statements before us in the public prints, I entered upon the examination of this case.

Now I am very sure that I have no disposition on earth to lower the standard of integrity or purity in the election of Senators or in other elections. I am very sure that I would hold the standard as high as any one; and by no act of mine, by no vote of mine, will I ever willingly or knowingly lower that standard. I would have an election of Senator free, unbiased, uninfluenced, as far as possible. So far as I am concerned, I should not object if by law you should provide that the seat should be declared vacant if the Senator left his place in this hall or left his home and was in attendance upon the legislature at the time of his election. So far as I am concerned, I should not object if you should provide that if either by himself or his friends he undertook to influence that election, or the members of the legislature, his seat might be declared vacant; and yet I think it is proper to say in this connection one thing. I have been almost pained here for the last ten days or two weeks to hear it not infrequently said upon this floor—if not said in terms, certainly implied from what was said—that the standard of senatorial integrity is being lowered, that we have fallen upon evil times, and that it is incumbent on the Senate, therefore, to protect itself; else that these evils will continue. Now, sir, I am not prepared to concede or admit that the times in these respets are any more evil now than formerly. To do so I should have to admit that the people are corrupt now as compared with former times, for, in my judgment, if the people have that degree of morality and honesty and integrity which they should have, you will find the same in official positions, and you will find the average morality in all official or public office as you find it with the people. Therefore, to say that we have fallen upon evil times in this respect, I say is a reflection upon the people that I think is unjust to them and unjust to their officers.

I have suggested, Mr. President, that I might take up very much time in the examination of this case. I do not intend to take up such time as I would under other circumstances. My purpose is only to notice some of the more prominent points that are suggested in the views of the Senator from Georgia.

I shall not enter into an examination of what has been said with reference to the registration of the State of Arkansas, nor of what has been said with reference to the influence of political conventions. All these matters I regard as being entirely outside of this case, and not only outside of the case, but I affirm here that upon this testimony I could be able to show, if time allowed, that there is no testimony that should influence a single man as a juror showing that Senator CLAYTON ever improperly influenced registration or that he ever influenced, improperly or otherwise, a single political convention in his State.

It must be remembered, Mr. President, that Governor CLAYTON was a candidate for the office of Senator, known, and accepted, and recognized as such during the entire preceding canvass. It must be remembered also that he was not unknown to the politics of Arkansas. Starting as a captain in the military service at the commencement of the war, soon afterward promoted to the rank of lieutenant-colonel, immediately thereafter, almost, becoming the colonel of the regiment, promoted in due time to be a brigadier-general, on the close of the war, after having fought through all the battles in that portion of the country, he settled in Arkansas as one of her citizens—settled upon his plantation—and invested his all there. After remaining there some two years, in no way connected with its politics, taking no part in the troublous times there, he was nominated by the republican party as a candidate for the office of governor. He made the race in the convention against Mr. Brooks, who is now among the principal witnesses against him, and also Mr. Johnson, who was at the same time nominated for the office of lieutenant-governor. He was elected governor and entered upon the discharge of the duties of that position.

The scenes attending his administration of the office of governor, I shall not refer to except to say this much: I undertake to say as a part of the history of the times that no State in the South was more thoroughly, or soundly, or properly reconstructed than Arkansas; and I say that that great work was largely owing to the indomitable will, energy, ability, and integrity of the then governor of the State. If there were found men who were prepared to and did violate the laws, if there were found men who opposed the officers of the Government or officers of the State who went out to enforce the law, the governor, by his agents, was constant and active in his work, and soon those men were led to believe and to know that they continued those dread scenes at the peril of their own lives.

He had been the governor of the State for two years. The term of office of one of the Senators then in the Senate of the United States from the State of Arkansas was about to expire. Governor CLAYTON was recognized as a candidate for that office. He was so recognized in every county and all over that entire State. The contest was made in that State largely with the knowledge that he was such candidate, and the members of the general assembly were elected with that knowledge. I undertake to say from this testimony that, when the members were thus elected, a very large majority of the members elected upon the republican ticket were recognized and elected as the friends of Governor CLAYTON. Hence you will find that at the first election, to which election I shall refer hereafter, he received in the house every vote except six, as I now remember, and almost the same proportion in the senate of the State.

I say, therefore, that Governor CLAYTON, as a candidate for the office of Senator, was not unknown before the legislature met. There can be no claim that it was a surprise upon any person, or upon any party or body of men, that he was such candidate or that he was elected. There was elected to that legislature a large majority in his favor; hence there was no necessity on earth that he should use money; no necessity on earth that he should use official influence; no necessity on earth that he should do anything improper to secure such election, for he had such election assured him at the time the general election closed, on the 8th day of November, 1870.

I therefore pass by all that is said with reference to registration, and all that is said with reference to the influence of primary elections, first, because I say there is no proof of improper conduct, and, in the second place, because I submit that with these influences we have nothing to do whatever.

I think I may also pass over what is said in the minority report and what has been said this morning with reference to the organization of the general assembly. I think if anything has been settled by the debate of the past two weeks, if anything is settled by the law on this subject, it is that we have nothing to do with such organization; that

the election, returns, and qualifications of the members composing the general assembly are to be left to the senate and house of such assembly respectively, and with those we have nothing to do. Very much is developed in this discussion upon this and kindred subjects, but I shall not touch upon them or refer to them for the purpose of justifying the action of Governor CLAYTON and his friends.

I desire to say another thing in this connection. In the first place, I ask the attention of Senators to the charges that are here made against Senator CLAYTON; I ask it of them without regard to party; and I say to all Senators here that this is a question upon which no man can afford to make a mistake. It is a question affecting the right of one of the members of this body to his place here, and no one influenced by mere party considerations can afford to vote for or against this resolution. I submit that, so far as the charges here are concerned, nothing could be more indefinite or uncertain. You will find by referring to the testimony of Wheeler and Whipple that they state nothing positive, nothing certain; but they state that this was understood and that was understood, this was rumored and that was rumored, and upon these rumors, thus faintly hinted at, the Senator from Arkansas is put upon his trial here and this investigation is had. Not only so; but examine this testimony, and I submit it to every member of the Senate that, notwithstanding five thousand manuscript pages of testimony were taken, and though the committee agreed unanimously to exclude one-half, if not more, of that testimony, yet take the testimony that has been printed, and I affirm that seven-tenths of it is the merest hearsay on earth. And yet it is claimed that we are justified in either unseating the Senator implicated, or finding that he should be expelled, upon testimony of the character that I have thus presented.

I do not know that it is necessary that I should go into an examination of some of the matters that have been referred to by the Senator from Georgia. It will be found that in the conclusion of his minority report he substantially abandons any claim of fraud, any claim of corruption, so far as relates to the granting of the certificate to Edwards as a member of Congress; and yet I undertake to say, from this testimony and the charges referred to this committee, that that was the prime charge that was made against Senator CLAYTON when this investigation was put on foot. I say that the principal charge was, that he had, by a corrupt agreement with General Edwards, or with his friends, agreed to give him a certificate of election, upon condition that he (Governor CLAYTON) should receive democratic votes for the Senate. But when it was found that he received but one democratic vote at the time of the second election, and that that man, Scales himself, testified that he scarcely knew whether he was a democrat or a republican, you can see at once that most readily they would abandon this charge, and therefore it is entirely abandoned.

So far as the two principal matters relied upon by the Senator from Georgia are concerned, if I can show that in some respects he makes fatal errors in his conclusions as based upon the testimony—that is to say, that the elements which enter into his calculation are without any support in the record, I feel that I shall have gone very far in satisfying the Senate that his conclusion is not warranted. For instance, he says that Governor CLAYTON received but five majority at his last election. I am very certain the Senator is mistaken in that. I refer to page 398 of the report. He says:

In the house, second election, (house journal, p. 715:)

Votes cast	78
CLAYTON received	42
Necessary to a choice	40
Majority	2

* * * * * * *

In the senate, second election, (senate journal, p. 272:)

Votes cast	23
CLAYTON received	15
Necessary to a choice	12
Majority	3

I have here the journals of the house and senate at the time of that election, and by referring to them you will find that in the house Senator CLAYTON received 42 votes; all others received 36 votes. In the senate, Senator CLAYTON received 18 votes, not 15, and all others received 7. I can very well see how the Senator made his mistake, for the vote, as first announced, was "for POWELL CLAYTON 15;" but three senators changed their votes before the result was announced, and the vote was then announced as follows: "For POWELL CLAYTON 18 votes," and for all others 7.

The Senator makes his calculation, and says there were five votes improperly influenced, and that these constituted Senator CLAYTON'S majority. Having shown that in this he is mistaken, without now entering upon the question as to whether any single one of those five was improperly influenced, I am sure the Senator's conclusion is not warranted. You will find that Senator CLAYTON had seventeen majority on his second election, and that it was necessary that there should be a change of nine votes in order to make the result different from what it was.

He says also that a part of the scheme of Senator CLAYTON to secure his election was——

Mr. NORWOOD. If my friend will allow me, it is barely possible that I may have been mistaken in the number, but I place no stress upon that. If any one of those five votes was secured in the manner that I think it was secured, it answers every purpose.

Mr. WRIGHT. Do I understand the Senator to maintain that if one of those votes was procured by bribery and improper means it would defeat the election?

Mr. NORWOOD. Not at all.

Mr. WRIGHT. What then?

Mr. NORWOOD. It would justify expulsion.

Mr. WRIGHT. There is no such question before us now, and therefore I shall not discuss it.

The Senator says that he may be mistaken as to the number, but that that is not material. I undertake to say that throughout his minority report he bases his conclusion upon the fact that five votes were improperly influenced, and that they changed the result. I say, if there is anything clear in that report and settled by its language, it is that he calculates and makes his estimate on the basis that five votes would have changed the result, and having found the five votes, as he thinks, he reaches his conclusion.

Mr. NORWOOD. I hope the Senator will not assume that that is the only issue in my report or the only conclusion that I present. The question being one of bribery, I was endeavoring to show that A, B, C, D, and E were bribed, and enumerating the number. The question now is as to whether any of those were bribed. The other issue is presented, it is true; but, true or false, it would not alter the result.

Mr. WRIGHT. I certainly was not pretending to say that that was the only conclusion at which the Senator arrived; but I was merely for the present combating that conclusion. I shall come to the others in due time.

I was about to say, Mr. President, when interrupted, that not a little force is placed upon what was regarded as improper conduct of Governor CLAYTON and his friends in connection with the delegation from Hot Springs County. It is said that it was part of the programme of Governor CLAYTON and his friends to keep the representatives from that county out of their places, and that they succeeded in doing this until after the second election, and that thus it occurred that he had three of his own friends in the house to vote for him at his second election, whereas if they had been excluded and the others admitted, they would have voted against him. Unfortunately for the Senator's argument, that contest was decided before the second election; and while three men who were in the places at the time of the first election, as I now remember, voted for Governor CLAYTON, they were excluded from their places before the second election, and each and every man thus admitted voted against Governor CLAYTON. I am sure the Senator will not controvert me in that. I am sure I am right in that. I have the record here, and if in this I am controverted I turn to the record. Therefore you see again, Mr. President and Senators, that here a most material and important item in the Senator's calculation, and one of the main charges that he makes against Senator CLAYTON, as showing the iron will and the iron hand of this man, falls to the ground.

I wish to say another thing in this connection. It is a little remarkable that Governor CLAYTON should have this iron hand and this indomitable will, and thus hold the legislature at his own will and pleasure, and yet there was a sufficient majority in that house to exclude his friends from their places and put three enemies in the place of those who were thus turned out.

Another thing is most remarkable. I ask Senators if they have ever known in all their experience that a man with an iron will, as Governor CLAYTON is represented, with the power in his hands to control that legislature, with such an overwhelming majority in that body as it was claimed he had to control as he pleased, that that same body impeached the very man who held them in his hands. This very legislature, that he thus controlled at his will and pleasure, by their votes impeached the governor of the State, and presented him at the bar of the senate for trial!

Mr. NORWOOD. If the honorable Senator will allow me, I will refer him to my views for the reasons why the governor was impeached.

Mr. WRIGHT. I should prefer to proceed.

Mr. NORWOOD. I did not expect that the few remarks I submitted to the Senate were going to provoke such a long and able discussion from the Senator from Iowa. I did not know that he was going so largely and so fully into the merits of these questions, from the conversations we had about the matter; and now, as he is pressing these points, I wish to show him the reasons, and answer him as he goes along.

Mr. WRIGHT. I should very much prefer to get along with my argument. The Senator will have ample opportunity to reply after I shall have concluded.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The Senator from Iowa declines to yield the floor.

Mr. WRIGHT. No, I shall not object if the Senator is desirous of presenting this matter. I want to get it off my hands as quickly as possible.

Mr. NORWOOD. I read from the minority report:

It was instituted for no other purpose than to fulfill the pledge which CLAYTON had given his friends repeatedly, that he would not accept the Senatorship until he had made way with Johnson. When that proceeding failed, his friends holding him to the pledge, he resigned, under the first election. In the mean time much bitterness had been engendered and division taken place among his friends and opponents in the legislature growing out of, first, the indignation of some at his

attempt to overthrow Johnson on so frivolous a pretext; secondly, the attempt made by his partisans to impeach Lieutenant-Governor Johnson; thirdly, his resigning the Senatorship; and, fourthly, his delay in carrying out the agreement with General Edwards.

That was the reason that they were enabled to impeach him at that time, and hence his strength was so much reduced that he got but a very small majority on the second election.

Mr. WRIGHT. I had read all that before, Mr. President. I knew the ground that the Senator took. I certainly am not to be held to his conclusions. I state the record. I state the fact that the men who were the friends of Senator CLAYTON, as it is termed, and who were held in his power, did impeach him. I state that as a fact.

Now, Mr. President, I have only time to just glance at matters as I go along, and instead of taking them up in their order I refer to them just as they occur to me.

I undertake to say that Senator CLAYTON'S conduct in connection with his election as Senator, taking the first and second election, is without a parallel in our politics. I have told you already that Senator CLAYTON had an unquestioned majority in that general assembly. In the nominating conventions or caucuses, as they are termed, there was scarcely a show of opposition to his nomination. At the first election his vote was almost unanimous. He had said to his friends in that State, however, that if elected Senator, being such candidate, he would not leave the State government in the hands of Lieutenant-Governor Johnson. He was elected Senator; he had his certificate; there was nothing in the world to prevent his coming here and taking his place; but there was his pledged faith to his friends that he would not leave the State in the hands of the lieutenant-governor. Why he had taken this ground and why he had given this pledge, it is not necessary that I should discuss at this time. But he was the Senator-elect; nothing in the world was in the way of his accepting the place. I undertake to say that but few men can be found anywhere who, having received so large a majority and having a certificate of election, would have stood upon such a pledge when men were found all around him all the time, and some of them his best friends, insisting that it was his duty to accept the place—to come here and enter upon his duties as Senator; and yet such was his fidelity to his friends, such his integrity as a man, and such his honesty as an official, that he regarded that the duty was incumbent on him to fulfill his pledge, and he hence resigned his place after the first election.

He having resigned the place after the first election, what is there to impeach his second election or that would show that he was in the least implicated in anything dishonorable or corrupt? The Senator refers to five members of the general assembly whose votes were influenced. I wish I had time to refer to those five members and the testimony bearing upon them. They are Chamberlain, Steele, White, Grady, and Scales.

Chamberlain, it is said, was influenced to vote for Governor CLAYTON by the promise of Governor CLAYTON to give him the office of justice of the peace; and yet throughout the minority report Chamberlain is spoken of as the true and tried friend of Governor CLAYTON from the time he was nominated and all the time during the contest; he is spoken of as the man who engineered the Edwards arrangement; he is spoken of as the man who engineered the democratic vote; he is spoken of as the man who during the contest, when he was a candidate for the legislature, had been appointed registrar, which has no foundation in fact in this testimony. He never was such registrar. But he was a candidate upon the CLAYTON ticket, and elected upon the CLAYTON ticket, as it is claimed; and notwithstanding all this friendship, all this devotion to the interests of Governor CLAYTON, it was necessary to buy him with a promise of the office of justice of the peace! He never was registrar; he was a clerk of the board, and so soon as he became a candidate for the legislature he was removed. He never was registrar. (In the same connection, also, to show the errors into which the Senator falls, let me refer to the fact that he speaks of Fitch as a member of the legislature, and says that he was given an office. Fitch was never a member of the legislature, and yet the Senator asserts in his report that he was a member of the legislature and received an office in consideration of his action.) This much with reference to Chamberlain, for I will very hurriedly run over these matters.

I next come to Scales. Scales voted for CLAYTON the first time, and he is the only man that approximates a democratic status who did vote for him the second time. Scales voted for CLAYTON, and he says that his vote was conditioned upon receiving certain appointments. He received no appointment himself. He swears himself that he was not influenced in the least in voting for CLAYTON by anything that CLAYTON had said to him, or by anything promised by CLAYTON or by Hadley; that, living in a county which was very sparsely settled, a prairie county, where there were but very few persons, he desired that certain men should be appointed to office there who were named. Some of those persons were appointed and some were not. He had no kind of interest in their appointment; he had no kind of interest as to who should fill these places except to get good men; and he said he applied to CLAYTON to have such men, good men, appointed, and afterward some of them were appointed by Hadley. That is all there is about Scales.

Mr. NORWOOD. As I am not able to reply, I think it would be but fair that the honorable Senator from Iowa should refer to the testimony as he goes along on these points. It is true there is a general denial on the part of Scales that he voted in consideration of the appointments; but his previous testimony shows an express agreement to vote for CLAYTON if those appointments should be made.

Mr. WRIGHT. I have already suggested that I feel that I should be doing an injustice to the subject and to myself if, in view of all the circumstances that surround us, I should undertake to enter elaborately into all this testimony and examine it in detail. I have here references to the testimony, and if any one has examined it, or if any one desires a reference to the testimony in support of what I state, I am ready to refer to it. So far as the Senator from Georgia and myself are concerned, we have examined this testimony; our views differ upon it; that I know very well; I cannot expect to satisfy him as to my conclusions; I do not know but that he might satisfy me as to his, for I know how much more power he has in that respect than myself.

I have spoken of Chamberlain and Scales; I next come to White. Now, I will tell you the strongest testimony there is as to White. One Grey was a witness before this committee. After he had been examined he left the city. Mr. Brooks, a witness against CLAYTON, testified that Grey told him that he overheard a conversation between CLAYTON and White, in which money was offered; and upon that testimony you are to find this man guilty. I say that is the strongest testimony there is here.

Mr. NORWOOD. I dislike to interrupt the honorable Senator, but I wish he would let the Senate know that in making that statement he entirely ignores the testimony of McConnell.

Mr. WRIGHT. I will come to McConnell in due time.

Mr. NORWOOD. McConnell testifies directly that Governor CLAYTON told him he had seen White the night before the election and fixed the matter up with him, and he had been very expensive.

Mr. WRIGHT. I desire to state here that I should believe a man who had told a thing at fourth hand infinitely quicker than I would anything that McConnell said, unless it was in regard to a matter unmistakably within his own knowledge; and if this Senate is prepared to unseat any man, or to cast the least blemish on him upon the testimony of McConnell, who, I affirm, is a living monument of God's punishment of society and mercy to the individual; who is a walking monument of the doctrine of total depravity—I say if any Senator here thinks of casting the least blemish upon any man on such testimony, I have done with this argument.

McConnell! Five witnesses come here and swear, as far as they are allowed to do under the law, that they would not believe him under oath. McConnell! Drunk and debauched every day of his life almost. McConnell! When before the committee he had to be sent to a place of charity for a week to get him sober before he could proceed with his testimony. McConnell! Can you convict a man upon the testimony of McConnell? And yet that is all there is of it. McConnell is smart. All these other witnesses who testified with reference to the friends of CLAYTON, and thus to conclude CLAYTON by showing a conspiracy, fell short of it; but McConnell is the chinker and dauber, the man who, when the part of the chinking and daubing is out, comes forward and patches it up. McConnell knew perfectly well, sharp and smart as he was, that, in order to affect CLAYTON, he must go every time and tell CLAYTON, and every time he must bring it home to CLAYTON; and McConnell is the only man upon whom there can be a hope that you can affect CLAYTON in this case. I have said that he was discredited. I have the testimony here of the governor of Kansas, of the mayor of Leavenworth, and of three or four citizens of Leavenworth, and of one or two of the principal citizens of Arkansas, who happened to be here at the time, all of them agreeing that his reputation for truth and veracity was bad; and nowhere in Arkansas, or Kansas, or Pennsylvania has there been found a man to come forward and assert his veracity. You will remember, Mr. President, and others also, what was said on this floor yesterday by two honorable Senators. I would myself feel justified in referring to my friend, the Senator from Arkansas, the colleague of the Senator upon trial, if he were here, that he might also state what he knows of this precious witness. McConnell is the only man, I say, that they can pretend to rely upon to make any, the least connection of Governor CLAYTON in the transactions complained of.

Now, Mr. President, allow me to say one word in connection with what is spoken of as the Mallory report and the frauds in Pulaski County. I wish the Senate had the time; I should like much that that Mallory report should be read here, to show the most unexampled frauds that were ever practiced in any country in this nation, in my honest judgment. Notwithstanding the number of votes that were against Governor CLAYTON, notwithstanding he was impeached, when that report came in, it was adopted in the Senate of Arkansas by a vote of 18 to 2. It shows the unexampled frauds in Pulaski County, where it is claimed that the friends of Governor CLAYTON were kept in their places and his enemies kept out. Let me tell you one thing in that connection. Governor CLAYTON got of the Pulaski delegation three votes. He got Chamberlain, Goad, and Pilkington. Goad and Pilkington were upon the same ticket with Brooks. Remember that Governor CLAYTON supported the ticket headed by Brooks in that election; remember also that he supported Judge Boles in his candidacy for Congress; remember that he made speeches for Boles; remember that Boles was the candidate of his party; remember that at one time there were two candidates for Congress in the field besides General Edwards—Judge Searle and Judge Boles; remember that Searle was more particularly the friend of Governor CLAYTON; remember that Governor CLAYTON urged and

insisted that Judge Searle should withdraw and the field given to Boles; remember that it was at his instance and upon his advice that this was done; and after Searle had withdrawn, Boles and Edwards alone being the candidates, CLAYTON supported Boles as against Edwards, and made speeches through his district; remember also that he supported the ticket headed by Brooks, who was the candidate for the senate against Riley; remember that Goad and Pilkington were republicans, and declared elected; Chamberlain and Goad and Pilkington voted for CLAYTON. Brooks and Hodges, and Hodges particularly, prosecuted this case against CLAYTON; he was here during the entire investigation; he was a candidate for the legislature upon the Brooks ticket. Brooks and Hodges swear that if they had been in the legislature and the caucus of the republican party had declared for CLAYTON they would have voted for him. If they had been admitted, therefore, you will see that Riley could not have voted against CLAYTON, he having been declared entitled to his place as senator. If Brooks had been there, and the majority of the republican caucus had declared in favor of CLAYTON, Brooks swears he would have voted for CLAYTON; and that there was such majority for him no one pretends to doubt. Not only so, but Hodges swears that he also would have voted for CLAYTON; and therefore, if Brooks and Hodges had been admitted, he would have got Brooks's vote in the place of Riley. Goad and Pilkington were on the same ticket with Hodges and Brooks. If Hodges and Brooks had been declared elected, Goad and Pilkington would also have been elected, and the more certainly from the fact that they ran ahead of both Hodges and Brooks. The trouble was, about Hodges's and Brooks's election, that there were certain frauds attendant upon that election which defeated them; but in view of the fact that Goad and Pilkington resided in White County, and received more votes there than the other candidates on their ticket, they were declared elected; and for the other seats the candidates on the democratic ticket were declared elected.

Now, I want to be understood in this. Riley voted against CLAYTON. Brooks would have voted for him. Goad and Pilkington would have continued in their places anyhow, and they voted for him. Hodges says he would have voted for him had he been in the legislature, and it is fair to presume that the other candidates on that ticket, for there were six for the house and one for the senate, would have voted as Brooks, who was their leader, and Hodges, who followed Brooks and was the leader in the house, declared they would have voted. Can you tell me what object CLAYTON had in keeping these men out of the legislature? You will find that Governor CLAYTON had nothing to do with that matter whatever. And so far as the Mallory report is concerned it did not determine anything in regard to the right of Brooks and the other candidates to seats in the legislature; but that was determined by the committee on elections, to which committee their credentials were referred. The Mallory committee was for the purpose of inquiring whether there had not been certain frauds and insurrectionary and violent proceedings in the county of Pulaski touching that election; not to determine who was elected to the senate and house of representatives of the general assembly, but to determine whether there had been violence with a view to subsequent legislation; and I undertake to say that when you look at that report—and if I had time I would have it read—you will find a condition of things that has no parallel in the history of elections in this Government. Why, sir, one witness swears that there was a combination the night before the election, and for days before that, to take possession of the polls in the city of Little Rock; that the town clock was to be so placed as that the regular judges of election would not get to the polls in time, at eight o'clock in the morning; that they were to be there hours before that time, and some of them were there at one or two o'clock in the morning; and when the regular election judges appeared there they were driven from their places and the polls were usurped, and that this man Hodges, and others, who prosecuted this case against CLAYTON, were active and instrumental in getting up these frauds and taking possession of the polls, not in Little Rock alone, but in the towns around through the county.

I say, then, so far as this county of Pulaski is concerned, that the most unexampled frauds were perpetrated there by these men, and that, so far as CLAYTON was concerned, it was his interest to have the very men who now insist that he improperly kept them out of place, in their places, that they might vote for him, for he received but three votes from Pulaski County members. Two of them would have been continued, and he would have got them anyhow. If Chamberlain's seat had been declared vacant, he would have lost Chamberlain's vote, but he would have got three other members of the house and the vote of Brooks in the place of Riley in the senate.

Mr. President, there is but one other matter to which I shall refer, and then I shall leave the case. I have said very much more than I intended when I rose. All that remains is the charge in relation to White's resignation as secretary of state and Johnson's appointment as his successor, and Hadley becoming governor.

I want it borne in mind that Governor CLAYTON did not need votes. He had been elected Senator; he had an unquestioned majority of the republican party in that general assembly. What he wanted, to state the matter briefly, was that he should maintain his pledge to the people of the State. White resigned his office as secretary of state. The only word that is shown here that CLAYTON ever said to him upon earth is, that he met him one day and asked him if he had seen Hadley, and he said he had. Now, remember that it was quite as important that Hadley should become governor, in his own estimation at least, as that CLAYTON should become Senator. It was also a matter of importance to Johnson that, instead of having the office of lieutenant-governor, which paid but very little, he should have the office of secretary of state, which paid better.

Now, you can see at once that there was quite as much motive, quite as much inducement on the part of Hadley and Johnson to make this arrangement by which the one was to become governor and the other secretary of state, as that CLAYTON should have anything to do with it. You will find in this testimony also that White had said three months before, if not longer than that, in view of the condition of his family, he having lost his wife and having a family of dependent children, that he was exceedingly desirous to get away from Little Rock, and to abandon his position; that what he wanted above everything else was harmony in the republican party, and, if he could do anything to bring that about, he was ready to do it. He had said so to Governor CLAYTON; he had said so to his friends; he had said so to men all around there; and that, too, while he swears positively that he was not the friend of either of these factions, but studiously kept out of all entanglements in connection therewith. I say this was the condition of things.

It is also true that White held certain railroad interests in connection with men who were the enemies of Governor CLAYTON. He held those interests, however, not by any written evidence, and under such circumstances that they, becoming offended at him, there was great danger that he would be prejudiced and lose in that connection. That is to say, he had not any written evidence of his interests in those railroad transactions. It was suggested to him, and he felt and knew, that if he should do anything the effect or result of which should be the election of Senator CLAYTON, or whereby Senator CLAYTON could fulfill his pledge to his friends, he must suffer at once in connection with such railroad interests. You will find that White (who, by the way, is the witness of the prosecution, and, remember, he is the man, and the man alone, upon whom they rely to sustain this charge) says nowhere that he received a dollar in consideration of resigning the office of secretary of state. On the contrary, he denies expressly that he ever received a dollar for any such purpose. He swears that he resigned the office because he had said repeatedly that he was willing to do anything to bring about harmony, and so far as the money consideration was concerned, it had reference to his connection with railroads—Governor CLAYTON having no part or lot in conversation with him in any such arrangement.

But not only that; but, as I have said, it was not votes that Senator CLAYTON wanted; he had the votes; and I undertake to say that no single vote in the legislature was influenced by any such arrangement. I undertake to say that it was a mere conventional arrangement entered into between these persons whereby CLAYTON (if you put it in the strongest light) could keep his pledge with his friends, no member of the legislature having anything to do with it except Hadley, no member of the legislature coming here or any person testifying on the subject showing in the least that a single man was influenced by such arrangement.

Now, in view of what has been said here for the last two weeks, and not lowering the standard in the least, I submit if any man can be justified in saying, in view of this testimony coming from their own witness, nothing in the world outside of what he says, that Senator CLAYTON is justly implicated in this matter.

Mr. President, there is nothing, in my judgment, that there is so much danger of as that we, giving heed to the morbid condition of the times, upon a mere presumption, in the face of positive and direct testimony, should affix a stain upon the official life of a member of this body. I submit, in all candor, is not one thus charged entitled to have applied to his case the same rules of evidence that you apply to the highest or the lowest criminal in the land?

Mr. SCOTT. If my friend will permit me before he passes from this subject, I have looked at this point as being really the serious question presented by the report. I have looked at the testimony in this case with a desire to understand it as fully as I could. I find that the resignation, of which he has been speaking, of Mr. White, the secretary of state, was negotiated for by Mr. Hadley, then a senator, who afterward was elected president of the senate and thereby became, *ex officio*, lieutenant-governor, and after the acceptance of the position of Senator by Governor CLAYTON, became governor of the State. I see that, in the position in which the parties stood Hadley was as much interested in procuring White's resignation as anybody else, and that Johnson was as much interested as anybody else in procuring White's resignation.

Following the testimony, I find that an offer or a suggestion was made to White that he could have $5,000, or would probably receive that amount in money, and $25,000 in bonds of the Ouachita and Red River Railroad Company. He did resign; Johnson did become secretary of state; and after that time, without any account of where the money came from, it passed through the hands of Senator CLAYTON, and was placed in the hands of White—the $5,000 and the railroad bonds.

Now, recurring to the testimony of Hadley and to the testimony of Senator CLAYTON given before the committee, I do not find any account of who furnished the money and who furnished the bonds; and the question I wish to put to the chairman of the committee is, is there any testimony in the other part of the evidence which does show who furnished that money and those bonds? That is a point

upon which I should like to be informed, if there is other testimony. I do not find it in the place where I expected to find it.

Mr. WRIGHT. I will state that the testimony of White, while he was not, perhaps, the last of the witnesses examined before the committee, was taken near the close of the investigation. White residing in Virginia, there was an effort, running through several weeks, to get him here, as I now remember, but, because of bad health, he was unable to come. The investigation had been protracted, and witnesses were being brought here from Arkansas, and each time, as a witness would testify to something that was regarded as new, there would be an application to the committee for two, three, four, or half a dozen witnesses, and thus the investigation was prolonged. White was examined, as I now remember, near the close of the investigation. I do not remember, nor do I think there is anything in the testimony explaining, who furnished that money, other than has already been stated; that is to say, it was sent from New York in a letter of Governor CLAYTON, being certificates of deposit in the name of Jackson E. Sickles—four certificates of deposit, as I now remember, and there were some bonds of the Ouachita Railroad Company, which, by the way, were represented as being worth 33⅓ per cent.; and that is based upon the testimony of a man named McLane. McLane referred to other matters, to levee bonds, and not railroad bonds, and the testimony shows, if it shows anything, that they were of very little value, and were so regarded by Hadley at the time the arrangement was made. White says he never received such bonds; he only received evidence that such bonds were on deposit for him. The four certificates of deposit were furnished, as I stated, and sent to White in Virginia, nothing being said as to who furnished the money; nothing being said, except simply, "I inclose you so and so."

Now, I have an explanation from Governor CLAYTON with reference to where that money came from. I do not think it proper myself to state it. The Senator can state it, and state the reason also why the testimony was not developed on that subject, if he chooses.

Mr. CLAYTON. Mr. President, I take great pleasure at this time in giving my explanation of that transaction. I hope the Senate will bear in mind that the testimony of Mr. White, which is the only testimony upon the subject, is the testimony of a witness for the prosecution, and that it was delivered nearly four months after the investigation commenced, at a time when Congress was about to adjourn, at a time when I was satisfied that the whole intention of the investigation was to make political capital against me during the last campaign in my State. What does Mr. White testify to? I would like every Senator here to read that testimony carefully and weigh it. He testifies that he was interested with certain parties in railroad transactions. Who were those parties? One of them was the prosecutor right before him, who could deny what he said if it was not so. Another was my then colleague, ex-Senator Rice. Another Mr. McDonald, my opponent in this election. Another, the brother-in-law of Mr. Rice, Mr. Benjamin. Who the other? Mr. Brooks, who ran upon the same ticket with Mr. Hodges, and whose name was left off the roll by Secretary White. These were the men with whom he was identified in the Cairo and Fulton Railroad transactions; and right here I want to call the attention of the Senator from Iowa to the testimony of Mr. Rice himself, which the committee struck out as irrelevant. You will find, and the Senate will find, that that testimony was relevant, and ought to be in this case. Why? Because Mr. Rice, when he came upon the stand, substantiated all these statements of White's, by testifying that there was such a railroad transaction, and that there were the same number of men in it as stated by White, and by telling how he became identified with it.

Mr. SCOTT. If the Senator desires to convince me of anything about White, I will relieve him in a moment. I read his testimony over carefully, and I never in my life read the testimony of a man who had occupied the position of secretary of state of a State, and whose intelligence ought to have made a better impression, that made so bad an impression on me as his did. I was satisfied that there were a great many things in his statement that needed much of corroboration; and my purpose in putting the inquiry was not to bring out any collateral controversy, but was simply to ascertain if the chairman had the knowledge from the testimony of where the money and the bonds, which it seems conceded were paid to White, had come from; who had furnished them.

Mr. CLAYTON. I am obliged to the Senator. I will take this occasion, if the Senator from Iowa will permit me, to go on with my statement. I think I understand what the Senator from Pennsylvania desires. I am afraid he misunderstood me. I wanted the Senate to understand the whole transaction.

Mr. WRIGHT. I will say to the Senator that if he will answer the question which was put by the Senator from Pennsylvania, I will then conclude what I have to say and yield the floor.

Mr. CLAYTON. I would be glad if the Senator would allow me to finish this now.

White testifies that he was interested in a railroad transaction with men who were prominent leaders in the opposition to me, among the rest the prosecutor in this case, and Mr. Brooks, who testifies in this case. In the course of time, in the performance of White's official duty, he had to make a list of members elected to the legislature, upon which the legislature organized. In making that list it became a part of his official duty to strike the names of Mr. Hodges and Mr. Brooks from the list, in accordance with a decision of the supreme court. When he did that, he was under the impression, according to his own testimony, that he would incur the displeasure of those men with whom he was identified in the business relations referred to.

Mr. Rice testified before the committee that he was interested in these transactions, and tells how he became interested. He says he and these gentlemen got possession of the Cairo and Fulton Railroad organization; and they then made a contract with Mr. Denckla, of New York, or some one else—I think Mr. Denckla—whereby, in consideration of that contract, Mr. Denckla issued to them a sufficient amount of stock to control the company. You can readily see that this railroad organization was one in which White could not enforce his rights. He was compelled to depend upon the good faith of his associates. About this time, it seems from his testimony, he was informed by some of my friends that any losses that he might sustain in the line of his duty, by being ignored by his associates, should be made good to him, and that he should not suffer on that account. Meanwhile his wife died, and he became dissatisfied with his position, and expressed himself upon several occasions as being desirous of resigning his office.

Just preceding his resignation, in a conversation with Governor Hadley, the subject of his probable losses by reason of the additional displeasure of his associates in the railroad transaction, which would follow his resignation, was adverted to, and the amount fixed in which my friends were willing to indemnify him, viz, $5,000 in cash and twenty-five bonds of the Mississippi, Ouachita and Red River Railroad. This White swears positively was not in consideration of his resignation, but, as before stated, on account of the losses that he expected to sustain, and did sustain, by the sacrifice of his interest in the Cairo and Fulton Railroad operation. White testifies that his interest was the same as Mr. Rice's, and Mr. Rice testifies that he received $40,000 for his interest.

Now I will explain how I became connected with this transaction. After this conversation between Governor Hadley and White, I was informed by the former of its purport, and was thus cognizant of it, though not a party to it. The only conversation in relation to this matter between White and myself was, as he testifies, a passing remark made by me when I asked him if he had seen Hadley, and he replied that he had, and the conversation testified to by him which took place in New York some three months afterward. At this time he informed me that his associates in the railroad transaction had, as he had apprehended, entirely ignored his interests, and that he had no hope of obtaining justice at their hands. He then asked me if I thought that the agreement made between Hadley and himself would be carried out. I replied that I thought it would be, and that I would see Mr. Sickles, one of the parties to the transaction, and would let him know. I took a memorandum of his address, which was in Virginia, and soon after saw Mr. Sickles about it. Mr. Sickles informed me that it was all right, and that he was ready to forward to him the certificates of deposit. Not having the address of Mr. White with me at the time of this conversation with Mr. Sickles, he asked me to take the certificates and forward them to Mr. White, which I did, as testified by him.

Mr. SCOTT. I trust the Senator will not leave the impression that I called upon him. My question was to the Senator from Iowa as to whether it was to be found in the testimony. I did not call on the Senator from Arkansas at all.

Mr. WRIGHT. Mr. President, I had about concluded what I intended to say in reference to the matter now before the Senate. As I have suggested more than once, there are many other points that I should like to refer to, and would refer to under other circumstances.

Mr. CLAYTON. I would like to ask the Senator from Iowa whether the testimony of Mr. Rice that I referred to did not corroborate the testimony of Mr. White.

Mr. WRIGHT. There is no question about that. Mr. Rice corroborates Mr. White as to his connection with that railroad transaction.

I was about to say that if there be anything in connection with this testimony as to which any member of the Senate has doubt or wants information, I believe I can refer to it readily, and will very cheerfully do so.

I but repeat what I said at the time I commenced these remarks when I say that my impressions with reference to the election of Senator CLAYTON have entirely changed. I feel that in view of the condition of affairs in Arkansas; in view of the plots and counterplots that there obtained; in view of the state of society; in view of the excitement that obtained at Little Rock during this election; in view of the feelings that obtained between the members of the different factions, the meetings that were held from night to night on either side, the struggle there for the succession; in view of Senator CLAYTON's life up to that time; in view of his integrity and honor in maintaining his pledge to his friends; in view of the position that he occupied before that people; in view of the manner in which he had discharged his duties as governor; in view of the entire want of testimony here to show anything against him that would be proper to justify action at our hands; in view of what I am bound to believe were the false and unwarranted rumors with reference to this case; in view of what I know will be the judgment of an enlightened public, and that they ought to hasten to give it, that justice may be done this man; with no kind of feeling on the subject myself, with only solicitude to discharge my duty here as a Senator, as ready as any other one to declare him guilty if he should be so found, whether as a member of the committee or a Senator upon this floor; in view of his life since he has been

a member of this body; in view of the evidence we have here of his integrity, and his unassuming deportment and manner; in view of the fidelity to principle and fidelity to everything that is right, so far as his conduct here shows; in view also of the circumstances attending this prosecution, the malice, the bitter feeling that seemed to urge it on; in view of the fact that he sought this investigation, and thus far has not seemed to do anything that should avoid it; in view of all these circumstances, and in view of the rights that he has as a citizen and the rights he has as a member of this body, and our duty as Senators, his colleagues, I submit that this testimony, largely made up as it is of hearsay, is wanting in almost every respect in every element that would make it competent testimony if we applied strict rules, and yet the committee were disposed to be exceedingly lenient to the prosecution, and inclined to give them every opportunity possible for the purpose of introducing testimony. In view of all these circumstances I leave the case, and I feel assured that Senators upon this floor, looking to duty alone, looking to the testimony alone, acting as judges, throwing aside once and forever all party or political considerations, can reach fairly but one conclusion, and that is the conclusion announced by the majority of the committee.

Mr. CLAYTON. Before the honorable Senator takes his seat, I want to call his attention to one matter. I would like to ask him whether Mr. Sickles, whose testimony does not appear in this book, but who did testify before the committee, did not swear that Mr. McConnell approached him with a proposition to pay him one or two hundred dollars if he would not testify in this case.

Mr. WRIGHT. I supposed that McConnell was so essentially and effectually out of this case that I did not think of referring to what Sickles said of him. McConnell testifies that Sickles approached him and proposed to buy him to get him to go away, he was a man of so much importance. Sickles comes in and swears that he never thought of doing any such thing; that McConnell himself came to him and proposed that for a consideration he should get out of the city. McConnell! There is not anything left of him.

Mr. NORWOOD. Mr. President, I dislike very much to detain the Senate any longer on this case; but I cannot forego the opportunity of referring to some of the remarks submitted by the Senator from Iowa. He has placed me in a position which I am not willing to occupy, and which I do not occupy. Before coming to that, however, I will refer to the very pertinent question that was asked by the Senator from Pennsylvania, and I call the attention of the Senate to it particularly. The question was asked as to whether the evidence discloses from whom the $5,000 and the $25,000 bonds came. The testimony is entirely silent, except that it came from Senator CLAYTON.

Mr. CLAYTON. Allow me to interrupt the Senator.

Mr. NORWOOD. With pleasure.

Mr. CLAYTON. Does the testimony show that the money and the bonds came from me?

Mr. NORWOOD. Yes, sir.

Mr. CLAYTON. Or does it show that I forwarded Mr. Sickles's certificates of deposit, stating that he had deposited in a bank certain amounts of money?

Mr. NORWOOD. Certainly, that is what I mean. I mean to say that the communication was directly between White and Senator CLAYTON. There was no pretense that there was anybody indebted to White, and that Senator CLAYTON was simply the medium to transmit that amount; nothing of the kind. Let me call the attention of the Senate to the fact that Senator CLAYTON was examined upon this investigation under oath, and that he never pretended to deny a single statement that White made. He was represented by what were supposed to be learned counsel, honorable gentlemen that he had appointed to the supreme bench in Arkansas, the honorable Chief Justice John McClure, for one, and ex-Justice Thomas M. Bowen. One had been elected, the other the Senator had appointed chief justice; and those counsel, skilled in the law, with these pregnant facts testified to by White and by other witnesses, placed their own client upon the stand and forewent the opportunity of asking him a single question as to the materiality of that testimony. He was silent when testifying under oath as to where this money came from. He did not pretend to deny a single allegation that White had made; and there is the bald, naked declaration of White uncontradicted, and, on the other hand, corroborated, that that money was sent to him by Governor CLAYTON, and that the consideration of it was his resignation.

Mr. CLAYTON. Mr. President——

The VICE-PRESIDENT. Does the Senator yield to the Senator from Arkansas?

Mr. NORWOOD. I have no objection.

Mr. CLAYTON. I know the Senator from Georgia does not wish to misrepresent me.

Mr. NORWOOD. I do not, of course.

Mr. CLAYTON. I do not deny White's testimony. I do not attempt to impeach him. It is the Senator from Georgia who attempts to impeach this witness for the prosecution, when he says in his report that White's conclusions are "lame and impotent." White does not say within the pages of this testimony anywhere, that I paid him that money. He does not say anywhere that he received it for his resignation; but, on the contrary, he does say that he did not receive it for any such consideration. I defy any one to show anywhere in this testimony wherein I ever paid him one dollar in money or any other consideration. At the request of Mr. Sickles I forwarded to him the certificates of deposit, and that was all I had to do with it.

The Senator says that I did not disprove that I furnished the money and the bonds alluded to. Why should I disprove that which was not charged or established by the testimony of any witness? The only doubt I have in my mind now is that I should deny it at this time. It was the place of the prosecution to establish the charges and not my place to prove a negative.

If White testified falsely about the Cairo and Fulton transaction, and if he had not really been ignored by his associates, why did not Hodges, who he swears was one of the parties to it, and who was present as both prosecutor and witness in this investigation, testify to the contrary; and why was not Mr. Rice, who was another of the parties to this transaction, recalled?

If the prosecution desired to ascertain whether Sickles really did furnish the money and bonds, why did they not recall him, he having already testified in the case, and ask him where the money came from? Did they do that? No; they did not attempt to do it; and why? I have my own opinion why. I think they were tolerably anxious to have that little transaction covered up. They were parties to it. I think they had, perhaps, some of them, a faint idea that another investigation might be raised in this chamber. They were trenching upon dangerous ground.

It was shown by the testimony of witnesses, and by Mr. Rice himself, that the Cairo and Fulton transaction was one with which he was identified. He received $40,000 as his interest in it. The question of granting lands to that railroad was brought up before this body and voted upon while he was a member of it. He did not deny that he voted on that question. My own impression is that, if this report had been made before that gentleman left his seat, he would have been compelled to ask an investigation at your hands. But he is not here to defend himself. The allusions I have made to him arise from his own testimony.

Mr. MORRILL, of Vermont. Will the Senator from Arkansas allow me to ask him a question?

Mr. CLAYTON. Yes, sir.

Mr. MORRILL, of Vermont. I do not understand that the Senator from Arkansas was put upon his oath or gave any statement in relation to these facts. He has of his own accord here made a statement in relation to Mr. Sickles. He states that he called upon him at New York and inquired of him whether he was ready to settle and adjust this matter with Mr. White.

Mr. NORWOOD. White, not Sickles.

Mr. MORRILL, of Vermont. I did not understand him to say that he did not contribute some part of this $5,000 or the bonds that were paid over. If he did mean to be so understood, then I did not understand him. I desire to know whether he intended to say that he did not contribute any part of that $5,000 or any part of the bonds?

Mr. CLAYTON. I do intend to say that. I have my own ideas where it came from, but it did not come from me, and I contributed no part of it at all, and if the Senator from Georgia desires, I will advance to the bar of the Senate and make oath to that effect. But, sir, I fear my oath would have but little weight with that Senator, judging from the manner he has treated my sworn statement in his report.

Mr. NORWOOD. There was one remark which fell from the lips of the Senator from Arkansas which I feel it my duty to notice. He speaks of the prosecution in this case. I hope he does not place me in that category. I am not prosecuting, and have no desire to prosecute the Senator. I would not hurt a hair of his head. I would not asperse him in the slightest degree. I am simply explaining this testimony; and if I speak with zeal, I hope the Senator will not consider that it is with any reference to him or personal to him, but it is owing to the manner in which I generally speak when I am interested in a question.

The issue that I was upon, coming back to that, is this: that when the Senator from Arkansas was upon the stand, he did not then explain that this money, which was represented by a check showing a deposit in New York, and these bonds, were not his property when he turned them over to White. He did not explain that any other person had contributed those to be paid to White. He did not explain that he was simply the agent, transmitting from the debtor to the creditor. He had the opportunity to do so. There was the testimony, which showed that he had written a letter to White, had transmitted this money and these bonds, and yet it was left without explanation; and that, too, in the face of the fact that it had been testified to by White that the identical amount of money, $5,000, and the identical bonds in amount, $25,000, and the identical railroad, the Mississippi, Ouachita and Red River Railroad, and first-mortgage bonds, were the identical amounts and the identical bonds that had been proposed by Hadley when he made the proposition to White to buy him off.

It is said that there were other considerations that entered into this transaction; that it was not for White's resignation. I have stated that it was for his resignation, and Mr. White, in his examination-in-chief does not refer to any interest in any railroad as one of the considerations for accepting that money. More than that, the proposition was made by Hadley himself, representing Governor CLAYTON, and I think the testimony shows, and I think that is conclusive, from the fact that the proposition made by Hadley is carried out by CLAYTON. When Hadley was on the stand, and he was under examination as to what was the consideration for this proposition he made to White, what did he say?

Question. Is it your belief, from your knowledge of the circumstances surrounding this transaction—

Referring to this proposition of White's—

from facts which you knew at the time, that he resigned his office solely to produce harmony in the republican party?

Answer. I have no reason to believe otherwise than that and his family difficulties.

Mr. White goes on to state what his family difficulties were. His wife had died, and he had been left with four small children; but he does not say there was any other valuable consideration that entered into it—none whatever. Mr. Hadley, who makes the proposition, states on oath that, when he was negotiating with White, the only consideration that entered into it was for the harmony of the republican party, and because Mr. White was in domestic trouble. And yet the new theory is suggested here that Mr. White was interested in railroads, and that this was paid in consideration of the interest he had in these railroads.

The Senator from Arkansas says, if he had attempted to cover this up, why would he write the letter? Why would he not have allowed somebody else to write the letter? Why, Mr. President, I do not suppose the Senator from Arkansas wanted to reveal to others what his transaction with White had been. It was not necessary, in sending a certificate of deposit from Sickles, that Mr. Sickles should know it was going to be sent to White. Mr. Sickles would probably never know to whom that draft was to be sent, and the fact of sending a certificate of deposit in the name of Jackson E. Sickles shows that the intention of the parties was to wipe out their tracks. That fact of itself is pregnant with meaning. Then, when you couple it with the other facts I have just named, that Hadley denies that any such consideration entered into the contract, that the contract made by Hadley was carried out by Senator CLAYTON in amount and in bonds, that Senator CLAYTON, when on the stand, made no explanation as to where that money came from, that he never pretended that anybody else was interested in it, never said that he was transmitting it for anybody else, I say the testimony is absolutely overwhelming.

The Senator from Arkansas speaks of some evidence that ought to be in this record. All I can say about that point is this: I wanted all the evidence printed; I believed it all pertinent; I believed that it ought to go to the country; that it indirectly and directly touched this case; but it was not the judgment of the majority that it should be included, and upon that I yielded, and a great deal of it was left out. There remains now the testimony of two witnesses that has not been printed and included in this volume, but which has not been rejected as part of the evidence, and which remains in the committee-room for reference if it should become necessary in this discussion, and had I been able to enter upon this discussion in the manner and to the extent that I desired and intended, that testimony would have been here under review.

One of these witnesses is Chauncey Stoddard, a witness who went to Arkansas from New York during the pendency of that legislature, and upon his own testimony, after a two days' examination, and upon an effort on the part of the committee and every member of the committee by every means and appliance we could bring to bear, except incarceration, for two hours in endeavoring to get him to answer a single question, we finally forced from that witness the confession that he had gone there and had contributed $40,000 for the purpose of getting a bill passed through that legislature; and there is evidence going to show that the Senator from Arkansas himself had a very large control over those bills. He was one of the commissioners of the State to grant State aid. Here were the levee bills and railroad bills that all these parties were interested in. They had come down upon that State like a set of harpies and fixed their talons upon its vitals, and there they were fastened until they were glutted. There is much in this evidence that has not seen the light that I think is important and would bear upon this case. I am making no reflection whatever upon the committee. I yielded my judgment to the majority as to a great deal of it; but I insisted upon retaining the testimony of two witnesses, Chauncey Stoddard and George W. McLean, which is now held in reserve in the committee-room.

But the honorable Senator from Iowa, when I referred him to McConnell, absolutely became irate that I should rely upon McConnell. He considers the testimony of McConnell absolutely worthless. Who is McConnell? Let the honorable Senator from Arkansas answer that question. McConnell went from Leavenworth, in Kansas, in 1868 or 1869, with a letter of recommendation to the Senator from Arkansas whose case is now under investigation, and immediately that Senator engaged him as his private secretary in his position as governor of that State. More than that, McConnell, from that time forth, became his advocate for election to the Senate. He wrote newspaper articles, he edited a paper, he wrote letters, he did everything within his intellectual power to advance the interests of Governor CLAYTON and to elect him to this body. Further than that, he was the intimate companion and associate of the Senator from Arkansas for nearly two years. Had not the Senator an opportunity to ascertain whether this was a man of truth and veracity? Does a man of his astuteness and his judgment of human nature, and his perceptions, require two years to ascertain whether an intimate associate is a man worthy of credit as a man of veracity? No, sir; this question of veracity never arose until McConnell became a witness against the Senator.

Their intimate and confidential relations are shown by the fact that Senator CLAYTON entered the room of McConnell in his absence, when McConnell was unfortunately upon a drunken debauch, and there opened McConnell's trunk, with no witness except a man he carried with him; that he there examined that trunk, and took from it papers, the contents of which and the secrets of which no one knows but Senator CLAYTON and McConnell. McConnell tells us that they were political revelations which would injure the Senator in this investigation. The Senator tells us that they were communications which he had turned over to McConnell as his private secretary to answer, but which he had not answered. The question lies between them. Now, does it lie in the mouth of the Senator from Arkansas, or the mouth of the Senator from Iowa, to rise here and, upon the statement of parties who have a casual acquaintance with McConnell, to say that in the community where he lived he was not a man of good character for truth and veracity; to impeach the character of McConnell, and to absolutely break down his testimony?

If any Senator will examine the evidence, he will find an intimate acquaintance on the part of McConnell with the business of Senator CLAYTON that probably no other human being on the face of the earth had. There is a circumstantiality, there is a particularity about it; and besides that, there is a corroboration from other witnesses and an absolute confirmation of much that he says that gives to the entire testimony of McConnell all the appearance of truth. I do not, therefore, discredit the witness McConnell simply because these gentlemen did not think he was a man of truth and veracity. If he had not been in a position to ascertain all that he testifies to, if he was not corroborated by the Senator from Arkansas himself in several of the statements that he makes, and corroborated by other witnesses of veracity and credibility, I would be willing to discard his evidence; but I cannot do it under the circumstances of this case. Any one who was in that committee-room, and listened to McConnell's testimony, must have been satisfied that, though he was the subject of inebriation at times, while he was testifying he was calm, collected, and sober, and had every appearance of a man who was telling the truth in every letter.

But, Mr. President, I cannot go on further. It is too much labor for me to speak.

Mr. CLAYTON. Mr. President, I shall occupy but a very few moments. The Senator from Georgia insists in his minority report that McConnell was my private secretary. I should like him to put his finger upon any testimony establishing that fact. On the contrary, I will take his own witness, McConnell, and prove to him that he is mistaken. Will that be good evidence in the Senator's estimation? I ask him to look at page 292.

Mr. NORWOOD. I may not use the correct words.

Mr. CLAYTON. Here is McConnell's own testimony.

Mr. NORWOOD. What does he say?

Mr. CLAYTON. He says that he was not, in so many words. I read from the testimony:

Question. How long were you employed as a private secretary?
Answer. I really never was employed as a private secretary.

That will be found on page 292.

Mr. NORWOOD. I simply wish to call the Senator's attention to one fact. I was not speaking of anybody who had testified in so many words that McConnell was the Senator's private secretary; but where McConnell was engaged and had the Senator's letters to answer, and the Senator, then governor, turned over to him his private correspondence to answer, I want to know in what position he was standing?

Mr. CLAYTON. I never turned over any of my private correspondence to him to answer while I was governor. He never wrote a line for me when I was governor. There is a Senator on this floor who can verify what I say. My private secretary was Mr. Barton, who testified before the committee. He was my private secretary from the time I became governor of the State until I vacated the executive chair. McConnell never occupied any position of confidence toward me. The only time that he ever did any work for me at all was while I was here at the treaty session of the Senate. He was then lying around here doing nothing, and being a very smart fellow indeed, I employed him to answer unimportant letters such as every Senator receives from his constituents—letters that were not of sufficient importance for me to answer myself. I always make it a point to answer all letters addressed to me, and I would take those letters, and say to him, "Answer these, and say so and so." He did some writing of that kind for me, until I found out that he was utterly unreliable in every respect, and then I turned him off, and after I turned him off he joined my enemies, and became the witness for these gentlemen.

Mr. DORSEY. Will my colleague give way to me for one moment?

Mr. CLAYTON. I will do so with great pleasure.

Mr. DORSEY. Mr. President, inasmuch as the Senator from Georgia seems to attach a great deal of importance to the testimony of Mr. McConnell, I desire to bear witness to the character which he maintained and sustained during his sojourn in Arkansas. He has now left there. When he first came there, I believe he attached himself to a paper in the northwestern part of the State as a contributor or local editor.

Mr. NORWOOD. I should like to ask whether we are going to have witnesses testifying around the Senate here. We had two witnesses on the stand yesterday who were volunteers. I should like to know whether the Senate consider that this is a regular proceeding.

Mr. DORSEY. I only desire to state the character that Mr. McConnell bore in the State of Arkansas.

Mr. NORWOOD. The Senator is not on the stand in this case at all. We are now discussing the question on the testimony here submitted.

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

Mr. DORSEY. I think the reputation that Mr. McConnell sustained in Pennsylvania, according to the statement of the Senator from Pennsylvania, [Mr. CAMERON,] he successfully maintained in Arkansas. To my personal knowledge, and from the general reputation of the man in the State, he is known and has been known as a professional libeler, a wanton and vile slanderer; one of those kind of men who not only get drunk, but lie in the gutter and sleep in a station-house. That has been Mr. McConnell's reputation, and I believe that the testimony of Mr. McConnell would be impeached in any court of justice in our State. I do not believe his testimony is worthy of any credence whatever, and I believe his general reputation in the State bears me out in making that statement.

I will say furthermore a word in regard to the charge that he was the private secretary of Governor CLAYTON. I was not a partisan of my colleague at that time, nor indeed of these men who were prosecuting him, and I am able therefore to speak without prejudice. Mr. McConnell's connection with Senator CLAYTON I believe was a forced one. I believe he did come down here about two years ago, and remained a short time with the Senator, but I think he was not employed by Senator CLAYTON. Indeed, I know he was not. I know he was not acting in the capacity of private secretary here then or at any prior time. I know that his connection with the Senator was entirely a forced one on the part of Mr. McConnell. He never at any time acted in the capacity of private secretary to Governor CLAYTON since I have lived in that State.

Mr. CLAYTON. I do not know, Mr. President, that I need say much more. I only wish to state that McConnell was not my private secretary, and entertained no confidential relations to me whatever. To give an idea of the man, he admitted while on the stand, in regard to some transactions to which he testified, that he was so drunk when those transactions took place that he did not know what he was doing; and yet he came here and testified to transactions that took place while he was in that condition. According to his own testimony, he was sent to the poor-house of Pulaski County, after a long drunken spree, extending through some of the time when those things transpired and took place about which he was testifying. He was sent there in a condition of *delirium tremens*, to be cared for at the expense of the county. That man never occupied any confidential relations toward me; but he was a smart, shrewd, insinuating fellow, who fastened himself upon everybody with whom he came in contact. He was a man who was very efficient in business matters. He was just the man to go round and make propositions on his own hook for somebody else. While this election was taking place, nobody had any confidence in him; but men did not feel like kicking him out. He came buzzing and talking around at that time, and then he comes before this committee and says, "I told CLAYTON so and so; I went and talked to this man and said this, and went and told CLAYTON." I say to you, Senators, this whole transaction is of a piece; his testimony is utterly unreliable. I did not think it necessary to deny what he testified to, after his conduct before the committee, and I am glad to say that the majority of the committee so understood him.

Mr. NORWOOD. As the Senator appeals to McConnell as a witness as to the relation he bore to him, I will read the whole of the answer the Senator referred to; he only read one sentence:

Question. How long were you employed as his private secretary?

That is, secretary of Governor CLAYTON.

Answer. I really was never employed as a private secretary; that is, I never got regular compensation for it; I used to do writing for him; wrote his letters for him, and fixed up speeches and had them sent to the papers, and so on.

The VICE-PRESIDENT. Is the Senate ready for the question on the adoption of the resolution? It will be again read.

The chief clerk read as follows:

Resolved, That the charges made and referred to a select committee of the Senate at the last Congress for investigation, affecting the official character and conduct of Hon. POWELL CLAYTON, are not sustained.

Mr. DAVIS. I think we had better have the yeas and nays on that resolution. It is a very important proposition.

The yeas and nays were ordered.

Mr. MORRILL, of Vermont. A single word. I have not been able to read this entire report so as to fully comprehend it. There is a sticking point in the case in relation to the payment of this money. I do not propose to vote to convict a Senator of bribery where the fact is not proved, and especially where the Senator himself distinctly denies it, as he has done here on the floor; but it seems to me "passing strange" that on this vital point the Senator himself should have omitted to bring forward the proof that would have shown clearly his innocence in that respect.

Mr. SAULSBURY. I wish to state, as I said yesterday, that I shall be unwilling to vote on this question, unwilling to vote either to declare that the Senator from Arkansas is innocent of the charges preferred against him, or to vote in such manner as to show any condemnation on my part of the action of the Senator, until I have had an opportunity to examine the evidence and determine that question for myself. I am unwilling to vote upon the judgment of the majority or the minority of the committee. I have been endeavoring to look into the testimony, but I have not been able to examine it sufficiently to form an intelligent judgment as to how I ought to vote on this question. I therefore feel that it would be improper for me to cast a vote on this question, either in favor of the resolution or against it. There are some things in the testimony that I have seen which would lead me to the conclusion that there had been action on the part of the Senator from Arkansas that I would not be willing to indorse, and yet I am not prepared to say that, upon the whole testimony, I would be willing to condemn the action of the Senator. At any rate, I am not in a position to-day, from the hasty examination I have been able to give this subject, to vote upon the resolution, and, therefore, when my name is called, I shall make no answer.

Mr. McCREERY. I am paired with the Senator from Pennsylvania [Mr. CAMERON] on this matter. I do not know how he would vote if he were present; but I have agreed with him that I would not vote. [Laughter.]

Mr. STEVENSON. I have had no opportunity to read this testimony, and therefore I have not formed any opinion. The charges are too serious affecting a Senator, to say nothing of how far the character of the Senate is concerned, for me to vote upon a question where I have not had an opportunity to read the testimony. I have been engaged in another investigation which kept me from reading it. I have had no opportunity to look into it. Therefore, if I am in the Senate when the roll is called, I shall decline to vote.

Mr. STOCKTON. I rise to say that I agree with the two gentlemen, on my left and right, who have asked to be excused from voting on this question, on the same ground. I have not been able to make up an opinion which would justify me in voting on a case where I sit as a judge. I was on the same committee with and was occupied in the same way as the Senator from Kentucky, after this volume of testimony was presented and during the time when I ought to have been examining this case. This testimony is a book of 407 pages. Last night, after the question was settled that this matter would come up to-day, I, with the assistance of a clerk, indexed this book of evidence, and I have had the index before me and attempted to make myself familiar with it. I can only say that it would take a week at least to put this testimony before a jury in a criminal case, and after that, if it was one of any importance involving character, as this case does, it would take a week to sum it up; and here, beginning to examine the book last night late, I am asked to vote to-day as a juryman or a judge in reference to the character of a gentleman sitting in his seat in the Senate. I certainly am unwilling to vote that the charges are not proven, and I am much more averse to vote that they are proven, when I really have no knowledge on the subject. In such a case I think the Senate ought always to excuse Senators from voting where we are called upon to act under the sanctity of our oaths as judges, where we make a statement to the Senate that we have been utterly unable to form a correct and sound judgment from want of familiarity with the facts.

The question being taken by yeas and nays, resulted—yeas 33, nays 6; as follows:

YEAS—Messrs. Alcorn, Allison, Ames, Anthony, Boreman, Boutwell, Chandler, Conover, Cragin, Dorsey, Ferry of Connecticut, Ferry of Michigan, Frelinghuysen, Hitchcock, Howe, Ingalls, Jones, Lewis, Logan, Mitchell, Morrill of Maine, Morton, Patterson, Pratt, Ramsey, Robertson, Sargent, Scott, Sherman, Stewart, West, Windom, and Wright—33.

NAYS—Messrs. Cooper, Davis, Goldthwaite, Gordon, Merrimon, and Norwood—6.

ABSENT—Messrs. Bayard, Bogy, Brownlow, Buckingham, Cameron, Carpenter, Casserly, Clayton, Conkling, Dennis, Edmunds, Fenton, Flanagan, Gilbert, Hamilton of Maryland, Hamilton of Texas, Hamlin, Johnston, Kelly, McCreery, Morrill of Vermont, Oglesby, Ransom, Saulsbury, Schurz, Spencer, Sprague, Stevenson, Stockton, Sumner, Thurman, Tipton, and Wadleigh—33.

So the resolution was agreed to.

Mr. CASSERLY. I wish to state that the Senator from Delaware [Mr. BAYARD] is detained at his house by illness to-day, and therefore is not able to be here. I should like to say, in explanation of my failure to vote, that I wish to put it on the same ground as that upon which the Senator from Kentucky [Mr. STEVENSON] placed his failure to vote—that I have not been able to examine this testimony to an extent sufficient to enable me to pass upon the character of a member of this body.

Mr. THURMAN. I ask leave to say that I am in precisely the same category with my friend from California, and have not voted for that reason.

Mr. RANSOM. For the reason assigned by the Senator from California, the Senator from Kentucky, and the Senator from Ohio, I have not voted in this case.

Mr. KELLY. I have declined to vote for the same reason just stated by other Senators. I have not had time sufficient to examine the testimony in the case so as to vote understandingly.

Mr. CARPENTER. I desire to join the democratic party on this point. That is my case precisely. [Laughter.]

COMMITTEE SERVICE.

Mr. STEWART. I move that the Vice-President be authorized to fill up the committees, and I desire to state that in making the committees it was understood there should be two places left for the Senator from Massachusetts, [Mr. BOUTWELL,] those which were not filled at the time the committees were formed.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The Senator from Nevada moves that the Vice-President be authorized to fill the vacancies on the standing committees.

The motion was agreed to.

PAPERS WITHDRAWN.

On motion of Mr. SCHURZ, it was

Ordered, That Ambrose N. Dunn have leave to withdraw his petition and papers from the files of the Senate.

EX-SENATOR PATTERSON, OF NEW HAMPSHIRE.

Mr. ANTHONY. I now move to take up the resolution which I offered the other day, and which was laid upon the table, in the case of Mr. Patterson, of New Hampshire.

The motion was agreed to; and the Senate proceeded to consider the following resolution submitted by Mr. ANTHONY on the 14th instant:

Whereas at the last session of the Senate a resolution was reported, from the select committee on evidence affecting certain members of the Senate, "That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate;" and whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

Resolved, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

Resolved further, That Mr. Patterson have leave to make a statement, which shall be entered upon the journal of the Senate and published in the CONGRESSIONAL RECORD.

Mr. ANTHONY. I wish to amend the last resolution by striking out the words "entered upon the journal." There is nothing in the journal that relates to this subject, and it would be manifestly improper to put upon the journal the explanation of a charge which has not been put upon it.

The VICE-PRESIDENT. The resolution will be so modified, and the resolution, as modified, will be read.

The chief clerk read the second resolution, as modified, as follows:

And resolved further, That Mr. Patterson have leave to make a statement, which shall be published in the CONGRESSIONAL RECORD.

Mr. BOREMAN. I do not really see any propriety in the second resolution.

Mr. ANTHONY. I think the word "file" suggested by the Senator from Wisconsin [Mr. CARPENTER] is better than "make." I will say "file a statement." To "make a statement" would imply that it might be made before the Senate.

The VICE-PRESIDENT. The resolution will be so modified.

Mr. BOREMAN. Mr. Patterson is a private citizen. Anything that he may say ought not to go into this semi-official paper, it seems to me. If Mr. Patterson sends a petition here, then of course, if it is read, it can go into the RECORD; but to let him after we adjourn publish a paper and put in it whatever he may please, and then insert it in this record of our proceedings, it seems to me is highly improper. I cannot consent to it, for one.

Mr. STEVENSON. It is well known that I asked the Senate to excuse me from serving on the committee which made the report in Mr. Patterson's case. It was a very painful duty to the committee to pass upon charges affecting the character of any Senator. It may not have been very ably performed; it was at least conscientiously done; and I have the satisfaction of knowing that the report was a unanimous one. I can have no personal feeling in this matter, but it occurs to me that the proposed action is a bad precedent; it is the inauguration of a practice which must be mischievous when carried out. Mr. Patterson is no longer a member of the Senate. He has the undoubted right to make any statement he pleases, reviewing the report of the committee in his case. He has already published the pamphlet [exhibiting a document] which I hold in my hand, in reply to the report of the committee. It is a respectful paper, and I do not object. Why, then, this resolution? If the action proposed by the Senator from Rhode Island in his resolution means anything, it is designed to give the *imprimatur* of the Senate to this private pamphlet. It is a document which the committee have never seen until to-day. No copy has been furnished to them. It is a pamphlet which, from a cursory inspection of it, seems to be inaccurate in one or two of its statements of fact. Is it not an entire innovation upon the past history and usages of the Senate of the United States to give its consent to the publication by a private individual, no longer connected with this body, in the official paper of the Senate of a printed reply to an official report of a committee of the Senate, and that, too, without allowing the committee to see what such a paper contains? Mr. Patterson has the undoubted right to reply to the report of the committee which passed upon his case, as he had to call up that report for discussion and action before leaving the Senate. Not a member of that committee of investigation questions the right of Mr. Patterson to publish any criticism of their conclusions in his case. No resolution of the Senate is required to confer on him such a right. But has the Senate any right to indorse such a paper without discussing the report? For one I protest against it. Such a practice must weaken and ultimately tend to destroy the moral effect of all investigation. No Senator should ever consent to serve upon any committee of investigation if the Senate, after a report has been made, which has neither been acted upon nor discussed—during another Congress, and when the Senator whose official conduct was passed upon had ceased to be a Senator—shall, by a resolution of that new Congress, be allowed to prepare any reply which he may think proper to make to that report, and without submitting it to the committee, and without any knowledge of its contents by the Senate, publish it in the official paper of the Senate and as a part of its proceedings. Who doubts that Mr. Patterson has a right to publish anything that he pleases, and to cast it broadcast over this land? Who questions his right to send his response *pari passu* with the report itself before the country?

Why this resolution, then? Clearly, as it seems, to give to this reply the impress of an official senatorial approval, to convey the impression that the committee possibly erred. Sir, I protest against such a usage, at the outset, as an innovation whose only intendment must be mischievous in its practice, and whose only object must be to weaken, if not destroy, all senatorial investigations. Better a thousand times let us discuss the report. All investigations of this character impose painful duties that every Senator would gladly shun. You have the evidence of this fact by the earnest effort made by two members of this committee to avoid service thereon. The whole committee would gladly have been excused. In obedience to your order they made this investigation, and as a result of their labors made a unanimous report. No member of that committee sought discussion or action upon that report in the few days of the session that remained after it was made, unless Mr. Patterson desired it. They were prepared to defend it then, and are prepared to defend it now. Nor have that committee any objection that Mr. Patterson should publish any reply to that report he desires. No member of the committee has anything but kind feelings and sympathy for Mr. Patterson. The committee had no disposition to utter one word of what that report contained. They did not desire or shrink from a discussion of it during the last Congress nor do they during this. They were and are content to leave that to Mr. Patterson. If the Senator proposes to take any official action on that report, to express any opinion on the conclusions reached by the committee, then I insist it should be done in the only legitimate way known to parliamentary law, namely, a full discussion of the report.

Mr. Patterson may publish any reply he pleases to that report. I deny the power of the Senate to make that private paper an official one by incorporating it in the official proceedings of the Senate. Neither the committee nor the Senate have had an opportunity to examine the reply which Mr. Patterson might publish were this resolution to pass. I protest earnestly against the resolution as proposed.

Mr. ANTHONY. Mr. President, the Senator from Kentucky certainly does not understand me, in offering this resolution, as intending to impugn in any respect the motives or the finding of the committee.

Mr. STEVENSON. I did not understand the Senator from Rhode Island as intending it, but I must say to that Senator that as Mr. Patterson has the unquestioned right to publish any reply in answer to the report of the committee which he may desire, by way of refutation of its conclusions of law or fact, I can see no other object in this resolution than an indirect approval of that reply. Mr. Patterson has already done that which your resolution proposes to empower him to do. He possessed that right without any action of the Senate. I utterly protest against any expression of opinion, directly or indirectly, by the Senate as to the report or reply of Mr. Patterson, unless the whole subject is discussed. I would do Mr. Patterson any favor. I would be the last Senator in the chamber to refuse him any courtesy; but let it be done in order and under the sanction of parliamentary usage.

Mr. ANTHONY. The object is this: Mr. Patterson, standing in his place on the closing day of the last session, asked, and I think he said if he had the right to use the word he would demand, the consideration of the resolution for his expulsion. It was said all over the Senate that it was impossible to consider the question at that time; even if the whole of the remainder of the session could have been devoted to it, it would not have sufficed to give it a fair and proper consideration, and it could not be taken up at all except at the sacrifice of all of the public business remaining undisposed of, which included some of the most important business of the session. Then it was said in various parts of the chamber that, if Mr. Patterson would waive his right to be heard at that time, at the special session of the Senate, to be held after the 4th of March, the subject should pass under the consideration of the Senate, and the Senate should record its judgment upon it. That was said by Senator after Senator, and no one objected to it; no objection was made in my hearing, certainly.

Mr. STEVENSON. Was not that in regard to the discussion of the report itself?

Mr. ANTHONY. Well, the resolution is the substance of the report. I see as much as any Senator can see it, the difficulty of considering a question that relates to a man who has been a member of this body and is no longer a member; because if you can take up a resolution of this kind for the purpose of exculpating a Senator, you can of course for the purpose of inculpating him. One follows the other. And if you can do it the day after a man has ceased to be a member of the body, you can do it after any lapse of time as long as the man shall live, and there would be no end of the jurisdiction of the Senate. Nor, inasmuch as there is no record in the journal of the resolution, can we take this question up for the purpose of correcting the record, as has been sometimes done; in one instance a record was expunged. At the same time there is something, I think, due to a man who has been a member of this body, who has been charged with the gravest possible crime, affecting more than his life—affecting his honor, affecting the name that he leaves to his children. Something is due to him, especially when he has waived his right to be heard, upon the unanimous assurance of the Senate that at the then coming session the matter should be considered.

I do not know in what way it ought to be done. I see all the difficulties that the Senator from Kentucky raises; but, at the same time, I think that something is due not only to a gentleman who has been

a Senator, but to the promise that the Senate at the last session made to him. If any other proper way can be devised, I am quite content to accept it; but I certainly think, after what was said upon all sides of the chamber without a dissenting voice, that in some way or other he has a right to have a hearing. And I say this: I am sure the Senator from Kentucky will not misunderstand me as impugning in any way the report of the committee, because I know that the report which the committee made was the most painful duty that the Senators upon it ever discharged; nor have I any doubt that they discharged it in the most conscientious manner.

Mr. STEVENSON. May I ask the honorable Senator from Rhode Island whether Mr. Patterson has not already published a pamphlet of forty-five pages criticising and replying to this report of the committee?

Mr. ANTHONY. Mr. Patterson gave me the pamphlet which he intended to place before the Senate to put in the CONGRESSIONAL RECORD, as his reply, in case permission was given him to do so. Manifestly he must have prepared that in advance, because the resolution does not come up until now as the session is about to close. I have not read this pamphlet, although two passages have been pointed out to me which I should certainly have advised Mr. Patterson, if he had consulted me, to leave out; and there may be others.

Mr. STEVENSON. Now, Mr. President, one single word and I am done. I never understood that any proposition was ever submitted to the Senate such as is couched in the resolutions proposed by the honorable Senator from Rhode Island. I did understand that Mr. Patterson asked that the Senate should take up this report and consider it. I neither consented nor did I object. I considered then what I consider now, that the Senate would have no jurisdiction to act on the report after the expiration of the Congress and after Mr. Patterson had gone out of the Senate. I had no objection to a consideration of the report at that time, if Mr. Patterson and his friends had desired, or at any future time. I did not believe then nor do I now believe that the Senate possess any jurisdiction to act on this report now. They may discuss it, and I do not object to it. If the Senator will propose a consideration of the report, now or hereafter, I will not object. I was ready to defend that report when it was presented; I am ready now, and I have been ready from the moment it was agreed upon. If Mr. Patterson can satisfactorily explain it or show the conclusions of the committee are erroneous, no heart in this chamber would rejoice more sincerely than my own.

Mr. ANTHONY. Will the Senator allow me to ask him a question for information? I certainly do it in the most candid spirit. What did the Senator from Kentucky understand Mr. Patterson to ask and the Senate to agree to do?

Mr. STEVENSON. To take up the report of the committee and discuss its propositions of law and fact, and then if possible to have a vote on the resolution accompanying it. That is precisely what I understood, and that is what I think a reference to the *Congressional Globe* will show was all that Mr. Patterson asked or desired. I have not looked at the *Globe*, but I think an examination will show that what I have stated was all that Mr. Patterson intimated as desired by him. If I had believed that Mr. Patterson would have asked us to publish by the authority of the Senate any reply which he might prepare to that report, I should have instantly risen in my place at that time and distinctly opposed it as beyond the power of the Senate and wholly unwarranted by any usage known to parliamentary law. Yet I would willingly and cheerfully yield to Mr. Patterson, either at that time or now, a full discussion of the report and testimony on which it was founded.

Mr. ANTHONY. The Senator from Kentucky is a lawyer and a parliamentarian. Does he think that we have jurisdiction—that we can take up that resolution and discuss it now?

Mr. STEVENSON. I do not say you have jurisdiction to act on the report, but I say you have as much jurisdiction to take it up and discuss it—I think a great deal more—as you have to give official authority to Mr. Patterson in his present private individual capacity to publish his reply, and publish it as a part of your proceedings, in the official register, without submitting it to the Senate and without any knowledge by the committee what it is to contain.

Mr. ANTHONY. Did we not agree to do that?

Mr. STEVENSON. Never. No, Mr. President, I repeat, never. My friend on my left [Mr. THURMAN] is looking now over the *Globe*, which is the highest authority as to what did occur and is the best proof of what was agreed on. I confidently vouch that record to sustain my remembrance as to what Mr. Patterson on that occasion asked, and what was agreed upon. My recollection is that Mr. Patterson rose and said that he regretted greatly that the report in his case could not have been earlier considered; he desired it to be taken up then; he asked that it might be fully discussed at that time. The Senator from Wisconsin, [Mr. CARPENTER,] I think, or some other Senator, said it was evident that the want of time would prevent a consideration and discussion of the report, but it might be discussed hereafter, although no action could be had by a new Congress. Mr. Patterson said he would not yield his right to have the report taken up and discussed then, unless he could have some assurance that it should be discussed at the extra session of the new and approaching Congress. To this there seemed to be a silent acquiescence, after some remarks from one or two Senators.

Mr. ANTHONY. My recollection does not differ materially from that of the Senator from Kentucky. We agreed to do a thing which he and I think we have no right to do. I do not think we have any more right to discuss that resolution to expel the late Senator from New Hampshire than we have to discuss a resolution to expel the remotest of his predecessors who is now living. We unanimously agreed to do—there was not a dissenting voice—what it appears upon reflection we have no right to do. What are we to do now? Is he to be dismissed without a hearing?

Mr. STEVENSON. He has already been heard.

Mr. ANTHONY. How?

Mr. STEVENSON. He has already published his printed reply to the report, in a pamphlet of forty-five pages, and scattered it broadcast, I presume, though I do not know it. I see a copy before me. I do not object to that.

Mr. ANTHONY. I think that is not so. I think this pamphlet he prepared with the intention of placing it before the Senate, and after being placed before the Senate to put it in the hands of Senators. I do not think there was any impropriety in that. There are two passages, as I said, that have been pointed out to me in the pamphlet that I think are in bad taste and are somewhat a reflection upon the committee.

Mr. STEVENSON. Does the Senator from Rhode Island think that it is proper for the Senate to give its indorsement to a printed pamphlet that neither the Senate nor the committee have had any opportunity to see or examine, and publish it officially among our proceedings? I am sure every member of the committee will agree that this reply of Mr. Patterson contains one or two inaccuracies—I will not say intentional misstatements of the fact, but which are, nevertheless, inaccuracies of fact.

Mr. ANTHONY. Mr. President, does the Senator from Kentucky mean to say that he indorses everything in the *Congressional Globe*? Heaven help me if I thought I had to do that! Do we indorse a thing by allowing him to make a statement in the *Globe* or the CONGRESSIONAL RECORD?

Mr. STEVENSON. What is the object of the Senator's resolution? Mr. Patterson has a right to publish everything he pleases. He has a right to controvert this report, and he has already done so in his printed pamphlet. Now, why should the Senate, without discussion, give it a *quasi* official indorsement? I deny the power of the Senate to do it. Let us do either one thing or the other. Let both sides be heard on the report, let the world know what the report contains, and let the committee in support of the report state its conclusions of law and its conclusions of fact, and then let the friends of Mr. Patterson disprove them in fair and free debate. Either do that or permit Mr. Patterson's reply to be circulated with the report of the committee, which has not been published in the *Globe*.

Mr. ANTHONY. Does the Senator from Kentucky mean to say that we give a *quasi* indorsement to a statement which it is perfectly well known we have not read when we authorize it to be published? I see no indorsement in that, whatever.

Mr. SCOTT. Mr. President, I feel impelled as a member of this committee to say a few words about this resolution.

There is no doubt, as the Senator from Rhode Island has said, that we have no power to take up and consider and pass or reject the resolution which was reported by the committee. The person to whom it relates has passed beyond our jurisdiction. But recalling what occurred upon one of the closing evenings of the session, we all remember that if the Senator from New Hampshire had retained the floor when he had it in his possession upon a question of privilege, he would undoubtedly have made a statement very similar to that which is now placed before us as his intended statement to be filed. If he had made it at that time, I suppose that neither the Senator from Kentucky nor any other member of the committee would have felt justified in taking up the time of the Senate at that juncture in replying to that statement. I concurred in the report of the committee with him. I feel from a casual glance at this answer, or, as it is called, "Observations on the report of the committee," that the report of the committee and these "observations" may well stand together before a discriminating public. There are statements in these "observations" which, as the Senator from Rhode Island observes, are in bad taste. I think I marked them myself when they were submitted to me a few moments ago. There is certainly one misstatement of fact which I cannot permit to pass without calling attention to it.

One of the strong features of the report was based upon what the committee deemed a withholding of a fact, and then in the possession of Mr. Patterson. Certain obscure words in his statement are now relied upon as intended to convey to the committee the information which he then had, and they doubtless were intelligible to him, but they only became intelligible to the committee when it was startled by the revelation of what they actually meant. There is a misstatement as to that in these "observations."

But now, Mr. President, comes the question, shall we deny to this man the opportunity of placing his statement in the RECORD? That is all there is of it. I find that it comes in the nature of a petition. He says:

> The Senate cannot refuse to any citizen of the United States the privilege of memorializing them in reference to proposed action of the Senate prejudicial to his interests or to his reputation. They cannot do less in favor of one of their late colleagues, a retiring Senator.

Now, sir, if this petition were read in the Senate, there are doubtless several passages in it which would not be perhaps deemed altogether

respectful to a committee of the body, but I let that pass. As I have already said, I am content that the facts reported by the committee, with their report, shall be taken and scanned, together with these "observations," and let the public form their judgment.

I do not agree to another statement in these "observations," that the remark of the Senator from Maine, the chairman of the committee, [Mr. MORRILL,] saying that the committee did not deem themselves prosecutors, was to be taken as evidence that they thought perhaps they had committed a mistake in making the report. From such a remark as that I must most emphatically dissent. I do not know whether the chairman of the committee intended it as evidence on his part of such a state of mind or not, but I think not. He may deny for himself on that subject.

But, sir, still the question comes back. Here was a Senator, an associate for six years, a man upon whom we all looked as one of pure life and spotless reputation, who, tracing him from the beginning of this unfortunate transaction down to its close, simply exhibited what many other men have also exhibited in their lives: first, a yielding to a desire for gain; secondly, when that desire involved him in what was probably not altogether a defensible transaction, a concealment; thirdly, a prevarication when called upon to explain before the public; and, lastly, saying nothing all the time of motive, a failure, as the committee believed, to disclose an important fact that was known to him and one other person only, to nobody else, and which was not developed in its full meaning until that other person was called and revealed it. That is all. Here is the fatal mistake which mars and blots a well-spent life—so marred it and so blotted it that this committee was brought to the painful necessity of bringing in the resolution which it did bring in. Now this man comes and he says, "I petition the Senate to put my answer to this report upon your record." Now, sir, as firmly convinced as I was of the justice of the report, I cannot find it in my heart to deny him this poor privilege, if it be no infraction of the rules of the Senate.

Mr. STEVENSON. Will the Senator from Pennsylvania allow me to say that our report is not on this record? Our report is among the loose documents of the Capitol. If Mr. Patterson desires to have his response published with our report, I have not the least objection.

Mr. SCOTT. It is a very pertinent suggestion; let them both go together in the RECORD. It is a very good suggestion, and I am glad the Senator from Kentucky has made it. I hope with that suggestion the whole subject may be disposed of, and let the report and these "observations," with what we have seen proper to say about them, go into the RECORD together.

Mr. STOCKTON. Mr. President, the Senate will remember——

Mr. SCOTT. There is one other suggestion which I propose to make before I yield the floor. The resolutions of the Senator from Rhode Island contain one which states that the failure to act upon the report shall not be considered either an approval or disapproval of the report of the committee. Now, I submit that if that resolution is left out altogether, and Mr. Patterson is permitted to file his statement, and the report and statement go together, we shall go just as far in saying what the Senate has or has not done as if we pass it.

Mr. ANTHONY. I am quite content with that. I merely wanted to carry out, so far as it was possible for us to do so, the agreement which was made with the Senator from New Hampshire before the 4th of March. I agree that it is not within our jurisdiction to do what it was then thoroughly understood we should do. Now, I want to come as near to it as we fairly can. I am quite content with the amendment which the Senator from Pennsylvania suggests.

Mr. STOCKTON. Mr. President——

Mr. STEVENSON. Will the Senator from New Jersey just let me bring the facts before the Senate? I read from the *Globe* of the 12th of March, which contains the proceedings of the last night of the recent session:

EXPULSION OF SENATOR PATTERSON.

Mr. PATTERSON. I rise to a question of privilege. Mr. President, I was unfortunately absent on Saturday, when the Senator from Maine, [Mr. MORRILL,] chairmain of the select committee, called up a report which he had previously made to the Senate, or I should have asked for the consideration of the subject at that time. I now, notwithstanding the press of business, feel it my duty and my privilege to ask that the subject may be taken up and considered.

The PRESIDING OFFICER, (Mr. EDMUNDS in the chair.) The Senator from New Hampshire moves that the report of the select committee upon certain charges against the Senator from New Hampshire be now taken up for consideration.

Mr. CARPENTER. It is perfectly evident that at this time in the night and at this day in the session, it is utterly impossible to take up that report and to discuss it so as to do justice to the Senator from New Hampshire on the one hand and to the committee on the other. We are so pressed with business that it is impossible for anybody to examine the testimony taken so as to form a judgment upon the case. At the same time every Senator must feel the deepest grief at the situation in which we find ourselves fixed by having this matter called to our attention in the last hours of this session—the grief with which we deny to the Senator his right to be heard—and we can only justify it because of the press of business which is upon us.

Now, I desire to suggest to that Senator and to the Senate that although after the 4th of March the Senator from New Hampshire will no longer be a member of this body, and the Senate will have no jurisdiction over him for any purpose, yet the Senate will always have jurisdiction over the subject, and after the 4th of March, when we convene here in executive session, that matter in some form, for instance by the introduction of a resolution which will bring the matter to the attention of the Senate, can be discussed, and the calm deliberation and judgment of the Senate, after an investigation of the testimony and the reports, can be had. This will be treating the committee fairly, and will do justice to the name and the reputation of the Senator from New Hampshire, and I trust that course will be pursued, and that he will not press the motion further. I am sure, at least I feel very sure, that no Senator after the 4th of March would hesitate for one moment to proceed to the consideration of the report, and give it a thorough and careful examination.

Mr. PATTERSON. Mr. President, I should be very glad indeed if there were time to enter into a full discussion of this question. All I want is a full and fair hearing of this whole question before the Senate. I know there is a pressure at this time of the public business. If I could be assured that the subject could be brought up and fully discussed in the executive session, I would not press the matter at this time. I shall not be here then. This resolution will not be legitimately before that Congress. If there is any way in which it can be brought up then, which the Senator can devise, I should acquiesce in his suggestion.

Mr. HAMLIN. It may be true that after the 4th of March there would be no legal obligation imposed upon the Senate which would compel them to consider and to express an opinion upon this subject; but I feel confident that from the peculiar condition in which the Senate is now placed, the pressure of great public questions upon it, and the period of time being so short, as the Senator from Wisconsin has said, it would be utterly impossible to discuss this question in a manner due both to the committee which reported and to the Senator and to the Senate itself. I feel very confident that there is that higher obligation, that sense of justice in the bosom of every Senator which would insure an expression of opinion on this subject, and if upon a careful consideration the Senate should come to the conclusion that such a resolution as the committee have reported ought not to pass, they would say so. It could not operate as it would if it were to pass now, but we can give a candid opinion upon what we think are the merits of the case so far as it relates to the Senator; and it does seem to me that the resolution suggested by the Senator from Wisconsin ought to be concurred in by the Senate, and I hope there will be a general acquiescence in it, from which we shall understand that Senators will be willing to give an opinion upon this subject after this session shall have dissolved.

Mr. ANTHONY. I quite agree with what has been said by the Senators who have spoken. For myself, if this question was brought to a vote I should have to ask to be excused from voting. I have no information on the subject except what I have seen in the newspapers. It has been utterly impossible for me to read the testimony or the report. The same is true, I am sure, of every other Senator here. We have been pressed with business during the last fortnight as we never were before since I have been a member of this body, and there are but few here who have been here longer than myself. It is physically impossible that this subject should be investigated within the eleven hours and a half that remain of this session, a considerable portion of which belongs and all of which is due to business of the utmost importance to the country.

I was glad to hear the Senator from Maine, whose experience is so great, and whose knowledge of parliamentary law is so large, state that he thought that by resolution or memorial, in some way, this subject could be investigated and could be brought to our consideration and discussed and decided after the 4th of March. That is due to the Senator who is charged; it is due to the Senate and to the country; and I am very glad to find that in his judgment it is practicable; but whether it be or not, it is a physical impossibility to entertain this subject now.

Mr. THURMAN. I think this matter may be considered after this session, although it would be a very singular proceeding. This particular resolution must of course die with the session and the senatorial term of the gentleman who is implicated; but still I think it is not beyond our powers to consider the subject afterward. A celebrated resolution, known as the "expunging resolution," was passed in this body, and an equally celebrated expunging resolution was passed by the House of Commons in England, after the subject-matter had long been buried. I think, therefore, it is not incompetent for us to consider the subject hereafter.

If the Senator from New Hampshire desires this matter to be taken up now for the purpose of addressing the Senate upon it, late as it is at night, and late as it is in the session, I shall vote to take it up, in order to afford him that opportunity. If he asks to take it up with a view of having a decision upon the resolution, then what has been said is undoubtedly true; I do not suppose there are a dozen members of the Senate, perhaps not half a dozen, who have read the testimony upon which they would have to vote. The consequence would, therefore, be that if they were compelled to vote on the resolution, they would be compelled to do as they do in other cases, vote upon the report of the committee; they could do nothing but follow their committee, and the vote would therefore be a foregone conclusion. That would not be just to the Senate; it would not be just to the Senator, and therefore I concur with those Senators who have said there is no time to consider this subject now and vote upon it; but if the Senator from New Hampshire desires it to be taken up in order to enable him to address the Senate, I shall cheerfully vote for that motion.

Mr. PATTERSON. I do not expect to address the Senate at any length; indeed, I do not care to address the Senate at all on this subject. I am willing to leave the matter, with the statement which I have made and the testimony which I have given, to my friends in the Senate. What I want is a fair and full discussion of the whole question as it stands in the testimony, and if I can rely upon the assurances which I have had from Senators, that this matter shall have fair and full consideration at the executive session of the Senate, I am willing to leave it there.

Mr. MORRILL, of Maine. I desire to correct a misapprehension into which the Senator from New Hampshire seems to have fallen, that on Saturday last in his absence I had called up the report of the committee in this case. I had no purpose of giving such an impression either to the Senate or to the country, and I am quite sure I did not. I did call the attention of the Senate to the fact that the committee had made a report in this case, and distinctly stated that so far as the committee was concerned, having called the attention of the Senate to the subject-matter, it would wait its action, and consider that it had performed its duty in so waiting.

One word more. My honorable friend from Wisconsin in his remarks, to which I take no exception, says that this may be considered elsewhere where justice may be done to the Senator and to the committee. While I take no exception to that, I wish to say that the committee do not feel that they are a party in any sense whatever to this transaction. Having performed a duty, they leave it, without the feeling of a prosecutor or a party, in the hands of the Senate.

With these remarks, Mr. President, I have no occasion to say anything in regard to what has taken place in our presence here and at the present time. It does not occur to me that for myself or on the part of the committee I have any observation to make upon that subject, but await the action of the Senate in the future as I have in the past.

Mr. PATTERSON. In view of all that has been said, and the assurance which I have received that this matter shall have consideration in the future, I withdraw my motion.

The PRESIDING OFFICER. After the understanding which has been had the Senator from New Hampshire withdraws his motion.

The Senator from Rhode Island will perceive that this whole debate points and the whole implied consent refers to the consideration of the report and the testimony. Now, I do not wish to interpose any objection to any act which will relieve Mr. Patterson. God forbid! I only desire to say that, as this report is not upon the record, I do not think his speech ought to be put in the *Globe;* but if the Senator will propose to let Mr. Patterson's statement or observations be bound up with our report, I shall not only cordially acquiesce in it, but I shall cheerfully hope that that privilege would be accorded to him.

Mr. STOCKTON and Mr. ALCORN addressed the Chair.

The VICE-PRESIDENT. The Senator from Mississippi.

Mr. ALCORN. I simply rise to remark that I will not vote for this resolution in the form in which it has been read to the Senate; and my reasons are briefly——

Mr. CONKLING. If the Senator from Mississippi will pardon me, I beg to interpose to remind the Chair that the Senator from New Jersey had the floor, and yielded it for a moment to the Senator from Kentucky.

The VICE-PRESIDENT. The Chair was not aware of that fact. The Senator from New Jersey, then, is entitled to the floor.

Mr. STOCKTON. I do not wish to interrupt the Senator from Mississippi, and I will not claim the floor till after he concludes.

Mr. ALCORN. I am not at all inclined to press my right to the floor, for I care not to hold it; but I am very much obliged to my friend from New York for the interest he takes in seeing that I do not violate the courtesies of the Senate.

Mr. CONKLING. The Senator quite misconceives me. I ventured to remind the Chair, not the Senator from Mississippi, of the fact. It was quite right for him to address the Chair, but I ventured to remind the Chair that the Senator from New Jersey had the floor. I hope the Senator from Mississippi does not suppose I intended any discourtesy to him.

Mr. STOCKTON. I must rise to correct a misapprehension of the Senator from Mississippi. I thought I had the floor three times, being a member of this committee, but the Chair did not recognize me until the last time, when the Chair did. Then another member of the committee behind me wished to read what occurred in the Senate on a former occasion, and I sat down to allow him to do so. When he concluded, the Senator from Mississippi was recognized, though I do not think he rose earlier than I did. I felt that the Chair was doing me an injustice, and I turned around and made a remark which induced the Senator from New York to make his remark. I think the Senator from New York is not at all to blame in the matter.

The VICE-PRESIDENT. The Chair will state to the Senator from New Jersey that he supposed that Senator had yielded the floor. The Chair had no intention to do him wrong.

Mr. ALCORN. As I am afraid, Mr. President, that while we are discussing the question of courtesy some other person will obtain the floor, I will say what I intended to say; it was only a word.

I will not vote for this resolution, for the reason that it gives Mr. Patterson, who is not a member of this body, and who is not responsible to this body, a *carte blanche* to write for publication in the CONGRESSIONAL RECORD just what he sees proper to write. He may place this pamphlet there; he may place any other document there or any other writing that he chooses. I would accord to a Senator the opportunity of writing a report and placing it in the RECORD; and why? Because he is responsible to the Senate. The Senate can hold him responsible for what he might write. But Mr. Patterson is not a member of this body. I have no idea that he would abuse the privilege, but he might abuse it if he chose to do so; he might write that which would be djscourteous to the Senate, that which would be discourteous to the committee, and reflect upon the committee. I repeat, I have no idea that he would do so, but I will not, by my vote, open the opportunity to anybody to do that; and before I would vote for his reply to the committee being placed in the CONGRESSIONAL RECORD I would either have to know its contents, from having read it, or be informed of those contents from some person who indorsed it or was acquainted with it. Now, if the Senator from Rhode Island will rise in his place and present the pamphlet as a publication which he desires to go upon the record, indorsing it as not discourteous to the Senate, but as a document proper to be placed in the RECORD, I will vote for that.

Mr. ANTHONY. I cannot indorse a pamphlet I have not read. I offered this resolution ten days ago. I had not seen this pamphlet at that time, and I have not read it now.

Mr. ALCORN. I understand that, and I simply say that for the very reason that the honorable Senator cannot indorse this pamphlet and has not read it. I have not read it. I know no person who has read it. I will not vote to admit it.

Mr. ANTHONY. But certainly the Senator from Mississippi does not understand that by authorizing the publication of a statement, under a man's signature, in the CONGRESSIONAL RECORD, we thereby indorse what he says.

Mr. ALCORN. By no means; I make no such point; but I do understand that when the Senate, by resolution, authorize Mr. Patterson or any other man to make a statement in the CONGRESSIONAL RECORD, it is with him to make just such a statement as he chooses to make, and that statement may be disrespectful to the committee, a reflection upon the committee, and disrespectful to the Senate itself, and the Senate has no means of righting itself. I propose to give no such privilege. I propose to allow no person to write up the minutes of the court unless the court itself inspects the minutes.

Mr. ANTHONY. I appreciate that difficulty, and I stated it in the beginning; but I think the Senators who find insuperable objections to the resolution which I propose are bound to show in what other way we may carry out the agreement which the Senator from Kentucky read from the *Globe;* and if it can be done in any other way better than this, it will be equally agreeable to me.

Mr. ALCORN. So far as the agreement is concerned, I trust I shall not be wanting in endeavors to extend to Mr. Patterson whatever opportunity there may be to place himself upon the record; but I was not a party to any such agreement, and I deny the authority of Senators to bind me by any colloquial conversation that may occur between gentlemen as to what the understanding is. Whenever the Chair propounds a question to the Senate, and asks whether universal consent is given, I feel that I am bound by that—the Senate is bound by that; but I am not bound by any colloquy that may occur, and by agreements that are frequently made among Senators who agree among themselves that they will do certain things, and then imagine that the whole Senate is bound thereby. I dissent from that doctrine.

Now, to state my point again, I will not vote to give to any man who is not responsible to this body the opportunity of writing in the records of this body anything he pleases.

Mr. STOCKTON. Mr. President, there was a very pretty little notion, I recollect very well, giving me a great deal of pleasure when I was a young man, and which you will all recollect, that when two people opened their mouths at the same time to say the same thing, and discovered it, if they would make a wish the angels would grant it. The Senator from Mississippi rose to say precisely what I have been trying to get a chance for the last ten minutes to say. I sought the floor simply to call the attention of the Senate to the fact that they were authorizing a publication, under the seal and sanction of the Senate, at the expense of the Government, not one word of which had they ever seen.

The idea that a pamphlet had already been published by Mr. Patterson never occurred to me. I had never seen it. The first suggestion was that of the Senator from Rhode Island. Then I found the Senator from Pennsylvania, a member of the committee, had a pamphlet in his hand, which perhaps he borrowed from the Senator from Rhode Island or perhaps he did not. Why were not these pamphlets sent to the Senate? Why were they not sent to the committee? Why did not I get one? The Senator from Rhode Island admits that there are passages in that pamphlet which he cannot indorse, and yet we are asked to give the seal of the Senate to it, so far, at least, as to say that we will authorize it to be published. The Senator from Rhode Island may have said, when he rose, that he saw that difficulty, but I did not hear it. I have no doubt he said it, as he suggested a moment ago.

Mr. ANTHONY. I did in the beginning.

Mr. STOCKTON. I have no doubt of it. The difficulty is a very grave one, and it would likely occur to a gentleman of his experience.

When I was appointed upon this committee, I asked to be excused, and I made some remarks. Without repeating any of them, the one great point that I made to the Senate was, that there was not time to examine the case; that the Senate would not examine it even if we made a report. I urged the Senate not to go into the investigation, on the ground that there was not time, and they would not make the examination. I also rose to say precisely what the Senator from Mississippi has said on another point, which is, that whether we could examine it or not at this session was not a question of agreement at all; and when I rose to attempt to interrupt the Senator from Rhode Island, it was to call his attention to that point. There was no such agreement whatever, according to my understanding. The Senator from New Hampshire rose and asked that the report of the committee be taken up. He was given permission to speak. He said he had nothing to say; did not care whether he spoke at all, but that he wanted the matter discussed; that he would like to have it taken up. Then two Senators only, I think, the Senator from Ohio [Mr. THURMAN] and the Senator from Maine, [Mr. HAMLIN,] and possibly some other Senator, suggested that it might be taken up at some other time after he had gone out. It was then said that this resolution could not be taken up at any other time, when he was out and we were in another session, but that some resolution could be introduced which would bring up the case; and that is just as true now as it was then, some resolution can be brought up, and therefore I shall move, if this document is to be printed with the report of the committee in the CONGRESSIONAL RECORD, that it be first read before the Senate, that we may see whether it is a proper document to be printed; and if Mr. Patterson and his friends desire the examination to which they are entitled, I shall ask that such a resolution be introduced as will cause that question to be discussed, for, although a verdict may not be given, although expulsion may not be a proper remedy at the present time, if we can do nothing else, we can invite Mr. Patterson to the bar of the Senate and ask him to make his statement.

It is unnecessary for me to repeat what other Senators have said, how painful this duty was, how we tried to avoid it, how it was said at the time that if we avoided it every member of the Senate would avoid it; how every member of this body shrank from the duty; but after having performed the duty, resulting in the unanimous report of every member of the committee, painfully and conscientiously made, and having that report lying on your table, I am not willing by any resolution that can be introduced to declare that the thing does not stand in precisely the position in which the law places it. It stands with the report of the committee, charging that he has been found guilty of grave offenses, and that he should be expelled for them. Can a resolution, which is offered now, saying that it shall not be considered; that this report, not being acted upon, shall conclude his case, or that it shall not be considered; that it weighs against him, or that it does not weigh against him, have any operation? If not, why offer it?

If it does have operation, is it for the Senate, without hearing the report read, and without one word of testimony, to condemn the action of their own unwilling committee?

Mr. ANTHONY. I accepted the amendment to strike out that part of the resolution which seemed to be exceptionable.

Mr. THURMAN. Mr. President, if I can have the good fortune to have the attention of the Senate I flatter myself that I can relieve it a little of this muddle in which we have got in this matter.

In the first place I have to observe that this resolution, if passed in the form in which it now stands, can do nothing but harm to Mr. Patterson; at least the first resolution. Let us see, sir, what it is. There is a preamble:

Whereas at the last session of the Senate a resolution was reported from the select committee on evidence affecting certain members of the Senate, "That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate;" and whereas it was manifestly impossible to consider this resolution at that session, without serious detriment to the public business; and whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore—

Now I ask the attention of the Senate to this resolution—

Resolved, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

Now, Mr. President, by no possibility could the failure of the Senate to take the resolution into consideration be construed into an approval of it.

Mr. ANTHONY. Will the Senator allow me to interrupt him for one moment?

Mr. THURMAN. I should rather the Senator would not. I do not want to speak long.

The VICE-PRESIDENT. The Senator declines to yield.

Mr. THURMAN. I know the Senator offers to take that out.

Mr. ANTHONY. I have taken it out.

Mr. THURMAN. Then that removes that difficulty, for certainly if there would be any implication at all from the Senate not having taken up the resolution of the committee, it would be that the Senate did not think it worth while to take it up—that the Senate did not approve it. That could be the only possible implication. There certainly could be no implication that the Senate approved the resolution from its failure to take it up, and, therefore, the first resolution of the Senator was only doing harm to Mr. Patterson.

Now we come to the second resolution:

That Mr. Patterson have leave to file a statement, which shall be published in the CONGRESSIONAL RECORD.

I understand that is to be amended by adding some such words as these, "together with the report of the committee," so as to put them both in the CONGRESSIONAL RECORD. Now, Mr. President, the objection that has been made to that seems to me to be well founded—seems to me to be well founded in this, that it allows a paper to go into the CONGRESSIONAL RECORD which the Senate never has seen, and, of course, never has heard. We do not do that. If a petition be presented at our desk any member has a right to require that it be read. The member presenting a petition is bound, under our rules, to make a succinct statement of what it is, and any Senator may have it read in full in order to see whether it is respectful in its terms, and if it be not it is not received; but to say that a person may put into our official record of debates a paper that the Senate never has seen, and which may do great injustice to a committee, is a thing which, it seems to me, never has been allowed and never ought to be allowed.

But is Mr. Patterson without redress? Not the least bit of it in the world. There are two modes in which this matter can be brought before the Senate: One is, the mode suggested by the Senator from Wisconsin on the last night of the session. Let me recall for a moment what then took place. Mr. Patterson rose in his seat and moved the Senate to take up the resolution reported by the committee. The Senator from Wisconsin objected to taking it up, for the very plain and obvious reason which he stated, that there was no time to consider it and determine whether it should be passed or not. But after stating that, the Senator from Wisconsin went on further to say that, in his judgment, although the resolution would fall with the end of the session and the end of Mr. Patterson's senatorial term, the subject itself could be considered afterward. The Senator from Maine [Mr. HAMLIN] concurred in that. I also made a few remarks in which I concurred in it, and I say still that that is true. Although that resolution is not now before the Senate, I am not willing at all to admit that if a report of a committee has been made that is in the highest degree prejudicial to a member of this body, the bare fact that that member's term expires will deprive the Senate of the power to do him justice. Why, sir, suppose that every member of this Senate and the members of this committee disapproved of that report, and thought that it was unjust, and thought Mr. Patterson an innocent man, is it possible that our hands are so tied that the moment he ceases to be a Senator we cannot do him justice and vindicate his character? Suppose, sir, testimony had been discovered since this report was made which would wholly acquit him, is it possible that we must put upon our records that he is a guilty man, and we cannot wipe out that stigma upon his character? No, sir; as I said, the subject can be brought before the Senate in either one of two ways: Any member of the Senate can move a resolution that will bring it before the Senate, or Mr. Patterson can present his memorial here, and he may ask that it may be considered, and upon that memorial, in which he may make his defense as fully and completely as he sees fit to make it, the Senate can take such action as the case may require.

Now, sir, if we are to have no action on the subject, if we are never to come to a vote on the subject, if we are simply to do what this one resolution left here seems to contemplate—that is, to spread his defense upon the official record of debates—if that is all we are to do, the regular way to do that is for him to present his memorial setting forth his defense, and praying that it may be spread upon our records. If he were to take that course, and regularly petition the Senate, setting forth his defense, and praying (which would be a sufficient prayer to entitle him to present it to the Senate) that it be spread upon the journal of the Senate or published in the official debates of the Senate, then we could have the memorial read, and if there were no injustice in it, if there was no improper language in it, if it was a respectful memorial, we would undoubtedly grant his request, spread it upon the journal, or have it published in the official debates. And we would not say that it shall not be published in the debates or shall not be spread upon the journal because there may be statements in it controverting the statements or conclusions made by our committee, so that he controverted them in respectful language. We would do nothing of that kind at all. But when that memorial was thus presented in the regular way, it would be just as if Mr. Patterson had risen in his seat here and made his speech in his defense, and then members of the committee would have a right to reply. So, whenever he presents his memorial to the Senate containing his defense, and asking that it may be spread upon the journals of the Senate or may be published in the official debates, the members of the committee can reply to that defense of his, if they find anything in it that merits a reply. But to say, as this resolution proposes, that he may in the dark, in vacation, without the Senate ever having seen or heard what he proposes to put on the files of the Senate, file his paper and it shall go into the official debates of the Senate, seems to me to be a proposition wholly inadmissible. The right way for Mr. Patterson to do is to hand in his memorial containing his defense, and praying either that it may be spread upon the journal or published in the official debates, or, if he saw fit to do it, that it may receive the consideration of the Senate.

Mr. SHERMAN. Mr. President——

Mr. MORTON. I ask the Senator if he will not yield for an executive session?

Mr. SHERMAN. I will yield in about two minutes, but not now.

It does seem to me that the Senate of the United States for the last hour has been engaged in a very useless undertaking, to say the least; I might use a stronger word than that. Here is a man who has been a member of this body for six years, who has been arraigned by a committee of this body; justly or unjustly is a matter of no account. He has not had an opportunity to vindicate himself in the presence of the body. He waived his opportunity to vindicate himself in the presence of the body upon an appeal by members of the Senate and for the promotion of the public business. Now, sir, he has a right to be heard here. You talk sometimes about the right of any citizen to present his petition here. Here is a man placed under those circumstances where he has a right to be heard, and even if his language was not the most courteous language in the world, I would give him that right, however disagreeable it might be to me.

Mr. Patterson, a citizen of the State of New Hampshire, presents us here with a document addressed to the Senate of the United States, and signed by "J. W. Patterson." I intend, to-morrow, to read that document in order to get it in the CONGRESSIONAL RECORD, and I will do it in debate on this resolution, unless the Senate allow it to be done. I will do it as a matter of justice to him, and no one can prevent it. I will do it as a matter of justice to him, and I would do it for the humblest citizen of the United States of America. It is a right that ought not to be denied to him. I shall read it, so that it may go in the CONGRESSIONAL RECORD; not that I know what is in it; I do not know what is in it; I do not know how it answers the report of the committee; but I will give him an opportunity to make that answer in any form he chooses, and it ought to be published in the CONGRESSIONAL RECORD or with the report of the committee. It cannot be published with that document, because that has been already printed and spread to the world. I have copies of it and all of us have copies of it, and have distributed them as a matter of public information.

Mr. STOCKTON. I will say to the Senator from Ohio that I stated a moment ago that I had no copy of it whatever, and never knew there was such a document.

Mr. SCOTT. The Senator from Ohio means the report of the committee.

Mr. STOCKTON. I beg pardon.

Mr. SHERMAN. It is manifest that we cannot get through with this matter to-night; but I say this pamphlet ought to be published. I will look over it. I would not read anything that was disrespectful to the committee, because the committee did a painful duty. I have read a few passages in this pamphlet, and I see nothing in it disrespectful to the committee, not even warm criticism. I read some passages marked by my honorable friend from Kentucky, [Mr. STEVENSON,] or some Senator who was a member of the committee. I am sure the language was scarcely sharp. It was language that any man defending himself would naturally use; but there was certainly nothing that the committee could complain of.

Now I will yield to the Senator from Indiana, if he desires it, and I hope that the Senate to-morrow will allow this to be published in the RECORD.

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

Mr. CONKLING. I ask the Senator from Indiana to withhold that motion for one moment, that I may make a remark to the Senate.

Mr. SHERMAN. I do not wish to yield the floor on this question.

Mr. CONKLING. I wish to call attention to another matter entirely.

Mr. MORTON. I withdraw my motion.

COMMITTEE ON THE REVISION OF THE LAWS.

Mr. CONKLING. Mr. President, I called the attention of the Senate the other day to the fact that a statute had charged the Committees of the two Houses on the Revision of the Laws with a duty to do in vacation, and I moved that the committee have leave to sit, which resolution was promptly adopted by the Senate. Since that time my attention has been called by one of the members of Congress, although not a Senator concerned, to the fact that it may be convenient, and economical of time and money too, if there be any expense connected with it, that the committee should meet in New York, or in some place nearer the homes of those who are to do this work, than to come all the way to Washington; and upon reflection it occurs to me that it may be true that under the resolution to sit, we should be compelled to sit here, and might not have leave to sit elsewhere. Therefore, to supply any possible defect that there may be in the authority of the committee to execute the order, I ask the Senate to adopt the following resolution:

Resolved, That the Committee on the Revision of the Laws be authorized to hold its sessions in Washington or elsewhere, and that the actual expenses of its members be paid from the contingent fund of the Senate, upon vouchers approved by the chairman of said committee.

There being no objection, the Senate proceeded to consider the resolution.

Mr. CONKLING. That, I will say to Senators who may suppose that it sets some example or precedent about other cases, is merely in deference to a statute passed at the last session, which requires the committee, for example on the 4th of May—that day is fixed—and on other days not within the session of Congress, to do specific things.

Mr. MORRILL, of Vermont. I desire to ask the Senator from New York if he will have any objection to having the following proviso added to his resolution:

Provided, That no committee of the Senate authorized to sit during any recess of the Senate shall receive any compensation therefor beyond their actual and necessary expenses.

Mr. CONKLING. I think that is right. I understand that to be both the law and the Constitution now; but if there is any doubt about it, I think it would be very well to add it.

The VICE-PRESIDENT. The Senator from New York accepts the proviso.

Mr. THURMAN. Let the resolution be reported. I did not hear it.

The chief clerk read the resolution.

Mr. THURMAN. That is the law now.

Mr. CONKLING. I think it is; but the Senator from Vermont offers this proviso.

The resolution, as modified, was adopted.

EMANCIPATION IN PORTO RICO.

Mr. MORTON. There was an omission this morning in the first resolution adopted in regard to the Spanish republic, and I desire to correct it by unanimous consent. It is to substitute three words in the fourth line, so that it will read thus:

Resolved, That the Senate of the United States have received with joy the intelligence that the republican government of Spain have abolished slavery in the island of Porto Rico, and raised the colored people of that island who were in the condition of slaves to the rights and privileges of citizens of the Spanish republic.

I ask that that correction be made.

The VICE-PRESIDENT. The Senator from Indiana asks unanimous consent to correct the phraseology of a resolution passed this morning. If there be no objection, the correction will be made.

Mr. MORTON. I now ask the adoption, as an additional resolution in that connection, of the following:

Resolved, That the President of the United States be requested to communicate these resolutions to the government of Spain.

The resolution was considered by unanimous consent and agreed to.

COMMITTEE SERVICE.

The VICE-PRESIDENT. The Chair announces that he has appointed on the Committee on Privileges and Elections, Mr. BOUTWELL; on the Committee on Public Lands, Mr. BOUTWELL; on the Committee on Indian Affairs, Mr. INGALLS in place of Mr. Caldwell; on the Committee on Mines and Mining, Mr. AMES in place of Mr. Caldwell.

The Chair also appoints as one of the directors of the Columbia Hospital for Women in this city, in place of Mr. Sawyer, who has ceased to be a member of the Senate, Mr. SARGENT, of California.

EXECUTIVE SESSION.

Mr. CHANDLER. 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-five minutes spent in executive session, the doors were re-opened.

ABSENCE OF THE VICE-PRESIDENT.

The VICE-PRESIDENT. The Chair desires to announce to the Senate that after to-day the chair will be vacated, and will not be occupied by the Vice-President, so as to enable the Senate, according to its usage, to choose a President *pro tempore*.

HOUR OF MEETING.

On motion of Mr. CARPENTER, it was

Ordered, That when the Senate adjourn to-day, it be to meet to-morrow at twelve o'clock.

Mr. FRELINGHUYSEN. I move that the Senate do now adjourn.

The motion was agreed to; and (at five o'clock and thirty-six minutes p. m.) the Senate adjourned.

IN THE SENATE.

WEDNESDAY, *March* 26, 1873.

The Senate met at twelve o'clock m.

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

ELECTION OF PRESIDENT PRO TEMPORE.

The Secretary (Hon. GEORGE C. GORHAM) called the Senate to order, and said:

The Vice-President yesterday notified the Senate that he would not occupy the chair during the remainder of the session.

Mr. MORTON. Mr. Secretary, I offer the following resolution, and ask for its present consideration:

Resolved, That, in the absence of the Vice-President, Hon. MATT. H. CARPENTER, a Senator from the State of Wisconsin, be, and he is hereby, chosen President of the Senate *pro tempore*.

The Secretary put the question on the resolution; and it was adopted *nem. con.*

Mr. CARPENTER accordingly took the chair as President of the Senate *pro tempore*.

Mr. MORTON. Mr. President, I offer the following resolution, and ask for its present consideration:

Resolved, That the Secretary wait upon the President of the United States, and inform him that, in the absence of the Vice-President, the Senate has chosen Hon. MATT. H. CARPENTER, a Senator from the State of Wisconsin, President of the Senate *pro tempore*.

The resolution was agreed to.

THE JOURNAL.

The PRESIDENT *pro tempore*. The journal of yesterday's proceedings will be read.

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

PRESIDENTIAL ELECTIONS.

Mr. MORTON. I offer the following resolution, and ask for its present consideration:

Resolved, That the Committee on Privileges and Elections, which was instructed by a resolution of the Senate of March 10 "to examine and report, at the next session of Congress, upon the best and most practicable mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions connected therewith, with leave to sit during the recess," be authorized to hold its session at Washington or elsewhere, and that the actual expenses of its members be paid out of the contingent fund of the Senate, upon vouchers approved by the chairman of the committee.

The resolution was considered by unanimous consent and agreed to.

WITHDRAWAL OF PAPERS.

Mr. WRIGHT. I ask leave to have the following order made; there has been no adverse report in the case:

Ordered, That the papers relating to the claim of the heirs of General William Gates be withdrawn from the files of the Senate.

The PRESIDENT *pro tempore*. That order will be made if there be no objection.

Mr. FERRY, of Connecticut. I ask to have an order entered for the withdrawal of the papers of Elizabeth M. Link, being an application for a pension.

The PRESIDENT *pro tempore*. Has there been an adverse report?

Mr. FERRY, of Connecticut. I do not know. This paper was laid on my desk by the chairman of the Committee on Pensions, [Mr. PRATT,] with the request that I should attend to it.

The PRESIDENT *pro tempore*. If there be no objection, leave will be granted, subject to the ordinary direction that copies of the papers be made and retained by the Secretary.

On motion of Mr. BOUTWELL, it was

Ordered, That William Thwing have leave to withdraw his petition and papers from the files of the Senate.

PNEUMATIC TUBE.

Mr. ANTHONY. I offer the following resolution, and ask for its present consideration:

Resolved, That the Secretary of the Interior be directed to communicate to the Senate at the next session the reason why the pneumatic tube to connect the Capitol with the Government Printing Office has not been completed, how much has been expended on the same, and all the circumstances connected therewith.

There being no objection, the Senate proceeded to consider the resolution.

Mr. ANTHONY. Mr. President, the only thing we have to show for this expenditure, whatever it may be, is a hole under the north front of the Capitol, over which the sidewalk is sinking, and the front steps of the Capitol have sunk half an inch. Whether it has affected anything else about the Capitol I do not know, but I think at least there ought to be money enough left of the appropriation to fill up the hole that has been made. [Laughter.]

The resolution was agreed to.

BONDS OF CENTRAL PACIFIC RAILROAD.

Mr. CASSERLY. I offer the following resolution, and ask for its present consideration:

Resolved, That the Secretary of the Treasury and the Secretary of the Interior, respectively, be and they are directed to transmit to the Senate any information in their respective Departments as to the amount of bonds issued by or on the credit of the Central Pacific Railroad Company, forming a first mortgage or lien on the company's road and property, and on what property specifically; and, also, the amounts of said bonds issued from time to time, and at what dates they were issued; and, also, to ascertain and report under what general designation such bonds are commonly negotiated or known, and to transmit all the said information, brought down to the latest dates, to the Senate at the commencement of the next session of Congress.

Mr. HOWE. I am decidedly in favor of that. I think that tends to legislation, and I hope it will be adopted.

The PRESIDENT *pro tempore*. Does the Senator from Wisconsin object to the resolution?

Mr. HOWE. I say I am decidedly in favor of it. That cannot be construed into an objection, I take it.

The resolution was considered by unanimous consent and agreed to.

POSTAL SERVICE AND RAILROAD COMPANIES.

Mr. WINDOM. I now ask the Senate to proceed to the consideration of the resolution offered by me on the 24th instant.

The PRESIDENT *pro tempore*. The resolution will be reported by the Secretary.

The chief clerk read the resolution, as follows:

Resolved, That the Select Committee on Transportation Routes to the Sea-board be directed to inquire and report to the Senate at the next session as to the nature and extent of the obligations subsisting between the railroad companies and the postal service of the country; and whether any and what additional legislation is necessary to guard the postal service against interruption or injury, by hostile action, on the part of any or all of said railroad companies.

Mr. WINDOM. I only wish to say in reference to that resolution that I am satisfied from the——

Mr. FERRY, of Connecticut. I make the point of order on the resolution.

Mr. WINDOM. I presume the Senator will allow me to make a statement.

Mr. FERRY, of Connecticut. I have no objection to a statement.

Mr. WINDOM. I simply desire to say that, although Congress at the last session increased the compensation to railroad companies for carrying the mails some $500,000, it is now understood that they propose to refuse to do that service, and it does seem to me it is a question which Congress might well consider. I am not particular as to the committee that shall consider it. I prefer that it should go to the Judiciary Committee. If the Senator from Connecticut insists upon his objection, I can only say that he must take the responsibility, and not I.

Mr. FERRY, of Connecticut. I make the point of order.

The PRESIDENT *pro tempore*. The Senator from Connecticut makes a point of order, which he will state.

Mr. FERRY, of Connecticut. When the resolution was offered before, the point of order was raised that it was a resolution leading directly to legislation, and, under the ruling of the Senate on two occasions, not appropriate to be considered at this executive session.

The PRESIDENT *pro tempore*. The Chair will submit the point of order to the Senate.

Mr. FERRY, of Connecticut. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. MORRILL, of Vermont. Is this on the question of order?

The PRESIDENT *pro tempore*. It is.

Mr. MORRILL, of Vermont. I hope there will be unanimous consent given to have this resolution passed. It is so clearly proper and necessary that it should be passed, that I would prefer that it should be passed without any question of order being made upon it.

Mr. SHERMAN. Is there any provision made in the resolution for having a meeting of the committee during the recess?

Mr. WINDOM. I propose to offer a resolution to that effect, if the Senate will hear it.

Mr. SHERMAN. If we are to authorize an inquiry of that kind, there ought to be authority to call the committee together, during the recess, to consider it.

Mr. WINDOM. I intend to ask that in another resolution.

Mr. MORRILL, of Vermont. We all understand that the railroads seem to have made a combination against the Postmaster-General, and it is clearly out of our power to legislate on the subject now, but it is eminently proper that we should make some inquiry in relation to this matter, so that we may be prepared to take proper and efficient action when we come together again. I hope there will be no objection to the passage by unanimous consent of this resolution.

Mr. BUCKINGHAM. It appears to me that the point of order is well taken, and yet I think the object aimed at in the resolution is very important. I do not know why we could not reach it by reconsidering the resolution which makes it improper to present such a resolution as this at this session. I only suggest that as a way of reaching the object.

Mr. MORRILL, of Vermont. I ask the Chair to put the question for unanimous consent.

Mr. WINDOM. I hope unanimous consent may be given.

The PRESIDENT *pro tempore*. The Senator from Vermont asks that unanimous consent be given that this resolution be considered at the present time. Is there objection? The Chair hears none. The question is on the adoption of the resolution.

The resolution was adopted.

COMMITTEE ON TRANSPORTATION ROUTES.

Mr. WINDOM. Mr. President, I am about to ask unanimous consent of the Senate to proceed with the consideration of the resolution presented by myself on the 18th instant, authorizing the Special Committee on Transportation Routes to the Sea-board to sit during the recess. But before the President submits my request, I ask the indulgence of the Senate for a few moments to express the objects and purposes of the resolution.

The PRESIDENT *pro tempore*. The resolution will first be reported.

The chief clerk read as follows:

Resolved, That the Select Committee on Transportation Routes to the Sea-board be authorized to sit at such places as they may designate, during the recess, and to investigate and report upon the subject of transportation between the interior and the sea-board; that they have power to employ a clerk and stenographer, and to send for persons and papers; and that the expenses attending such investigation be paid out of the contingent fund of the Senate upon vouchers approved by the chairman of said committee.

Mr. WINDOM. I do not propose to weary the Senate on this subject, but to state very briefly the objects of this resolution. It is an admitted fact that the present facilities for the interchange of products and commodities between the interior and the sea-board are totally inadequate. Bitter complaints of extortion and oppression come to us from all parts of the country. The channels of commerce are controlled by powerful monopolies who dictate their own terms to the people. The burdens they impose upon both consumer and producer are too grievous to be long endured. While millions of bushels of corn and wheat are rotting in the fields of the West, thousands of people at the East are suffering for want of cheap bread. While Great Britain imports annually one hundred and fifty million bushels of wheat for consumption, we, with a surplus of nearly two hundred million bushels without a market, are able to contribute only about ten per cent. Why? Simply because of the exorbitant charges for inland transportation. The balance of trade against this country is over sixty million dollars per annum, which must be paid in gold. Thus, while the farmer is impoverished for want of a market for his products, the country is drained of its specie to pay the balances against it. Cheapen transportation between the interior and the sea-board, and our products will command the markets of Western Europe. Then our agricultural interests, now crushed by a rapacious despotism, and dying from neglect, will revive; the tradesmen and manufacturers of the East will find a market for their goods, and the products of our corn, wheat, and cotton fields will very soon pay our debts to foreign nations and turn the balance of trade in our favor. How is this to be accomplished? I frankly say I do not know, but that something must be done does not admit of a doubt. The demand of the people for redress can neither be evaded nor denied. To the great central portions of the Republic this question has become one of vital importance. With the farmer who sees the product of his summer's toil consumed to warm his dwelling in the winter, because it costs more than it will bring to transport it to market, this question overshadows all others. Party lines and party platforms sink into utter insignificance in the face of questions involving the right to live. Congress will be compelled at an early day to act on this subject. Already State legislatures, representing one-third of the population of the country, have memorialized Congress to provide some remedy. Boards of trade and city councils of nearly all the cities of the West, and of many of the leading cities of the East, have petitioned for redress. The President of the United States, with that foresight, statesmanship, and great practical good sense which distinguishes him, has in two messages recommended the investigation of this subject, and urged it upon the attention of Congress. The people are everywhere discussing it, and in many localities are organizing themselves for self-protection and for the assertion of their rights.

All I now ask of the Senate is that the committee appointed to consider this subject may have the power to investigate it thoroughly and ascertain the extent of the evil complained of, the necessity for a remedy, and, if possible, be able to recommend some definite action at the next session of Congress. It can certainly do no harm to collect the facts and statistics and present them to the Senate. If the recommendations of the committee, when made, shall not meet the approval of Senators, they will be in no way committed to their support.

Mr. President, let those of us who are willing to work in the interests of the people during the long recess have the opportunity of doing so. If the expense of such investigation be an objection, at least give us the power to act; and, for one, I will say that so great is the interest of my constituents in this subject, that I am willing to devote my time to it and pay my own expenses.

I hope we may have unanimous consent to pass the resolution.

The PRESIDENT *pro tempore*. Is the Senate ready for the question on the adoption of the resolution?

The resolution was adopted.

Mr. MORRILL, of Vermont. I suggest to the Senator from Minnesota that he incorporate in his resolution the amendment that was placed upon the resolution yesterday presented by the Senator from New York, [Mr. CONKLING,] and passed, providing that only the necessary and actual expenses of the members of the committee shall be paid.

Mr. WINDOM. Let that amendment be considered as adopted.

The PRESIDENT *pro tempore*. The Senator asks unanimous consent that the amendment adopted yesterday to the resolution submitted by the Senator from New York shall be considered a part of the present resolution.

Mr. SHERMAN. The same proposition ought to be applied to the resolution of the Senator from Indiana, [Mr. MORTON,] adopted this morning, so as to make it uniform.

The PRESIDENT *pro tempore*. Is there objection to the proposition that this amendment shall be considered a part of both these resolutions?

Mr. MORTON. What is it?

Mr. SHERMAN. To confine the amount paid for expenses to the actual and necessary expenses.

Mr. MORTON. Of course that is proper.

Mr. SHERMAN. But I think the resolution offered by the Senator from Indiana was in the usual phraseology, and I think the language ought to correspond.

Mr. MORTON. Certainly; let that amendment be made.

The PRESIDENT *pro tempore*. The Chair hears no objection, and by unanimous consent the Senate agree that both resolutions be so amended.

Mr. WRIGHT. Let me suggest to the Senator from Vermont that the amendment offered by him yesterday was general and covers all these committees.

Mr. MORRILL, of Vermont. Yes; but if a subsequent resolution be passed with merely the words that are in here, it might be understood to be a later law, repealing the former one.

Mr. WINDOM. Let the amendment be adopted any way.

Mr. WRIGHT. I have the amendment passed yesterday before me.

Mr. MORTON. I will state that the resolution passed this morning in regard to the Committee on Privileges and Elections contains the words "actual expenses."

The PRESIDENT *pro tempore*. The Chair will state to the Senate that the amendment passed yesterday is general, and applies to all committees. Its language is:

Provided, That no committee of the Senate authorized to sit during any recess of the Senate shall receive any compensation therefor beyond their actual and necessary expenses.

Mr. WRIGHT. That certainly covers the whole ground.

ELECTION OF CHAPLAIN.

Mr. MORTON. On the second day of this session the Senate proceeded to the election of a Chaplain, Rev. Dr. Newman. The next day the Senator from Pennsylvania, not now in his seat, [Mr. CAMERON,] entered a motion to reconsider. He told me afterward that he intended to withdraw that motion, but I suppose he forgot to do it. It has not been withdrawn. I now ask that that motion may be disposed of upon the record.

The PRESIDENT *pro tempore*. The Senator from Indiana moves that the Senate proceed to consider the motion of the Senator from Pennsylvania to reconsider the election of Chaplain at a former day of this session.

The motion was agreed to.

The PRESIDENT *pro tempore*. The question now is upon the motion to reconsider that election.

The motion was not agreed to.

COMMITTEE ON LEVEES OF THE MISSISSIPPI.

Mr. ALCORN. I ask leave to call from the table the resolution which was offered by the Senator from Louisiana [Mr. WEST] giving permission to the Committee on the Levees of the Mississippi River to sit during the vacation.

The PRESIDENT *pro tempore*. The resolution will be read for information.

The chief clerk read as follows:

Resolved, That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess, and to investigate and report upon the condition of the levees of the Mississippi River; also upon the propriety of the Government of the United States assuming charge and control of the same, with a view to their completion and maintenance; and that they have power to employ a clerk, and that the expenses attending this investigation shall be paid out of the contingent fund of the Senate, upon vouchers approved by the chairman of the select committee aforesaid.

Mr. FERRY, of Connecticut. I make the point of order on that resolution. A point of order is pending on it now, I think.

The PRESIDENT *pro tempore*. Upon this resolution the same point of order was formerly made.

Mr. ALCORN. I desire to say that I offered a resolution subsequent to that, which avoided some of the points of objection that had been made to the resolution of the Senator from Louisiana, and that was the resolution I intended to call up.

The PRESIDENT *pro tempore*. The Secretary reported the wrong resolution. He will now report the one indicated by the Senator from Mississippi.

The chief clerk read as follows:

Resolved, That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess of the Senate.

Mr. WEST. Will the Senator from Mississippi accept an amendment to that resolution?

Mr. ALCORN. I had an amendment that I was going to offer.

Mr. WEST. What I would propose perhaps is similar to what the Senator intends to offer.

Mr. FERRY, of Connecticut. I make the same point of order on this resolution.

The PRESIDENT *pro tempore*. The Senator from Connecticut raises the point of order that this is in the nature of legislative business. The Chair will submit the question of order to the Senate.

Mr. WEST. Will the Senator from Connecticut allow me to suggest an amendment, and then when the amendment is made he can still make his point of order?

Mr. FERRY, of Connecticut. I have no objection to hearing the amendment.

Mr. WEST. The resolution now reads:

That the Select Committee on the Levees of the Mississippi River be authorized to sit during the recess of the Senate.

I move to add, "at Washington or elsewhere."

Mr. ALCORN. That is just the amendment I intended to offer.

The PRESIDENT *pro tempore*. If there be no objection, this amendment will be considered as ingrafted in the resolution.

Mr. FERRY, of Connecticut. The point of order is still pending, of course.

Mr. ALCORN. I merely rise to suggest that it will be a very strange state of things if every other committee that has asked permission to sit during vacation can obtain unanimous consent of the Senate to sit during vacation, and the Committee upon the Levees is denied that consent. As to the point of order, I am not sufficiently conversant with the rules of order, although I have been in legislative bodies for some twenty years, to discover the point that lies in this case. I have never before heard it asserted that a legislative body had not control of its own committees, and could not authorize its committees to sit during vacation. That there is a point in it I will admit, from the fact that the objection comes from so high a source as the honorable Senator from Connecticut; but I confess my inability to discover it. It is on account of my obtuseness, doubtless. But I will say that it is strange to me that it can be considered legislation when the Senate of the United States simply gives authority to one of its committees to make an inquiry during the recess of Congress on a question that is presented already before the country for its consideration. I know very well that the honorable Senator from Connecticut would not make any captious opposition, and that his position is, in his own judgment, well taken.

I understood the Chair to submit the point of order to the Senate. I ask the Senate to pass upon the point of order in view of the action that has been taken heretofore on this subject. Each and every other committee that has asked it has had this permission, and no objection has been made; all have had it. The Committee on the Levees of the Mississippi come here unanimously asking that this privilege shall be accorded to them, and objection is made.

Mr. FERRY, of Connecticut. This committee is raised by a resolution of the Senate for the purpose of performing certain duties of a legislative character, with instructions to report to the Senate, by bill or otherwise, in reference to such legislation. If the committee is authorized to sit in the recess, it is for the purposes and to discharge the duties set forth in the resolution which created the committee, and it is therefore as much legislative in its character as if the original resolution creating the committee were ingrafted on the present resolution and made a part of it.

Whether it be appropriate and in order to proceed to the consideration of such business at an executive session of the Senate has been twice at the present session decided by the Senate upon the yeas and nays adversely to the propriety of such action, and twice decided by the President of the Senate without its being submitted to the Senate; so that, in reference to the reasons for the point of order, I simply place myself upon the four precedents that have been established at the present session, and will not go back to the metaphysical principles which underlie the point of order.

I regret that other committees have been permitted to sit during the recess. I think this practice is growing altogether too rapidly upon us; and the argument which the Senator from Mississippi now makes, "Why prevent this committee sitting in the recess when you have already allowed half a dozen?" may be asked by the chairman of any committee; and where we are to stop short of having the whole twenty-nine committees of the Senate empowered to sit during the recess in order that the chairmen may sign the vouchers of the clerks monthly, I do not know. Some of these resolutions have passed when I was not present; otherwise I should have objected to them. In reference to the one which has just passed, in regard to the transportation routes from the interior to the sea-board, so strong an appeal was made to my good nature that I could not resist it. But I am so sincerely opposed to the object which was set forth in the original resolution regarding the levees of the Mississippi River, as also with regard to the object of another resolution of this character which is upon our table, that I feel that I should come short of doing my duty

unless I now, at the outset, interpose the point of order, and then let the Senate act according to its own best judgment.

Mr. HOWE. I was apprehensive the other day, and I do not know but that I dropped a hint of the kind, that if we undertook to be learned here on the subject of parliamentary law, we might get into difficulty, and I am not surprised at the predicament in which we find ourselves. What the Senator from Connecticut has just said is entirely true. The Senate did by a vote on two occasions declare that it was not in order to move anything here in an executive session which tended to legislation. There was no resolution of the Senate cited in support of that position. There was the unanimous course of the Government for over ninety years opposed to it. There was at least one solemn decision made by a former Vice-President of the United States against it. Nevertheless, in spite of the silence of the rule, in spite of the affirmatory action of the Government, the Senate did decide upon its own oath that it was out of order and unparliamentary to do a thing which had been done for ninety years right along.

Now, the effect of that decision is to enable any one Senator to prevent the doing of anything which is styled a tendency toward legislation. I asked the Senate to allow me to present a petition and refer it to a committee. I did not ask that the committee might be allowed to sit during the recess to consider the question. I was entirely willing that it should pass out of their consideration when the Senate adjourned. I was entirely willing to allow it to lie upon your table without any reference. But subject after subject since has been committed to different committees by the order of the Senate, and those committees have been ordered to sit during the recess, or allowed to sit during the recess, for the consideration of those subjects.

I understand the question upon which the Senate is now to vote is, not whether we shall adopt the resolution moved by the Senator from Mississippi, but whether the Senate will consider his resolution. I am sorry to say it, but I am so thoroughly convinced that the decision which the Senate made the other day was in violation of law, and not in accordance with parliamentary law, that I shall have still to vote—I suppose that is permitted to me—to receive this resolution. Whether I shall vote to pass the resolution is an entirely different question. But I really think, Mr. President—I say it with all the deference in the world—the sooner we return to the old ways of the Senate, the sooner we shall be relieved from this difficulty, and the sooner the Senate will be once more unshackled.

Mr. CHANDLER. I offered a resolution the other day directing the Committee on Commerce to make certain investigations during the recess. I believed then, and believe now, that I was doing it in the interest of economy; but the fact that so many committees have already been authorized and instructed to sit during the recess has persuaded me that I ought not to press my resolution. Each and every one of these committees is attended with a great deal of expense. I have served on special committees for six years since I have been in this body, committees authorized to sit during the recess, and I know the expense is very great. Besides, I think for the last two years we have had a committee investigating this very question. It is a very large question; I suppose involving from one to two thousand million dollars.

Mr. WEST. The levee question?

Mr. CHANDLER. Yes, sir.

Mr. WEST. I will discount you that at fifty millions.

Mr. CHANDLER. I do not know the amount, nor does anybody else; but we have had a committee investigating the subject for the last two years, and they have made no report. Besides, I am not quite prepared to vote that it is right or proper or just for this Government to take charge of the levees of the Mississippi River. I have never seen an estimate of the cost of those levees, and I doubt if an accurate estimate has ever been made, and I doubt if we would know quite as much after this committee has spent all summer in an investigation as we do now. We shall finally have to send a board of engineers to make a thorough investigation, and report before we shall know anything of the subject, and if this or any other, or all others of the committees of this body, go and examine the levees of the Mississippi River, and come here and report, we shall all know a little less than we know now, although we really know nothing now.

Mr. WEST. In order to relieve the mind of the Senator from Michigan, who has got the figures up to some two thousand million dollars in regard to this expenditure, I will state to him that the estimate of the Engineer Department for the expenditures upon the levees is $36,000,000.

Mr. CHANDLER. That is not for the completion of the whole, if the Senator will allow me to say so. I had this subject under the charge of my committee for four or five years before the special committee on the levees was authorized to act.

Mr. WEST. It is no evidence in the world that the Senator from Michigan has investigated the subject that he has had it in the charge of his committee. That committee is notorious for pigeon-holing things that the committee is unfavorable to. [Laughter.]

I desire simply to say that the proposition for this committee to sit during the recess is with the object of ascertaining whether it is at all desirable for the Government of the United States to embark in the enterprise, and, although I will say to the Senator and to the Senate frankly that I am in favor of the Government so doing, yet, if upon such information as may be elicited through the operations of the committee during the summer I shall become convinced that it would be against the interest of the Government, I shall be quite as willing and quite as ready to report against it as I now feel in favor of it. The object of this committee is to obtain information, simply. As to the expense, I am advised by the chairman that it will probably not exceed fifteen hundred or two thousand dollars. What we want to do (at least that was my object in offering the original resolution) is to go into that country with the authoritative capacity of a committee authorized to investigate the subject, and to lay the information so derived in that capacity before the Senate, that we can form a judgment, and the Senate can form a judgment, of the advisability of embarking in the enterprise. That is all that the committee desire. We want to go there in the interest of those levees, we want to go there in the interest of the Government of the United States, to ascertain whether it is desirable that the Government should in any way engage in the maintenance or construction of those levees; that is all.

Mr. CLAYTON. Mr. President, in my opinion, if it is not proper for the special committee which has been raised on the subject of the levees of the Mississippi River to inquire thoroughly into that subject in the manner proposed, the committee ought to be discharged. It is very certain that the committee cannot get the necessary information here. The Government has already made a thorough examination of this question through its Engineer Department. The estimates furnished by General Humphreys cover all the territory subject to inundation, from Cape Girardeau to the mouth of the Mississippi River, and from the highlands of Memphis to the mouth of the Mississippi on both sides. The examination is exhaustive and complete, and if Senators will read that report they will get a great deal of information that I apprehend many of them do not now possess. After an exhaustive and complete examination, running through years, the reports were that it will take about thirty-six millions of dollars; and that, too, based upon the most liberal estimates of putting the levees above all possible future overflow, raising them ten feet in many localities above what they are now. I think if there is any one subject that ought to have a thorough and complete investigation, it is this question of the levees, upon which so little is known.

Mr. CHANDLER. While I have great confidence in the committee that propose to investigate this subject, I should not like to vote a very large amount of money on their report. I have the same confidence in them that I have in myself, and no more; and after I had made a thorough investigation of this subject, I should not know anything about it.

Mr. WEST. That is not any compliment at all.

Mr. CHANDLER. If we want information on this subject, we have just one thing to do, and that is to send a board of competent engineers there; let the War Department detail a board of competent engineers to go and examine the levees and report, and then we shall have some information before us on which we can act. Senators talk about the estimates of the engineers for building these works. Those estimates do not claim to be perfect; those estimates were made some years ago. But they are not estimates for building the works; they are estimates for the perpetual reparation and preservation of the works. I do not mean that it would cost a thousand million dollars to do the present work; but I mean that if the Government takes charge of the levees and undertakes to build, repair, and take perpetual care of them, a thousand million dollars will not pay the final cost.

Now, sir, as I said before, we have had this self-same committee the last two years investigating this subject during the recess, and not one single line have they reported to this body in reference to their observations or investigations, so far as I know.

Mr. ALCORN. I am sure that the committee ought to stand exonerated from the charge that this resolution is sought for no higher purpose or aim than that of simply certifying to the pay of a clerk. I do trust that the committee may stand without any suggestion upon my part exonerating them from that charge.

The honorable Senator from Michigan has given a very good reason why the Senate should not grant leave to the Committee on Commerce to sit during vacation, because the Senator declares that after he had investigated a subject he would simply know nothing in the world about it. But I claim that the Senator has, perhaps, done himself injustice in a remark so broad as the one which has fallen from his lips, and I would have more confidence in him than he manifests in himself; for I think great consideration and great interest would be felt in any report that should come from him on that or any other subject.

But there is one charge that the honorable Senator makes against the Committee on Levees that I feel should be replied to, for it has some point in it. It is true that the Committee on Levees had permission to sit during the last vacation of Congress, a permission that was given by the Senate; but I hold that the Committee on Levees as now organized is not responsible for the failure to discharge any duty there. It is known to the Senate that the honorable chairman of that committee in the recess of Congress became a candidate in a heated contest in Louisiana, and that it was impossible for him to give the time that was necessary to this public enterprise on account of the canvass that was going on in his own State, in which he was taking so prominent a part. This committee is not chargeable for that dereliction. The committee now organized by the Senate is one

that manifests a disposition to discharge its duty, to present this question before the country in a way that will elicit information, and that will enable the Senate to pass judgment upon it.

If now it be determined that no action on the part of the Government of the United States should be had in aid of the levees, why continue the committee at all? It would be an economy rather than a waste of money, for, under the resolution, the committee will only have its expenses paid, and I apprehend that there will be no Senator ready to go into any investigation simply that he may obtain from the Government his expenses while he is at work. The inducement is not sufficient for that. Let the committee go and make a report, and if there is nothing in that report which addresses itself to the judgment of the nation, let the committee be discharged, and there will be economy in that.

Why continue the committee year after year if nothing is to be done? If the judgment of the country is against it, why not discharge the committee and let us be done with it? We will not complain of that. The men who are upon that committee desire not to be here simply that they may be held to be members of a committee. If they can perform no service to the Government, they stand ready to be discharged from the trust that has been given to them.

Now, I do hope that the Senate will permit the committee to sit, and, if we fail to report information valuable to the Senate, that it may make up its judgment on the question, we shall be held before the country to have failed in the discharge of public duty. It is for this purpose, for the purpose of obtaining light, for the purpose of acquiring information that the resolution is presented.

Now, sir, how wanting in information is the Senate upon this question, when an honorable Senator who has had this matter in charge, as he says in times past, rises in his place here and suggests that a board of engineer officers be detailed for the purpose of examining this matter. Why, sir, the fact is known that the Government once sent a board of engineers to examine the levees; that they had the matter for a long time in charge, and that a most interesting and valuable work was the result of General Humphreys's investigation. He estimated, computing the cost of the levees in all their completeness, in all their fullness of proportion, at thirty-six million dollars; and that engineer, too, gave to the Government reasons why it should look after these levees. It is to bring the subject before the Senate in such a form that it can be considered understandingly, that we desire permission to sit. If it is denied us, we shall not complain. I will say, at the suggestion of my friend from Arkansas, [Mr. CLAYTON,] that if in the course of the investigation we find that it is necessary that a further and additional investigation be had on the part of the War Department, the committee can make known that fact, and that examination can go forward.

The PRESIDENT *pro tempore*. The question is on the point of order made by the Senator from Connecticut.

Mr. FERRY, of Connecticut. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ANTHONY. I do not participate in the apprehensions which Senators have of committees sitting in the recess; on the contrary, I think the more committees sit in the recess, to prepare business for us when we meet, the better it will be for the country. But on the point of order, I shall be bound to sustain it. I think the point of order is well taken, according to our previous decisions.

Mr. THURMAN. I wish to know whether I understand the point of order. It was submitted before I came into the Senate this morning. Do I understand that it is that this relates to legislative business?

The PRESIDENT *pro tempore*. That is the point of order.

Mr. HOWE. I ask how this question is submitted.

The PRESIDENT *pro tempore*. The Senator from Connecticut raises the point of order against the consideration of this resolution, that it looks to legislative business, and is therefore improper in this executive session of the Senate. The Chair submits the point of order to the Senate. Senators who will sustain the point of order will, as your names are called, answer "yea;" those opposed will answer "nay."

Mr. ANTHONY. I understand that point has been decided by the Vice-President in similar cases.

Mr. WEST. On a different resolution entirely.

Mr. ANTHONY. But similar in principle.

Mr. SHERMAN. The Chair states the question in rather a different form from that usually put, which tends to embarrass some of us. The usual form is, "Shall the resolution be received?" That is the form in which it was submitted before. The Chair proposes to put the question in such a way that a negative vote will receive the resolution.

The PRESIDENT *pro tempore*. The Chair will remark to the Senator from Ohio that, if the Chair had ruled upon the point of order and an appeal had been taken, then, of course, the affirmative of the question would be, "Shall the decision stand?" which would in substance be, "Shall the resolution be rejected?" In this case the Chair submits the question to the Senate; and it seems to him the proper form of the question is, "Shall the point of order be sustained?" That is what the Chair would have to rule; the Senate rules it in place of the Chair.

Mr. SHERMAN. We all understand how to vote, of course; but the usual form in which such a question is submitted by the Vice-President is, "Shall the resolution be received?"

The PRESIDENT *pro tempore*. The Chair will put it in that form, if it is desired. Senators in favor of receiving the resolution will say "yea," and those opposed, "nay."

Mr. THURMAN. I concur with what was said by the Senator from Rhode Island as to the advantage of committees sitting during the recess; and if some members of the Senate are willing to perform that labor which is not performed by other members who are not on the particular committee to sit during the recess, they are entitled to our thanks. If Congress were in session, and this were about the end of a session of Congress, I should most cheerfully vote to give this committee power to sit in the vacation; but Congress is not in session, and I cannot but think the point of order is well taken. I shall, therefore, vote against receiving the resolution.

Mr. FRELINGHUYSEN. Mr. President, this resolution looks to legislation; but it does not look to legislation at this session at all; it looks to legislation at the next session, when we shall be perfectly competent to legislate. Now, I understand that when the Senate established a precedent, the other day, it was under very different circumstances. Petitions were offered here and they were not accepted, because they contemplated legislation which must necessarily, if it was contemplated at all, be at this session, because the committees to which these petitions would be referred all fall before another session. But now this very resolution continues the committee; it looks to legislation when it is competent for us to perform it. It seems to me that it must be in order for us to authorize our committees to gather information during this recess.

Mr. FERRY, of Michigan. I should coincide with the views expressed by the Senator from New Jersey were the question up as an original one at this time; but if my recollection serves me—and the Chair will correct me if I do not state the matter as it occurred—the colleague of the present occupant of the chair presented petitions here for some object, and the Chair ruled them out of order. The question was taken to the Senate, either by appeal or otherwise, and the Senate sustained the Chair in his decision. While, as an original proposition, I should be in favor of anything that looked toward information or facilitating legislation hereafter when we shall be together as a Congress, yet, under the ruling of the Chair, and the precedent established by the Senate, I shall be compelled to vote against receiving this resolution.

Mr. FRELINGHUYSEN. The precedent to which my friend alludes was on receiving petitions to go to committees which must necessarily expire with this session. That was the precedent, and this is not that case.

Mr. HOWE. Is not my friend from New Jersey a little mistaken in saying that the Committee on Foreign Relations, for instance, must expire? After the petitions which I had the honor to offer to the Senate had been referred to that committee, if the Senate thought it of sufficient importance by a separate motion to authorize that committee to sit during the recess, would it not have been competent for the Senate to make that order?

Mr. FRELINGHUYSEN. I certainly think it would; and if my friend had accompanied the offer of his petition with a resolution that the committee should sit to entertain that petition, I should have voted it to be in order. This resolution does that.

Mr. HOWE. I do not feel so much mortified as I should if I had not confessed my utter inability to understand the sublime mystery of parliamentary law when I first raised this question.

Mr. FERRY, of Connecticut. Let me explain.

Mr. HOWE. Yes, sir. My friend from Connecticut volunteers to explain it, and he will lay me under obligations if he does so.

Mr. FERRY, of Connecticut. I think I can make it perfectly clear what underlies this point of order. The Constitution confers upon Congress, upon Congress alone, all legislative power. We are not Congress; we cannot exercise any legislative power; and, therefore, these resolutions are out of order.

Mr. WEST. Mr. President, are there not some powers of inquiry that Senators may exercise during the recess of Congress? Does the Senator from Connecticut intend to shut himself up in a shell like a tortoise and not consider legislative questions or governmental questions during the recess of Congress? What we want is to investigate and inquire and lay before Congress at its next session such information as may be desirable to it; and I must confess my admiration of the complacency of the Senator from Michigan, and also the Senator from Rhode Island, who obtained the consent of the Senate a few days ago for the consideration of measures of somewhat equivalent character to this.

Mr. ANTHONY. I?

Mr. WEST. Yes, sir; the Senator from Rhode Island introduced legislation here, absolute legislation by the Senate on the question of the printing of the agricultural report. When there was evidence before the Senate that the law was inadequate to the printing of that report, he induced the Senate to perfect that law to an extent that would enable the agricultural report to be printed; but to this resolution he takes exception, because it has in view legislation.

Mr. ANTHONY. The Senator is entirely mistaken. The Chair having ruled that the resolution which I offered to print the agricultural report was not in order, because it was legislation, I then draughted a resolution that the Commissioner be directed to make a report to the Senate, which nobody denies his right to do, and nobody can deny the right of the Senate to print that report, although it can only print the usual number.

Mr. WEST. Nobody denies the right of the Commissioner of Agri-

culture to make that report, because the Senate authorized it; but the Senator from Rhode Island explicitly stated that the law was inadequate for the object which he contemplated; that it was desirable to have the agricultural report printed; and he asked the authority of the Senate, which was legislation itself, that the agricultural report should be printed, and the Senate conceded it.

Now there is no legislation contemplated in this resolution. It is simply a resolution authorizing this committee to elicit information, upon which it is possible that legislation may be based; or it is possible also that no legislation will be based on it; and it is also possible that the committee may make a negative report. What is desired by this committee, as I understand, and what was desired by myself in offering the original resolution, was simply that the committee might have such authority in going into that region of country to investigate this subject as to enable them to obtain information which they could not do in their individual capacity. It looks to no legislation whatever; it looks to simply forming a conclusion that we can lay before the Senate for its action; and, for my part, I cannot conceive that it has any reference to legislation at all. It is for the purpose of eliciting information, and I would not stickle upon it. I think the gentlemen of the committee can go down there and look into the subject, but we would like to have the authority, when we come before the persons most concerned, to say "We are authorized by the Senate of the United States to solicit this information." For my part I can assure the Senate that I am not committed to the project. If upon calm deliberation and investigation I come to the conclusion that it would be adverse to the interests of the Government to propose it, I shall vote against it and shall be inclined so to report. What we want is the information and nothing more.

Mr. HOWE. Mr. President, I am profoundly grateful to my friend from Connecticut, for the gallant effort to explain the difficulty in which I found myself, and to expound the whole law underlying the recent resolution of the Senate of the United States. Still, I am obliged to confess that I do not see the thing quite so clear as I would be glad to.

Mr. FERRY, of Connecticut. That is not my fault.

Mr. HOWE. The Senator says very correctly, that is not his fault. No, sir; that is not his fault. If it could be made clear, the Senator from Connecticut would make it clear. It is the fault of the subject, and not the fault of the Senator from Connecticut.

His explanation consists of two propositions of law and a deduction. One of the propositions is that all legislative authority is vested in the Congress of the United States. Now, I think I comprehended that in a dull way before it was stated. The second was that this is the Senate, and not the Congress. Well, I had a suspicion of that fact; I raise no issue on that point. But his deduction was that, therefore, we could not do anything which tended to legislation. That is a statement of fact, and I oppose to that statement the action of this Senate from the time it was founded to this day, with the exception of the two petitions which I offered the other day and which were rejected, and with the exception of the resolution which is moved by the Senator from Mississippi, which is gibbeted on the precedent set the other day.

I think, notwithstanding this is the Senate and not the Congress, we can take a step toward legislation, and I prove it as the justice proved his authority to try an action of ejectment by saying he had just done it; I say we can do it because we have done it a million times.

Mr. ANTHONY. Well, Mr. President, I say so too. I have changed my mind on this question. We have authorized two committees to sit during the recess; and why should we not authorize the third?

Mr. CONKLING. Which two are they?

Mr. ANTHONY. The Committee on the Revision of the Laws is one, as the Senator from New York is probably aware. We have authorized it to sit in New York. The Committee on Privileges and Elections is another, which we have authorized to sit in the recess, and sit elsewhere than in Washington.

Mr. HOWE. Does my friend from Rhode Island mean to say that the Senator from New York is aware that the Committee on the Revision of the Laws has been authorized to sit during the recess?

Mr. ANTHONY. I suppose he is aware of it. It was done on his motion, I think.

Mr. HOWE. But the Senator from New York is decidedly opposed to taking any step tending to legislation, if he can be believed, and I believe him.

Mr. ANTHONY. But, Mr. President, unless this vote can be taken without any further debate, I shall call for the regular order. It is ten minutes past the morning hour.

Mr. ALCORN. I hope the Senator will allow the vote to be taken.

Mr. ANTHONY. If the vote can be taken, I will; otherwise we had better postpone it until the regular order is disposed of.

Mr. ALCORN. We have no more to say over here.

Mr. CONKLING. I was afraid I should lose the opportunity, as the present occupant of the chair said the other day, of associating my name with this debate; but the Senator from Rhode Island has relieved me by an allusion to the Committee on the Revision of the Laws, and therefore I wish to remind him that the committee, although in form authorized to sit, was not so authorized in any sense applicable to this question.

The two Houses of Congress on the last day of the last session enacted a law which the President has signed, which law requires the Committee on the Revision of the Laws to perform certain acts during the recess, or rather certain acts at dates fixed, which dates are during the recess, beginning on the 4th of May, for example. It is quite doubtful whether any license of the Senate, after that law, was necessary to enable the committee to perform that duty; but for abundant caution, that everybody might understand it, a resolution was offered giving it leave to sit. Then a suggestion being made by a member of the corresponding committee on the part of the House, authorized by this law to act with the committee on the part of the Senate, that, without some special leave, we might be required to sit here, which would be a bad economy of time and money if a nearer place could be found, a resolution was offered in the ordinary form, authorizing the committee to hold the session authorized by law either here or at a nearer point. So the Senate will see that that cannot be a precedent in the case which we are now discussing.

One other word, Mr. President. The Senator from Ohio [Mr. SHERMAN] induced the Chair to consent to submit to the Senate the question, shall this resolution be received? If the purpose of the honorable Senator was to mingle with this question a certain persuasive element growing out of what may be deemed the merits of the resolution, I think that was a very successful and a very ingenious movement executed by him. If, however, the purpose of the Chair and of the Senator is to submit to the Senate and decide a question of order merely, which question arises behind the rules and upon the Constitution of the United States, I respectfully submit that the true question is as the Chair originally propounded it, namely, is this question of order well taken or ill taken? That is a clear-cut question independent of the merits of this resolution; and I humbly conceive that the Senate would be more likely to vote upon the question of order alone if stated in that form than in the other.

Now, before I sit down, I wish to congratulate my honorable friend from Connecticut on the fact that he has reached a case where he prefers the Constitution of the United States to a particular object to be attained in a particular way. That is an advance on his part; a progress, what is now called a progression, upon which, as his friend, I beg to tender him my congratulations.

Mr. ANTHONY. Mr. President, here is a resolution we passed, I believe, this morning:

Resolved, That the Select Committee on Transportation Routes to the Sea-board be authorized to sit at such places as they may designate, during the recess.

Mr. CONKLING. That is one committee. I was speaking of the Committee on the Revision of the Laws.

Mr. ANTHONY. And by this resolution we authorized that committee "to investigate and report upon the subject of transportation between the interior and the sea-board; that they have power to employ a clerk and stenographer, and to send for persons and papers; and that the expenses attending such investigation be paid out of the contingent fund of the Senate upon vouchers approved by the chairman of said committee."

The PRESIDENT *pro tempore*. The Chair will inform the Senator from Rhode Island that when that resolution was considered the point of order was made upon it, but the Senator from Vermont [Mr. MORRILL] appealed to the Senate for unanimous consent, and it was granted, that the resolution might be considered and passed.

Mr. ANTHONY. The Senate cannot by unanimous consent do anything that it has not the power to do. The objection to this is that the Senate has not the power to do it. We cannot alter a law by unanimous consent. It is not our own rule that we are charged with violating, but a law of Congress.

Mr. ALCORN. I understood the honorable Senator from New York to say that this was a question of the Constitution of the United States. I ask whether the resolution just read was not a violation of the Constitution, and whether, by common consent, we can abolish that instrument?

Mr. CRAGIN. When this resolution is declared to be in order, if it shall be, will it be in order then to move an amendment to it?

The PRESIDENT *pro tempore*. It will be.

Mr. CRAGIN. It occurs to me that it would be more satisfactory to provide that all the committees of the Senate have leave to sit during the recess, in Washington or elsewhere. [Laughter.] I think that would be entirely satisfactory, and I presume there would be no objection to it. [Laughter.]

Mr. MORRILL, of Maine. I am opposed, as a general proposition, to all these, as they are sometimes called, roving committees. My own experience and observation convince me that they are never useful. I do not remember a single instance where it has turned out that one of these committees has really aided legislation at all or even been the foundation for legislation. I remember that three years ago the subject of commerce was confided to a special committee, and they spent a great deal of pains, took a great deal of testimony, and after all it turned out that all the information they had was within the reach of the legitimate standing committees of either body, and it is so now. Take this proposition in regard to the levees of the Mississippi, which I do not now rise to oppose, that has been examined, examined thoroughly, examined exhaustively by one of your standing committees within the last half dozen years, and I think within the last three years.

It so turns out that we have the information, if we could only lay our hands upon it, in regard to any of these subjects, and the standing committees may avail themselves of it, and may report to either

branch of Congress anything and everything that may be expected to be obtained from these roving committees.

Take this very question of the levees. We have a most exhaustive report on that matter, covering the whole subject of levees—a most able and most interesting report from the Engineer Department.

Of course, then, nothing is to be gathered in that light by this committee. Then historically there is nothing to be gathered. What is this committee to do? To go upon the spot? Are they to take testimony? How? Upon what subject? How are they to enlighten us? What facts are they to gather that are not accessible?

Mr. WEST. They are not authorized to take testimony.

Mr. MORRILL, of Maine. Then what is to happen? Is not this simply to be a tour of observation? That may be very pleasant, but is it to amount to anything? That is the real question. If it is not, then it is really derogatory, I will not say to the character of the Senate, but to the legitimate business of the Senate, that which belongs to the standing committees. This very subject has been before my honorable friend, the chairman of the Committee on Finance, I think, within a very few years. So that upon this very subject it will be found that within the reach of the standing committees of this body, to which this subject would appropriately go, you have all the information that I can conceive is obtainable on the subject.

I am inquired of whether the Ku-Klux committee was not, on the whole, of some consequence. Of course, that is another affair. I am, as a general proposition, opposed to the whole thing. My honorable friend from Minnesota, [Mr. WINDOM,] with commendable zeal, has spoken this morning of the great good he hopes to derive from an investigation into the subject of intercommunication—getting better facilities for transportation from the interior to the sea-board. That is an old subject. It is a very old subject. It dates back as far as 1825 when Congress raised a commission very like this, to see what could be done for internal improvements. I have with great interest in former times examined that subject, and it is perfectly amazing to see what was the result of that commission; to see how little they comprehended the condition of things. They made a report, which they thought then was very comprehensive, for a system of internal improvements; but never was the first thing done with it. What has been done since by the people of the States, acting in their own right, and of their own industry, and of their own energies, in the way of giving us a system of internal improvements—railways, canals, and the like—dwarfs that whole scheme, and shows how utterly insignificant it was.

I did not object; I gave my consent with the rest of the Senate that that resolution should be offered. There is unquestionably a feeling in the community that something ought to be done, and it ought to be done upon the great water-lines of the country, toward facilitating transportation from the interior to the sea-board. I am willing that that should be tried; but, after all, it will result, so far as the examinations are concerned, in what? Just in reporting to us now, in a most convenient form undoubtedly, what the standing committees of this body would find accessible at their hands if they would only reach out and look for it.

So, Mr. President, though I do not rise to object to this proposition at all, I predict we shall have no good from it. In the nature of the case it will be so. But I think the Senate ought to come to the conclusion that whatever is proper to be done is best attainable by and through their standing committees. That is my belief and that is my experience, so far as I have had any on this subject.

Mr. FERRY, of Connecticut. Mr. President, having taken this point of order, I desire that it shall be presented to the Senate as a point of order and in the orderly mode. I think the only question which the Senate has to decide is whether the Senate will sustain the point of order, and not whether the Senate will receive this resolution. I ask the Chair to put the question according to parliamentary order.

The PRESIDENT *pro tempore*. The Chair, as a matter of self-defense, will state the attitude of the question, which seems to be now the greatest difficulty in the case. The resolution being offered, the Senator from Connecticut raised the point of order. The point of order, and nothing else, was to be decided by the Chair. The Chair, for obvious reasons, chose to submit the question to the Senate, and the question before the Senate was, "Shall the point of order be sustained or overruled?" In analogy to the ruling of all courts when a question is put to a witness and an objection is made, the question is, "Shall the objection be sustained?" And if two judges of a circuit court of the United States disagree upon that question, the objection falls, because it requires an affirmative decision to sustain the objection. The Chair, therefore, put the question in that form. The Senator from Ohio objected to that and said it was not according to the usual form of submitting such a question in the Senate, and he desired it to be put in the other form. The Chair then stated his view of it briefly, and stated that if the Senate desired the question to be put in the other form, he would so put it, and, pausing for a reply, heard no response, and put the question in that form. The Chair having reversed himself once, and having proceeded on what he understood to be the direction of the Senate, and put the question in that form, will now adhere to that, and put the question in that form. Senators who will receive this resolution and overrule the point of order will, as your names are called, answer "yea;" those who are opposed will answer "nay."

Mr. SAULSBURY. Let the resolution be read.

The resolution was read.

Mr. CASSERLY. For the information of several on this side, including myself, I ask for the distinct shape of the question as we now have to vote upon it. [Laughter.]

The PRESIDENT *pro tempore*. The Chair will make another attempt to explain it. [Laughter.] This resolution being offered, the Senator from Connecticut raised the point of order that it looked to legislative business, and could not be received at this executive session. The Chair, instead of ruling upon the question of order, submitted it to the Senate in this form: "Shall the point of order be sustained?" The Senator from Ohio objected to that form of the question, and claimed that it should be put in the other form: "Will the Senate receive the resolution?" Of course, that involves the same question, only it is put in the other form. The Chair stated that if it was the desire of the Senate the question would be put in that form, and, pausing, heard no objection, and put the question in that form. The question now is, "Shall the point of order made by the Senator from Connecticut be overruled and the resolution received or not?" The roll-call will proceed.

The question being taken by yeas and nays, resulted—yeas 25, nays 19; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Bogy, Casserly, Clayton, Cooper, Dennis, Frelinghuysen, Goldthwaite, Gordon, Hitchcock, Howe, Merrimon, Morton, Norwood, Patterson, Robertson, Sargent, Schurz, Scott, Stevenson, Stewart, West, and Windom—25.

NAYS—Messrs. Boutwell, Buckingham, Carpenter, Chandler, Conkling, Cragin, Fenton, Ferry of Connecticut, Ferry of Michigan, Gilbert, Hamilton of Texas, Kelly, Logan, Mitchell, Morrill of Vermont, Oglesby, Saulsbury, Thurman, and Wright—19.

ABSENT—Messrs. Ames, Bayard, Boreman, Brownlow, Cameron, Conover, Davis, Dorsey, Edmunds, Flanagan, Hamilton of Maryland, Hamlin, Ingalls, Johnston, Jones, Lewis, McCreery, Morrill of Maine, Pratt, Ramsey, Ransom, Sherman, Spencer, Sprague, Stockton, Sumner, Tipton, and Wadleigh—28.

The PRESIDENT *pro tempore*. The point of order made by the Senator from Connecticut is overruled, and the resolution is before the Senate. The question is, "Will the Senate agree to the resolution?"

The resolution was agreed to.

COMMITTEE ON TRANSPORTATION ROUTES.

Mr. STEWART. At the suggestion of several Senators, and with the approval of the chairman of the Committee on Transportation Routes to the Sea-board, I move that the committee be increased by the addition of two members.

Mr. SHERMAN. Before anything further is done I should like to have the matter pending disposed of—the unfinished business of yesterday, in regard to the publication of the statement of Mr. Patterson.

The PRESIDENT *pro tempore*. The motion of the Senator from Nevada is in the nature of a resolution, which is in order unless the regular order is called for.

Mr. SHERMAN. I call for the regular order.

EX-SENATOR PATTERSON, OF NEW HAMPSHIRE.

The PRESIDENT *pro tempore*. The regular order is the resolution of the Senator from Rhode Island, [Mr. ANTHONY,] on which the Senator from Ohio [Mr. SHERMAN] is entitled to the floor.

Mr. MORRILL, of Maine. I ask that the resolution be read.

The chief clerk read as follows:

Whereas at the last session of the Senate a resolution was reported, from the select committee on evidence, affecting certain members of the Senate, "That James W. Patterson be, and he is hereby, expelled from his seat as a member of the Senate;" and whereas it was manifestly impossible to consider this resolution at that session without serious detriment to the public business; and whereas it is very questionable if it be competent for the Senate to consider the same after Mr. Patterson has ceased to be a member of the body: Therefore,

Resolved, That the failure of the Senate to take the resolution into consideration is not to be interpreted as evidence of the approval or disapproval of the same.

Resolved further, That Mr. Patterson have leave to file a statement which shall be published in the CONGRESSIONAL RECORD.

Mr. MORRILL, of Maine. I move to amend by striking out all after the first word, "resolved," and inserting:

That the pamphlet entitled "Observations on the Report of the Committee of the Senate of the United States respecting the Credit Mobilier of America," submitted by Mr. Patterson, be received, filed, and printed with the report of said committee.

Mr. SHERMAN. I have no desire to debate this proposition. My position yesterday was merely for the purpose of securing what I believed to be the right of the former Senator from New Hampshire to have his views spread in some way upon the public documents, so that the accusation against him may go with whatever he says in self-defense. If this resolution can be adopted without debate, I have no desire to hold the floor.

Mr. ANTHONY. The amendment is perfectly satisfactory to me, and if it is in my power I will accept it.

Mr. SHERMAN. This resolution, as amended, I understand will allow Mr. Patterson's observations to go with the accusation, to be bound with it, so that wherever that goes it goes.

The PRESIDENT *pro tempore*. The Senator from Rhode Island accepts the amendment of the Senator from Maine. The question is, "Shall the resolution as amended pass?"

Mr. BOREMAN. Is that amendment in lieu of both resolutions?

The PRESIDENT *pro tempore*. In lieu of all. The question is on the resolution as amended.

The resolution, as amended, was agreed to.

ADJOURNMENT SINE DIE.

Mr. ANTHONY. I offer the following resolution:

Resolved, That at four o'clock this day the President of the Senate do declare the Senate adjourned without day.

The resolution was considered by unanimous consent and agreed to.

NOTIFICATION TO THE PRESIDENT.

Mr. ANTHONY. I offer the following resolution:

Resolved, That a committee of three Senators be appointed to wait upon the President and inform him that, unless he may have some further communication to make, the Senate is ready to close its present session by an adjournment without day.

The resolution was agreed to.

By unanimous consent, the Chair was authorized to appoint the committee; and the President *pro tempore* appointed Messrs. ANTHONY, MORTON, and CASSERLY.

COMMITTEE SERVICE.

Mr. STEWART. I now renew my motion, that two additional members be added to the Select Committee on Transportation Routes to the Sea-board.

The motion was agreed to.

By unanimous consent, the members were authorized to be appointed by the Chair; and the President *pro tempore* appointed Mr. MITCHELL and Mr. DAVIS as additional members of the Select Committee on Transportation Routes to the Sea-board.

EXECUTIVE SESSION.

Mr. SHERMAN. 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 one hour and forty-five minutes spent in executive session, the doors were re-opened.

COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS.

Mr. MORRILL, of Vermont. By a rule of the Senate the rooms in this wing of the building are under the charge of the Committee on Public Buildings and Grounds. It is found to be necessary to make some re-assignments of the rooms. I move, therefore, that the Committee on Public Buildings and Grounds have leave to sit during the recess of the Senate.

The motion was agreed to.

PAPERS WITHDRAWN.

On motion of Mr. CLAYTON, it was

Ordered, That Antoine Pelletier have leave to withdraw his petition and papers from the files of the Senate.

On motion of Mr. CLAYTON, it was

Ordered, That Wildey Lodge, I. O. O. F., have leave to withdraw its petition and papers from the files of the Senate.

CLOSE OF THE SESSION.

Mr. ANTHONY. The committee appointed to wait on the President of the United States, and inform him that, unless he have some further communication to make, the Senate is ready to close the present session by an adjournment, have performed that duty. On notifying the President of the action of the Senate, he replied that he had no further business to lay before the Senate.

Mr. MORTON. Is a motion to adjourn in order?

The PRESIDENT *pro tempore*. A motion to adjourn *sine die* is in order.

Mr. MORTON. I move that the Senate adjourn *sine die*.

Mr. STEVENSON. I hope that motion will be withdrawn for the present. The Senator from New Jersey has a resolution to offer.

Mr. MORTON. Very well.

THANKS TO THE VICE-PRESIDENT.

Mr. STOCKTON. I offer the following resolution:

Resolved, That the thanks of the Senate are due, and are hereby respectfully tendered, to Hon. HENRY WILSON, Vice-President of the United States, for the eminent ability, courtesy, and impartiality with which he has presided over the deliberations of this body.

The resolution was agreed to unanimously.

ADJOURNMENT SINE DIE.

Mr. MORTON. I now move that the Senate adjourn *sine die*.

The motion was agreed to; and (at three o'clock and twenty-five minutes p. m.) the Senate adjourned *sine die*.

INDEX TO THE PROCEEDINGS.