able man can so contend. It never was so decided in any case that I have ever seen or heard of.

So that, Mr. President, it does appear by the investigation made in the way and manner I have indicated that the McEnery ticket was elected by a majority of 10,000 votes. It further appears by this same report that the Legislature elected upon his ticket assembled and organized. It further appears that McEnery himself was qualified; that all the State officers elected upon his ticket qualified according to the constitution and laws of the State of Louisiana, and from that day until this they have been claiming to represent the lawful government of the State of Louisiana. Not for one moment have they conceded that any other officers of the State represented the lawful government. In every way in their power have they endeavored to assert their right. They are doing so to-day, and proclaim their purpose to continue to do so.

Mr. McCREERY. Will the Senator from North Carolina give way that I may move that the Senate adjourn?

Mr. MERRIMON. I yield for that purpose.

Mr. WRIGHT. I suggest that the Senator change his motion to one for an executive session.

Mr. McCREERY. Very well; I modify the motion.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twelve minutes spent in executive session the doors were reopened, and (at two o'clock and fifty-two minutes p. m.) the Senate adjourned.

IN SENATE.

WEDNESDAY, *March* 10, 1875.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

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

WITHDRAWAL OF PAPERS.

On motion of Mr. MITCHELL, it was

Ordered, That Samuel Adams have leave to withdraw his petition and papers from the files of the Senate on leaving copies of the same.

On motion of Mr. BOGY, it was

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

SENATOR FROM LOUISIANA.

The Senate resumed the consideration of the following resolution, submitted by Mr. MORTON on the 5th instant:

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years, beginning the 4th day of March, 1873.

Mr. MERRIMON. Mr. President, it had not been my purpose to address the Senate on yesterday, and therefore I had not collected the cases which I desired to cite upon the point which I debated with as much care as I ought to have done. I therefore beg leave this morning, at the risk of having them come in my remarks at a place not exactly pertinent, to cite a few other cases to which I did not then call attention.

The first case to which I call attention this morning is that of Stark, of Oregon, in 1862. Mr. Stark was appointed by the governor to fill a vacancy. He came to the Senate and presented his credentials. It was suggested by some Senator that he perhaps had used language hostile to the Union in that State. Thereupon his credentials were referred, and the whole merits of the case were gone into by the committee. They made a report, and he was finally admitted to his seat, but in the mean time he was not allowed to sit.

The next case I refer to is that of Mr. GOLDTHWAITE. Senator GOLDTHWAITE was elected by the Legislature of Alabama to represent that State for six years. He also came to the Senate and presented his credentials. They were in due form in all respects and so far as the Senate could see, looking simply at the record, he was entitled to be admitted; but it was suggested that there was some reason why he ought not to be admitted, and thereupon his credentials were referred, and he was kept out of his seat for months. Finally he was admitted. I cite the case to support the view that the Senate is not bound to admit upon a *prima facie* case. If it were, when he presented his credentials, they being in due form, he was entitled to sit until the merits of his case could be determined.

The Senator from Indiana cited this case as one sustaining the view that he has taken of the case now before the Senate; but so far from sustaining that view it will be seen that it sustains the position which I have taken.

I refer again to the case of Blodgett who was elected to represent the State of Georgia. Blodgett also came with credentials in all respects formal and regular, and he had what is termed here a *prima facie* case. It was suggested, however, that he was not entitled to sit, and according to the course and practice of the Senate his case went to a committee. That committee examined it and finally made report declaring that he was not entitled. At all events, he never took a seat in the Senate at all. In the mean time, while his case was undergoing investigation he was not allowed to sit.

The next case that I refer to is that of my colleague, [Mr. RANSOM.] He was duly elected by the Legislature of the State of North Carolina in 1872. He presented his credentials. They were in due form in all respects; there was no question made about them. They were, however, referred to a committee and he was not allowed to sit for many months, at all events for a long time. Finally his case was determined and he was allowed to take his seat.

The Senator from Indiana made reference to the practice of the House, and I believe he mentioned the case of Sypher. It seems to me that the case of Sypher in the House illustrates as strongly as any case that I could cite the strength, and force, and propriety, and reason of the doctrine which I have insisted upon. Mr. Sypher presented his credentials more than two years ago. He was admitted upon what is called a *prima facie* case to a seat in the House. He sat in the House until a very brief period before the last Congress expired. Probably within twenty-four hours before the expiration of the Congress his case was acted upon by the House and he was turned out, because it was ascertained that he was not elected.

Under this practice of admitting upon a *prima facie* case Mr. Sypher was admitted to the House and he voted upon all the stirring and important questions that were decided by the House during the last Congress. I believe some of them turned upon one vote. How he voted I do not know, nor is it material; but it shows the impolicy, the impropriety, and I go further and say, the illegality of allowing a person applying here to sit upon a *prima facie* case when his right is questioned.

Now, sir, in opposition to all this vast array of cases which I have cited and which I think settle the regular practice of the Senate, the Senator from Indiana cites two cases. The first one is that of General Shields. I commented sufficiently upon that yesterday. He then cites the case of Robbins from Rhode Island, and he lays a great deal of stress upon that. It would seem that that case does sustain his view; but at the same time it appears to me that every Senator must see at once the impropriety of that case and that it was improperly and unwisely decided. Mr. Robbins sat here many months while his case was questioned; he voted upon all the questions that came before the Senate, and perhaps his vote may have determined an important question before the Senate one way or the other. In the end of that case, it turned out that he was allowed to sit; it was found upon examination that he was duly and properly elected; but suppose he had not been elected? Then there had been a Senator sitting in this body, as in the case of Shields, who had no right whatsoever to sit here and vote. How far his vote may have affected the best interests of the country, the interests of individuals, how far it detracted from the dignity of the Senate, how far it affected his State, how far it might have affected the Union, no earthly power can determine. But I say the case of Robbins goes to show the impolicy of such a practice; and I insist, Mr. President, that the vast array of cases which I have cited are not to be overborne and set aside by the citation of the two cases which the Senator from Indiana has cited, to wit, those of Shields and Robbins. I maintain that they are in the face of the reason of the thing, in the face of the proper construction of the Constitution of the country, in the face of the best interests of our governments, both State and Federal.

When I concluded yesterday, I was giving a brief but correct summary of the action of the committee appointed by the Senate to inquire into the election in Louisiana in 1872. I called attention to the fact that all the authorities of Louisiana that could be called lawful—and I maintain that those who did examine and determine as I suggested were lawful, they were at all events colorable; I believe nobody questions that or ever has questioned it—ascertained that the McEnery ticket was elected by an average majority of ten thousand votes. I think I had better sustain my statement by a few extracts from the report giving the conclusions of the committee. It seems to me that no fair person can consent to doubt the findings and action of the committee under the circumstances. The committee say in reference to the action of the De Feriet board, as follows:

> In the opinion of your committee there can be no doubt—conceding the validity of the act of November 20—that it transferred the duty of canvassing the returns of the last election to the board to be elected under the provisions of the act. The act provided for such election by the senate, and, taking effect in the vacation of the Legislature, created offices to be filled thereafter by the senate. This is what is styled in that State an original vacancy, which, happening in the vacation of the Legislature, the governor is authorized to fill by appointment; and it is said that the State courts of that State have repeatedly recognized the right of the governor to make such appointments.

To make that clause in the report a little clearer, I will say here that the Warmoth board quarreled among themselves. There were two parties, a Kellogg party and a McEnery party, in that board. Each of these factions brought suits in the courts and enjoined the other from counting the returns as they were charged by the law to do. Pending this litigation, Governor Warmoth took from his safe an act which had been passed by the Legislature which assembled in that State next before that time, and approved it. That became a law and repealed the then existing board. Under the law which he then brought into existence by his approval a new board had to be created, and it ought to have been appointed by the governor with the sanction of the senate of that State; but under a provision of the constitution, in the absence of the senate, the governor could appoint, and he did appoint what was called the De Feriet board; and the board to which the committee refer in the clause I have read was the De Feriet board. Now let us see what they say about the

result of the action of that board. Speaking of the McEnery ticket, the report says—and this is their conclusion—it would take too much time to go into the evidence upon which they acted; I can only give their conclusions:

It is the opinion of your committee that, but for the unjustifiable interference of Judge Durell, whose orders were executed by United States troops, the canvass made by the De Feriet board, and promulgated by the governor, declaring McEnery to have been elected governor, &c., and also declaring who had been elected to the Legislature, would have been acquiesced in by the people, and that government would have entered quietly upon the exercise of the sovereign power of the State. But the proceedings of Judge Durell, and the support given him by United States troops, resulted in establishing the authority *de facto* of Kellogg and his associates in State offices, and of the persons declared by the Lynch board to be elected to the Legislature. We have already seen that the proceedings of that board cannot be sustained without disregarding all the principles of law applicable to the subject, and ignoring the distinction between good faith and fraud.

Judge Trumbull in his report says:

According to the official returns, the fusion State ticket, headed by McEnery for governor, received an average majority of about ten thousand votes, and a large majority of the persons elected to the Legislature were of the same party; and but for the illegal interference of the United States authorities, as is stated in the report of the majority, the McEnery government would have been peacefully inaugurated.

How skillfully the plan was laid to overthrow the legitimate State government, set aside an election, and inaugurate the Pinchback and Kellogg administrations and legislatures, and how well Judge Durell was supported in all these revolutionary and illegal proceedings by other United States officials, will appear by reference to a few facts disclosed in the evidence.

The committee say again:

If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State, and McMillen, if regularly elected by that Legislature, should be seated in the Senate in place of Kellogg. But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.

I cite these extracts from the report of the committee and from the minority report of Judge Trumbull, for the purpose of showing that according to all the legitimate action taken in the State of Louisiana for the purpose of ascertaining who was elected at the election in 1872, according to the examination made by the committee itself, having the returns before them here, according to the truth as ascertained and not denied by any one, the result of the election in 1872 showed that the fusion or McEnery ticket was elected by a majority of 10,000 votes. I cannot conceive how any one in the Senate or anywhere, who has a fair and just mind, can doubt the fact for one moment that the McEnery ticket was elected by the majority I have stated.

After obtaining that majority, the Legislature which was elected upon his ticket assembled; they had a quorum; they proceeded to elect a Senator to fill the vacancy and to fill the regular term in the Senate here. The Legislature also proceeded to count the votes for governor, as they were charged by the constitution and laws of that State to do. They ascertained that McEnery was lawfully elected; that the other State officers upon his ticket were lawfully elected; and they were duly inaugurated. The people of the State of Louisiana were advised, according to the forms and practice of that State, of his election, of his inauguration, and that he and his colleagues were the true and proper officers of the State. The President of the United States was also informed and notified of the election. The matter of his inauguration was brought directly to the attention of the President; it may be said the world was notified of his election and his inauguration in pursuance of it. From the day of his inauguration until this day he has claimed to be the lawful governor of the State of Louisiana and his colleagues the lawful officers of that State, and whenever they have had power to do it they have exercised their offices.

It has been said that their government is a paper government. That I deny. They have exercised power and they have exercised their offices whenever and wherever and under whatever circumstances they could. To-day they claim to exercise their offices, and they proclaim their purpose to insist upon the administration of the government until they shall be subverted by absolute force. And the truth is, the Senate knows, the country knows, the world knows, that they are suppressed to-day by the interference of the Army of the United States.

Why, sir, the President has told us in his recent message that but for the presence of the Army there the Kellogg government could not operate for one hour. The press of the State of Louisiana tells us every day that it cannot stand without the aid of force. The officers of the Army tell the Senate, tell the Congress, tell the President, tell the world in their official reports that but for the presence of the Army of the United States this Kellogg government could not stand there for one hour; and one officer—and he seems to be an officer of sound discretion, of very considerable experience and wise judgment—tells the President, in a report made by him, that the Army might be stationed in every parish in the State of Louisiana, and then the Kellogg government could not administer the government. He says furthermore that the government could not last twenty-four hours but for the presence of the Federal troops, and this in great part growing out of the fact that there is a universal impression, to use the language of the officer, that Kellogg was not elected; that McEnery was elected; that he has claimed to be the lawful governor of the State and his colleagues the lawful officers, and the people are not content to recognize any other authority.

Then, Mr. President, can there be any doubt in the mind of any Senator who is looking simply after truth, without regard to any other consideration, that at the election in 1872 the fusion ticket—the McEnery ticket—was elected by ten thousand majority? Can there be any doubt that in pursuance of that election McEnery was inaugurated as governor and the other State officers elected with him were inaugurated as officers of that State respectively? It seems to me there can be no doubt about it.

But it is said that Kellogg and the Kellogg government are the true and lawful government of the State of Louisiana, and this assertion which I say is not founded in fact or law—I deny it at every step—turns materially upon the question whether or not he was ascertained to be elected by what is called the "Lynch returning board." Those who listened to the argument of the Senator from Indiana will remember that he laid great stress upon the action of the "Lynch returning board;" and if we would take his general statements, underlying his whole argument, the Senate would infer and the country would infer that there was no question in the world about this Lynch returning board, that it was the regular and lawful returning board of the State of Louisiana. Because he laid so much stress upon it, because his whole argument rests upon it, I deem it worth while to look into this Lynch returning board, and see what its character was, and whether it was lawful or unlawful, or whether indeed it was a board at all or not.

Under the law of Louisiana there was what was called a returning board. That returning board was charged to examine the returns in all cases of election, and ascertain who was elected to fill any office. It consisted of five persons. It was to be appointed by the governor, with the consent of the senate, from all political parties, without distinction. Under the law as it existed prior to the 20th of November, 1872, the governor and four others composed this board. In the contest about the election of 1872 Governor Warmoth and his political associates quarreled; they differed; and that difference extended to the returning board. After the election was held, and when it became necessary that the votes should be compared by this returning board, a meeting was held according to law. At that meeting a quarrel sprang up. It is said that Warmoth apprehended that a portion of the board were inimical to his views, and that they would not count the vote as he wanted it counted. They apprehended that he on his part would not count it as they wanted it. The result was that there was an irreconcilable difference, and, besides, two of the members of the board could not act, to wit, Pinchback and Anderson, because they had been candidates and were therefore ineligible to sit. Their places were filled by appointment, and at this meeting Lynch was not present. The board, as a board, never met after that time. Lynch, heading what was called the "Lynch board," composed of Longstreet and three others, brought their suit in court and enjoined the Warmoth faction from comparing the vote. The Warmoth faction, on the other hand, also brought suit against the Lynch faction, and obtained an injunction restraining the Lynch faction from counting the vote; and so the matter stood, and neither faction could compare the vote, nor could the whole board do it, because both factions were enjoined by an injunction issued by a proper court.

Warmoth apprehended that the judge who had granted the injunction in favor of Lynch would decide in favor of the Lynch board. He had no confidence in the judge; he supposed he was corrupted, and I expect he was about right in that. Seeing that he was about to be defeated, he took from his safe the act which had passed the Legislature next before that, to which I have referred two or three times in the course of my remarks, and he approved it. It is conceded on all hands that he might well do it, that the constitution and laws of Louisiana allowed him to approve that act although the Legislature had dissolved and gone, and that that act became operative and was a law of that State as valid as any other statute. The effect of that act was to repeal the law of 1870 and also to abolish the then existing returning board, that is, to abolish the Warmoth returning board as it was styled. It put out of existence the returning board composed of Warmoth, Lynch, and others. In the first place, Lynch, in organizing his board, had no more power to appoint the persons who co-operated with him as the Lynch board than I had. He was not a majority of the Warmoth board. He had no power to fill any vacancy. The whole board had no power to fill any vacancy, for by the law the governor must appoint by and with the sanction of the senate persons to fill such vacancies and in the absence of the senate it was the duty of the governor to appoint. Nobody but the governor could fill any vacancy upon the board as the law existed before the 20th of November, 1872, and I may add after that time too. So that before the approval of the act of the 20th of November, 1872, the Lynch board, so called, had no existence whatsoever any more than if five gentlemen were to get together in the Senate and say they composed a board to compare the vote of Louisiana. But if it could have had any legal existence before the passage of the act of the 20th of November, 1872, it cannot be denied that by operation of that act the board was absolutely abolished. Then I put it to the Senate, I put it to every one who knows anything about principle and about law, to say whether or not that Lynch board ever had any existence at all.

In the first place, it never existed because Lynch had no power to fill any vacancy, nor had the board any power to fill a vacancy. No one but Warmoth could fill a vacancy in the absence of the Senate,

and he did not do it; it is not pretended that he did. But suppose the Lynch board had any existence prior to that time, then the approval of the act of the 20th of November, 1872, repealed the act that had existed before that time, abolished the board, and created the necessity for appointing a new board, which was done by Warmoth according to law, and the De Feriet board came into existence.

Then it does appear conclusively that the Lynch board, on the action of which the Senator from Indiana lays the basis of his whole argument, rests his whole case, never had any existence at all. But, Mr. President, will the Senate believe it, if it had any existence? The Lynch board, if it had any legal existence, if it had been a board, never compared the vote cast at the election in 1872 at all; it never ascertained that anybody was elected, and for the reason that there were no returns before it, and it had no returns to compare, and it never ascertained that anybody was elected. Without enlarging upon that, I wish to read to the Senate what the committee who investigated this matter say about the Lynch board. This puts any possible controversy to rest. Even the Senator from Indiana will not contradict what the committee say in the paragraph which I read:

On the 6th of December, 1872, the Lynch board—Bovee, (who was then acting as secretary of state in place of Herron,) Lynch, Longstreet, and Hawkins—pretended to have canvassed the returns of the election, and certified to the secretary of state that Kellogg had been elected governor; Antoine, lieutenant-governor; Clinton, auditor; Field, attorney-general; Brown, superintendent of education; and Deslondes, secretary of state; and also certified a list of persons whom they had determined to be elected to the Legislature.

Now see what the committee say:

There is nothing in all the comedy of blunders and frauds under consideration more indefensible than the pretended canvass of this board.

The following are some of the objections to the validity of their proceedings:

1. The board had been abolished by the act of November 20.

2. The board was under valid and existing injunctions restraining it from acting at all, and an injunction in the Armstead case restraining it from making any canvass not based upon the official returns of the election.

3. Conceding the board was in existence and had full authority to canvass the returns, it had no returns to canvass.

The returns from the parishes had been made under the law of 1870 to the governor, and not one of them was before the Lynch board.

It was testified before your committee by Mr. Bovee himself, who participated in this canvass by the Lynch board, that they were determined to have a republican Legislature, and made their canvass to that end. The testimony abundantly establishes the fraudulent character of their canvass. In some cases they had what were supposed to be copies of the original returns; in other cases they had nothing but newspaper statements; and in other cases, where they had nothing whatever to act upon, they made an estimate, based upon their knowledge of the political complexion of the parish, of what the vote ought to have been. They also counted a large number of affidavits purporting to be sworn to by voters who had been wrongfully denied registration or the right to vote, many of which affidavits they must have known to be forgeries. It was testified by one witness that he forged over a thousand affidavits and delivered them to the Lynch board while it was in session. It is quite unnecessary to waste time in considering this part of the case; for no person can examine the testimony ever so cursorily without seeing that this pretended canvass had no semblance of integrity.

So then it appears, Mr. President, that, according to the facts as they are admitted to be by all parties, the Lynch board never had any existence in law; that if it ever had any existence it was abolished by the act of November 20, 1872; and, further, if it ever had any legal existence at all, if it had been competent in law to count the vote, it never had any returns before it to compare. So neither the Lynch board nor any other authority whatsoever ever ascertained that Kellogg was elected, and nobody can so pretend, founding such pretense on fact or law.

But what appears on the other hand? It appears by the action of the inspectors of the election, the commissioners as they are called under the Louisiana law, by the action of the supervisors in the parishes, by the action of the De Feriet board, which was legal, by the action of another returning board provided by the Legislature which assembled in 1873, by the action of the committee here, it was ascertained that McEnery was elected by ten thousand majority, and, as a necessary consequence, that Kellogg and his ticket were not elected for lack of votes to destroy that majority.

But then the Senator from Indiana, apprehending that somebody would call this defect in his argument to the attention of the Senate and the country, says that the supreme court of that State has recognized Kellogg as the lawful governor and the Kellogg legislature as the lawful Legislature; that there is no question about the supreme court, and that the Senate is bound by the decision of the supreme court of Louisiana.

Now, sir, I do not concede that the Senate is bound by the decision of the supreme court of Louisiana, even if the decision shall be a lawful one. The power of the Senate to determine who is elected one of its members is absolute. It cannot be abridged by any power, State or Federal; nor can it be abridged by the ruling or determination of any other officer whatsoever. The Senate, I repeat, is absolute, and must pass judgment in this behalf without any restraint from any source.

But, sir, if we look to the decisions of the supreme court of Louisiana, we cannot hesitate to determine that the decision made touching this Lynch board was not worthy of any respect or consideration at all. In the case of the leading decision, in which a majority of that court held (for there was a minority that held otherwise) that the Lynch board was lawful, it is plain to any lawyer, it is conceded I believe by all lawyers at least, that the court had no jurisdiction whatever to determine the matter before it. It is a plain principle of law that where a court has no jurisdiction of any matter brought before it, its decision in that behalf is absolutely null and void and goes for nothing. In the leading case which has been cited the court had no jurisdiction, as is conceded by every lawyer, as our able committee said in their report. It had no jurisdiction; and its decision has no effect and no weight whatever, and is not to be regarded by the Senate or anybody else.

In addition to that, it is manifest that the supreme court of the State of Louisiana had conspired with the Kellogg government to sustain it and uphold it with a view to defeat the popular will of that State. Some of the judges of that court were under direct obligations to Kellogg; some of them were looking to his administration to keep them in office. They expected benefits. In addition to that their decision is in the face of the law as it would be determined by any intelligent mind, and in the face of the facts. Besides, there is evidence that goes to show that the supreme court had been in communication with Kellogg and his associates and that fact had been communicated to the Administration here. There was a direct conspiracy between the supreme court of Louisiana and the Kellogg usurpation, and all the decisions made by it are justly referable to that conspiracy, especially when it is manifest to anybody whose mind is controlled by reason that their judgment was in the face of law and right and justice and decency and dignity and everything else that is virtuous and good.

The majority was, as I have shown, beyond controversy, as ascertained by all the authorities who examined the question, Federal and State, in favor of the fusion ticket; and yet in the face of the fact that the De Feriet board was legal, in the face of the returns of all the officers, that court went on and decided that the Lynch board was legal. Such a decision as that shows corruption on its face and that the judges who made it are not entitled to consideration or respect at the hands of the people of Louisiana or of the Senate or anybody else.

Let me show you what Mr. Casey said to the President on the subject of this supreme court before they made this decision. I regret to know that this band of conspirators there put themselves in communication with the President on this subject and were recognized and sustained by him. James F. Casey sent to the President a telegram on the 12th of December, 1872. He was urging the President to recognize the Pinchback government, and after Pinchback to recognize the Kellogg government and his legislature. If I had time I could read half a dozen communications showing that he was importuned day after day and night after night by Casey, Kellogg, Packard, and others to recognize the Pinchback government, or in other words to recognize the whole usurpation there. In the telegram I refer to Casey says this:

The supreme court is known to be in sympathy with the republican State government. If a decided recognition of Governor Pinchback and the legal Legislature were made, in my judgment it would settle the whole matter. General Longstreet has been appointed by Governor Pinchback as adjutant-general of State militia.

Now, I ask how Mr. Casey knew the feeling of the supreme court in anticipation of the decisions relied upon by the Senator from Indiana? I ask, if the supreme court judges will agree to do such dirty and corrupt political work as that, are their decisions entitled to consideration at the hands of anybody? I ask every one who has any sense of justice if such a supreme court does not deserve to be denounced by every honest man throughout the land; if it does not deserve execration; if it ought not to be spurned from society and civilization; if such a set of judges do not deserve, every one of them who joined in such practices and decisions, to be impeached and turned out of the office they have disgraced?

But the Senator says in the next place that the election of Kellogg and his government was recognized by the President of the United States. First, that he recognized the Legislature and afterward Kellogg as governor.

Suppose the President did so, that does not bind Congress or the Senate. It is not the office of the President to recognize a State government except as he is empowered to do so by Congress. He is the executive power. Congress has the legislative and the political power. It is the peculiar office of Congress, it has exclusive jurisdiction to recognize what are State governments and what are not State governments in particular cases properly brought before it. It is true, indeed, that the President, in the exercise of his authority, which I will speak of more by and by, is bound to recognize the existing government in one case, but only in that case. His action is not final in that behalf; his action is subject to review by Congress; and his action in that behalf in no way affects the Senate in determining who was elected one of its members. It is a mere circumstance, that might have moral weight upon the mind of a Senator. He might say, "The President has recognized the Kellogg legislature; the President has recognized Pinchback as governor; he is a good man; he is an intelligent man; it was his duty to recognize somebody; and inasmuch as he has so determined, I take it he did it upon sufficient examination and deliberation, and it has weight with me." That is all that can be said about his action. It is not final, as the Senator from Indiana has said. He showed no authority to sustain his view, nor can he do it; but the Constitution as expounded by judicial decisions makes it clear beyond cavil that it is peculiarly the office of the Congress of the United States to determine what is a lawful State government and who are the properly ascertained officers representing it.

Then he says further that the House of Representatives has recognized the Kellogg government as the true and lawful government. He says they passed at the late session, just before they adjourned, a resolution in these words:

Resolved, That William Pitt Kellogg be recognized as the governor of the State of Louisiana until the end of the term of office fixed by the constitution of that State.

In the first place, the House of Representatives had no more right to pass that resolution than I have. The Senate has no right to pass that resolution or another similar resolution offered by the Senator from Indiana. Where is the warrant of authority in the Constitution that empowers one branch of Congress to recognize any State government? I never heard of it. I never read it. I do not believe any can be cited, and I challenge the Senator from Indiana or anybody else who can do it to cite it. I say that the House of Representatives had no right to pass that resolution, and it is no more than if it had not been passed at all. Nor can the Senate pass a similar one. All the Senate can do is to determine whether or not Pinchback was elected by the Legislature of Louisiana to represent that State here, and the Senate has no power to determine what is the lawful State government, except in determining whether a particular person was elected or not a Senator to represent the State in the Congress of the Union. In determining who was elected Senator, the Senate decides that a particular body was the true Legislature, but it can only determine in that way; it has no other or further jurisdiction to say by resolution or otherwise that one government or another is the lawful government.

But let us see what the House of Representatives did. They passed this resolution, which they had no jurisdiction or power to pass, and it therefore goes for nothing.

They allowed to sit in their body, upon what is here called a *prima facie* case, members of Congress from Louisiana elected upon the Kellogg ticket; and before they adjourned they turned them out and seated those members of Congress who were elected upon the McEnery or fusion ticket; so that if there is anything in this resolution, if it has any force or effect whatsoever, the House has stultified itself, for after it declared at one moment by this resolution that the Kellogg government is the lawful government and to be recognized as such, it turned around and admitted that the members elected to Congress upon the fusion or McEnery ticket, thereby declaring very strongly that the McEnery ticket was elected. So that, I say, all these authorities that the Senator falls back upon to sustain his case go for nothing. They are empty; they prove nothing; indeed when examined they go to show that he is in the gravest error, that the President has erred, that the Kellogg government is a sheer usurpation, unlawful, upheld and sustained by Federal power.

Then, Mr. President, it must be manifest to reasonable men that the Kellogg government was not elected by the people of Louisiana, nor has anything transpired in the State of Louisiana or anywhere else that has the force and effect to give that government legality. And thus it appears that there is a lawful government there, and that the Kellogg government, so called, is in power and administering the government; but now let us see what his government is, and what ought to be done with it; whether indeed it is a government or whether indeed it is a sheer usurpation.

It is not pretended that his government is a *de jure* government. It is said that he is the governor *de facto* and that his officers are the officers *de facto* of the State of Louisiana; that it is the existing government; that it would lead to bad consequences to displace it, to abolish it; and that because it is the existing government it has force and effect, it is legal, it is competent to administer the government of the State of Louisiana. All this I flatly deny.

In the first place it is not *de jure*. Why? Because Kellogg and his associates were not elected. A *de jure* officer is one who was duly elected or appointed and fills the office, and his office is in all respects complete and effective. Then I say that he is not a *de facto* officer. What is a *de facto* officer? It is not simply one who happens to be in the office and undertakes to discharge the duties of the office. That seems to be the supposition here; but it is a very false and pernicious view of the subject. A *de facto* officer is one who goes into office by color of right in an irregular way, but still in some sense recognized by the law, and he exercises the office for the benefit of the public; and for the benefit of the public alone, not for himself, his acts are deemed and held valid. He is one who appears to act in pursuance and by authority of law, who appears to act in the office by colorable sanction of law.

I want to cite some authorities on this subject, for, as I said a moment ago, a very false notion seems to prevail in the Senate and outside of the Senate as to what constitutes a *de facto* officer. The first case I cite is a very ancient English one, drawing the distinction. I cite the case of The King *vs.* Lisle. In that case the court say:

It was held by the whole court (except Lee, chief justice, who gave no direct opinion as to this point) that *Goldwire* was not so much as a mayor *de facto*—

The question was about whether a particular party was the mayor of a certain town or city—

for in order to constitute a mayor *de facto* it is necessary that there be some form or color of an election; but without this, the taking the title and regalia of the office, and the acting and being sworn in as mayor, are not sufficient; and with this agrees the Abbot of Fountain's case. Now here it appears that Goldwire was never elected in fact; and though it be stated that he was sworn at the leet, it does not appear (as it ought) that this was agreeable to the constitution of the borough. And it is not material that he acted as mayor, as it is found that a *quo warranto* was recently prosecuted against him, pending which the present election was made, and that he was thereupon adjudged to be an usurper. The consequence hereof plainly is that the election is void. And Lee, chief justice, said that in these cases the proper question is, whether the person be an officer *de facto* as to the particular purpose under consideration, according to 1 Salkeld, 96. And he cited the Queen and Davis, in Queen Anne's time, where on a motion for an information it was held that there cannot be an officer *de facto* and an officer *de jure* at the same time; and therefore the chief justice said that it would deserve great consideration whether collation by a bishop *de facto* is good where there is a rightful one in being. (Andrews's Reports, 172, 173.)

The next authority I cite is an interesting case which will be found in 37 Maine Reports, page 423. The court say:

An officer *de facto* is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. * * * Or one who actually performs the duties of an office, with apparent right and under claim and color of an appointment or election. He is not an officer *de jure*, because not in all respects qualified and authorized to exercise the office; nor a usurper, who presumes to act officially without any just pretense or color of right. A mere claim to be a public officer and exercising the office will not constitute one an officer *de facto;* there must be at least a fair color of right, or an acquiescence by the public in his official acts so long that he may be presumed to act as an officer by right of appointment or election.

* * * * * * *

The distinction between officers *de facto*, acting *colore officii*, and officers *de jure* has been recognized in England from an early period, and seems to have been applied to officers of every grade, from the king to the lowest incumbent of office.

The court say further:

The same distinction is equally well known in this country, and has been applied in numerous cases, and to a great variety of offices, where persons have claimed to act *colore officii*, though not qualified according to the requirements of law, and where their acts, as officers *de facto*, have been upheld. It is familiar doctrine in the courts of our own State, and is sustained by the cases following.

Citing a great number of them.

I then cite Bouvier's Law Dictionary. Bouvier, a learned law lexicographer, says this:

An officer *de facto* is one who performs the duties of an office with apparent right, and under claim and color of an appointment, but without being actually qualified in law so to act.

If these definitions of what constitutes an officer *de facto* are correct, I put it to every sensible man to say if in any point of view Kellogg can be called an officer *de facto*? He was not elected. There was a majority of ten thousand votes against him and his associates. He did not come in by color of any authority. It was alleged that he was ascertained to be elected by the Lynch board, but the facts, the reports, the examinations all go to show that the Lynch board had no existence whatsoever, and that it never compared any vote or returns at all. All the authorities that examined the vote cast in that State in 1872 go to show that the McEnery ticket was elected, I repeat, by a majority of ten thousand votes. Therefore it cannot be pretended that Kellogg came in by any color of authority whatsoever. If anybody can show any color for his authority I will be obliged to him if he will cite it.

Then if Kellogg is not an officer *de jure*, if he is not the governor *de facto*, what is he? He is a mere naked usurper. He is as much a usurper as if I were to go into the State of Maryland to-day with ten thousand armed men at my back and proclaim myself governor there, and with that force and power, backed by the Army of the United States, were to administer that government for twelve months. Would anybody pretend in that case that I could be the governor of the State of Maryland? I have ten thousand armed men, and I proclaim myself governor. I inaugurate a State government founded upon the constitution of that State. I observe all its provisions in every respect. I apply to the President of the United States for troops to sustain me as governor, and, advisedly or unadvisedly, honestly or corruptly, he recognizes and sustains me there in the exercise of this power; could that by any possibility constitute me the lawful governor *de facto*, *de jure*, or in any other way, in the State of Maryland? I apprehend that there is not a man in all this country that would so believe for one moment; and apart from the frauds, the dust, and fog that prevailed in the State of Louisiana, Kellogg and his associates are as much usurpers as I would be if I were to go into the State of Maryland and do all that I supposed. I could not live there an hour unless I were backed by armed force; nor could the Kellogg usurpation last an hour but for the fact that he is backed by the troops of the United States.

What is a usurpation? Let us see. I will cite again Bouvier's Law Dictionary. He says:

Usurpation—

A term used in connection with government, means this—

The tyrannical assumption of the government by force, contrary to and in violation of the constitution of the country.

I ask any Senator here, I ask any friend of the Kellogg government, if that definition does not cover completely and precisely the case in hand? The author, if he had been writing a definition to cover this case, could not have been more exact. It is so strong and pointed that I will read it again:

Usurpation: The tyrannical assumption of the government by force, contrary to and in violation of the constitution of the country.

Usurper:

Another word applied to government—

one who assumes the right of government by force, contrary to and in violation of the constitution of the country.

Now let us see how Worcester defines these terms. He says:

Usurpation: The act of usurping; forcible, illegal seizure or possession.

* * * * * * * *

Usurper: One who usurps; one who seizes or possesses that to which he has no right; applied particularly to one who excludes the rightful heir from the throne.

Then, Mr. President, as the Kellogg government was not elected nor ascertained to be elected, and is not and never has been in any legal sense a government *de jure*, is not in any possible sense a government *de facto*, inasmuch as Kellogg is there exercising power and undertaking to administer the government; and inasmuch as he has been upheld by force from the beginning of the exercise of such power on his part to this day, and by force alone, according to the legal definitions which I have brought to the attention of the Senate, according to all law, according to all rules of construction, he is a mere naked usurper; he is not an officer *de facto*, and he is liable to be displaced from the position he holds whenever the lawful authorities of the State of Louisiana can displace him.

But it is said, however that may be, by the Constitution of the United States the Federal Government, the President in the first place and Congress after him, has the right to determine who constitute the lawful officers of a State government; and the President of the United States having recognized Kellogg as the lawful governor and the Kellogg government as the lawful government, the people of the State of Louisiana must acquiesce; they must admit and sustain that usurpation, however much and widely the President may have erred. Now, sir, I wish to inquire into this matter. It is an interesting question. It is one that ought to be decided after solemn debate and the most thorough and scrutinizing investigation. A question of higher interest and more momentous concern could not arise.

Looking into commentaries on our Constitution and the political writings of public men, I regret to find that the article of the Constitution which bears on this subject has never been much discussed, and the responsibility is with us to examine it and determine its meaning and apply it. The Constitution provides in section 4, article 4:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

In the first place I remark, that this clause of the Constitution contains a power to be exercised, not originally or directly; it is a power to be exercised in a collateral way, collaterally to the State government. It is a clause which provides a guarantee; it is a collateral undertaking on the part of the nation—the United States—not to make a republican government for a State, but to secure to a State with a republican form of government that government against foreign invasion or domestic violence, or any and all causes that might in any way destroy its republican character. It is a collateral undertaking on the part of the United States to do this. It implies that there is a government already existing; it implies the United States agreed, as the National Government when it came into operation, to protect the several States in the then existing governments, which were treated as republican in their character, to protect them forever against foreign invasion and domestic violence or interference in that form of government. It applies manifestly and reasonably to more than that; it means that as often as the several States shall see proper to change their forms of government, preserving a republican form, so long as they should continue to be republican in form the United States will from time to time and forever protect them in the exercise of rights under such a form of government.

What is a republican form of government? Why, sir, I do not think there can be any doubt about that. In a very general sense it may be said to be a government of public sentiment regulated by law; but that is not sufficiently definite for my present purpose. A republican form of government is a government by the people, administered through their agents, their representatives, and their officers elected by the voting population. It seems to me, after some consideration, that this definition embraces every feature of a republican government. The essential feature in it is that it is representative in its character. It is a government administered through agencies, agencies of the people, representing the whole people, but not necessarily elected by the whole people, but elected by the voting population as the constitution and laws shall provide.

While, therefore, any State in the Union shall have a republican government that compasses this leading idea, the Government of the United States is bound to protect it in that behalf. And if a State should undertake to establish a monarchical feature in its constitution, such a provision would be absolutely inoperative. Why? Not only because it contravenes the genius of our institutions, but it would contravene the Constitution of the United States; and I apprehend that if a State were by its constitution and law to undertake to invest an officer there with regal powers, to make him king, the United States Government, its courts, its whole authority, could declare in a legal way that such a provision of the constitution or the laws of any State was absolutely null and void and inoperative; and because such a provision would contravene the Constitution of the United States; and the United States courts, and indeed every department of the Government of the United States, its action being regulated by law, would have the power to treat such a provision as a nullity anywhere and everywhere, under all circumstances.

How far must the United States Government go in guaranteeing a republican form of government? It may be said in one sense that a constitution republican in form in all its provisions is a republican form of government; but that is not what is meant here. A reasonable, just, and necessary construction of this clause of the Constitution implies a great deal more than that. Suppose the State of New York to-day by the act of God or the public enemy were deprived of all its officers, its governor and all other State officers, so that it would have no State officers at all. The form of government as embodied in its constitution would remain republican, but that would not be the complete government contemplated by this clause of the Constitution of the United States. It implies that if by the act of God or the public enemy or any other cause the State government shall be dismantled so that there are no lawful officers to administer it, and if there is no law by which the places of those officers may be filled by the voting people of the State, it is the duty and obligation of the United States to provide a means by which the people of the State could fill those offices. I say then if it shall turn out that the State of Louisiana has no officers, through the frauds, combinations, and corruptions of the Kellogg party, or the McEnery party, or the other ambitious and corrupt men in the State of Louisiana and elsewhere—in that extreme case, and only in that extreme case—Congress not only has the right and power but it would be its duty, it would be under obligation to provide a means whereby those officers may be supplied by the voting people of that State.

Mr. LOGAN. I should like to ask the Senator a question right there. Does he mean by that to say that it is the duty of Congress to provide for an election?

Mr. MERRIMON. Yes, sir; in the case I suppose.

Mr. LOGAN. Then I would ask a further question. When a majority of our committee reported to this House against the government in Louisiana, stating that the frauds were so great that they could not recognize either government and asked the Senate to pass a bill authorizing an election so as to establish a government, why was it that the Senator voted against that bill, with all his associates on that side of the House?

Mr. MERRIMON. In the first place I was not in Congress at that time; but if I had been I would not have voted for that bill for a reason which I will now state.

Mr. LOGAN. I beg the Senator's pardon. When I asked why he did not vote for that bill, I did not recollect the fact that he was not here. But every Senator on that side of the Senate, commonly denominated democrats, voted against that bill, and I supposed that included him. I did not remember that the Senator himself was not here at that time.

Mr. MERRIMON. But I will now answer the Senator's question in full, for I am very anxious on this subject; I am serious about it, and mean to do what is right without regard to party affiliations. I am sincere when I say that this question is above parties, and I intend to act above parties and I wish everybody else would do likewise.

I say to the Senator most frankly that if I had been here I would not have voted for that bill. I say to him frankly that I will not vote for such a bill now; and why? Because I believe as I know there is a God, I believe as I know that I exist, I believe by every evidence by which conviction can be carried to my mind in that respect, that a lawful election was held in the State of Louisiana at the regular time according to law in 1872, and that a governor and other State officers were elected; that they were inaugurated; that they from that day to this have been proclaiming their right to administer the government; that they are doing it to-day, and if the United States would do their duty they would administer it and there would be peace and quiet in the State of Louisiana. For these reasons I could not vote for such a bill.

But if there are Senators in this Chamber who believe otherwise—and I shall not question the sincerity of their convictions; I shall not question the sincerity of the convictions of the Senator from Illinois, for I believe he was sincere and the whole committee were sincere—I implore them in the name of justice and my country to declare by their act and their vote that there is no government there, and to make a just and wise provision by which the people can elect officers to fill the offices. I shall complain of no one for doing so, however much I may think they err. If I could believe there was no government there, if I could believe there were no officers there to administer the government, that by fraud or any other means the State was dismantled of its officers, in one moment I would gladly vote for an appropriate law to enable the people to elect officers to fill the necessary State offices that are not filled according to law. I would not vote, however, for the bill presented by the late Senator from Wisconsin, (Mr. Carpenter.) That bill did not provide for an election according to this provision of the Constitution. Congress has no right to have an election held there under a statute of the United States regulating the manner of election at all. Congress must provide according to the circumstances of the case for an election to be held pursuant to the constitution and laws of the State of Louisiana and for the election to be held by the people of Louisiana. It might provide that certain officers should be appointed under the act of Congress to superintend the holding of the election, but that is as far

as it could go. I never would consent to allow it to be held by Federal authority, by Federal troops, by Federal officers to control the vote. I would provide the means whereby the people according to their own constitution and laws could hold an election and fill the offices, uninfluenced by extraneous force or influence.

Mr. LOGAN. I do not wish to disturb the Senator in his discussion, to which I am paying attention; but as we go along I would like to make a suggestion to him. As I have before stated to the Senate, I was placed in a very peculiar position in reference to this question. Suppose, acting upon the theory that he is now going on, that an election might be provided by the Congress of the United States in a constitutional form, or mode, or plan, in some such way as he suggests, that the Congress of the United States should absolutely refuse to adopt that plan, no matter by whose votes, whether by republicans or democrates, and the condition of things in the State was that of chaos and confusion, as was the case in Louisiana, I ask him what his remedy would be? If there was no recognition given to the party that he claimed to be elected, and there were two State governments claiming the right in that way, and all was turmoil and confusion, and Congress should utterly refuse to take any step whatever, then I ask him what would be the result?

Mr. MERRIMON. That is to suppose Congress would be false, that it would not do its duty.

Mr. LOGAN. I am supposing precisely the case that exists. I was on the committee and was with the majority. We reported to the Senate that there was no State government in Louisiana. We said that according to the best lights we could get, according to the certificates before us, McEnery was elected if any election took place; but the frauds were so great on both sides that we deemed there was no legal election held, and therefore, we asked the Congress of the United States to authorize an election to be held so that the people might elect a governor and other State officers, with the safeguards that we thought necessary in the bill; but that was voted down. Then what was the condition? What was my condition? Congress having refused to carry out the suggestion of a new election, I must then adopt the next best mode in order to give those people a government. What is that mode? I ask the Senator, and I put it to him as a legal proposition, how he would act? Suppose then the President acts when Congress refuses to act, and recognizes one of the parties; suppose then the courts of the State act and recognize one of these parties, as they have a right to do when the question is before them, then I ask the Senator what course would he take? Would he adopt the form of revolution for the purpose of overturning that government which had been recognized when there was a necessity for the establishment of some government; or would he support that government in order to give peace to the people? I put that as a square proposition to him; and that states my position precisely as I have occupied it here in the Senate. When I could not get what I thought it was right for Congress to do, I then adopted the next best mode in order to give peace and tranquillity to the people in Louisiana; I fell back upon the necessity of the case, and that necessity requires a government of some kind to exist; and if there is a legal government that we can find, supported by the President and the courts, I ask him what would he do? Would he overturn that government by revolution if Congress refused to pass a law authorizing an election; or would he support the President in maintaining peace?

Mr. MERRIMON. I will answer the Senator with all frankness. In the first place, the President under the legislation of Congress, not in the exercise of any original power conferred on him by the Constitution but by virtue of an act of Congress, where there are two contending parties in a State claiming to be the lawful officers of the State, has the right, and indeed it is his duty, to determine, on proper application to him with a view to the exercise of his office, which of the two parties lawfully represented the State government. Having determined that question, it is his duty to aid that party in administering the government. It is the duty of everybody to sustain the President while he shall continue in that course. But it is the duty of the President also, before he shall determine which faction he will recognize, to decide that delicate question after full hearing and thorough investigation. He may not decide hastily, rashly, recklessly; he must decide cautiously and advisedly. If he shall not do so, then I have to say he is false to the high trust reposed in him and he is not fit to be President. That officer is charged with no more delicate power and duty. There is no Federal power that more vitally affects the State governments. If he does it without a hearing, if he does it without due consideration—as I contend, with all respect, he did in this case—the President is to be complained of, he is to be held responsible for his unwise and injudicious conduct and held responsible to the American people; but inasmuch as he has the legal authority to so determine in the first instance, it is the duty of the people of the United States and the people of the State of Louisiana to submit to his action, and only to his action, until he shall reverse it himself or Congress shall reverse it.

I maintain that when the President found out from the report of the Senate committee and from other sources that bad and corrupt *men* had imposed upon him and led him astray, that it was his solemn and high duty, and it ought to have been his highest pleasure and an opportunity seized upon joyfully, to change his action, and say "I acted inadvertently; I was not properly informed." But then after he had taken action and recognized the Kellogg government, and while his action, and his action alone, ought to have been submitted to until it should be reversed, as I have said, it was the duty of Congress long, long ago, and the President and the country have a right to complain of Congress because it did not do it, to have determined, as the proper power and the only proper tribunal to determine, which of the two governments was the lawful one. If the Congress of the United States are willing for any consideration, political or otherwise, to take the responsibility of recognizing the Kellogg government, let them do it; they may so decide for improper and sinister considerations and purposes, but let them decide. They have full and complete jurisdiction to do it, and when they have made the decision, however distasteful to the people of Louisiana, they are bound to submit, because the lawful and properly constituted authorities of the country shall have so determined. In that case the decision would be manifestly wrong, but there is no further appeal, except to the ballot-box—to the high tribunal of the American people—to public sentiment. But inasmuch as Congress has not acted in this respect, inasmuch as it has failed in its duty in this respect, until the action of the President shall be reversed or until he shall reverse his own action, as I maintain he has the power and right to do and he ought to do, it is the duty of the people of Louisiana and of the whole country to submit to his determination. In the mean time the proper and lawful government is to protect its existence as far as it can until the highest authority, to wit, Congress, shall determine the question at issue.

Mr. LOGAN. That is just the point exactly that I desired the Senator to come to. I stated that Congress had not acted. I care not how much fault he finds with Congress, nor do I care what fault he finds with the President; but I put the simple proposition, that inasmuch as Congress has not acted and the President has acted, the President not having reversed his action, but standing by it, then the question is what is the duty of the people of Louisiana, whether to go into revolution or to stand by the action of the President?

Mr. MERRIMON. To submit to his action unquestionably until it is reversed.

Mr. LOGAN. I am very glad to hear the Senator say that.

Mr. MERRIMON. But I do not mean by that that the McEnery government is to cease to exist. I mean that the McEnery government is to stand there until the highest and last authority shall act and determine that it is not the lawful authority.

Mr. LOGAN. I will ask the Senator another question, then, in furtherance of this discussion. Inasmuch as he says the duty of the people of the State of Louisiana is to maintain the position of the President until the President reverses his action, I ask whether he considers McEnery and his followers and satellites a part of the people of Louisiana?

Mr. MERRIMON. I do.

Mr. LOGAN. Then it is their duty to maintain that government, too, is it not? If it is their duty to maintain it, how can they maintain a separate government?

Mr. MERRIMON. It is their duty to submit to the action of the President, and only to him. Their separate government is not active, but is there to spring into existence the moment this unlawful power is removed, the moment the controversy is ended.

Mr. LOGAN. It stands ready?

Mr. MERRIMON. Until the unlawful power is decided against by the authority competent to decide in that behalf.

Mr. LOGAN. It stands ready, as I understand the Senator, fully organized but in a passive condition until the other government can be wiped out, and then it proposes to come in. That is the idea?

Mr. MERRIMON. Yes, sir. I maintain that it is the duty of the President this day, in view of the facts and the law of this case, to withdraw the troops from Louisiana and to allow the McEnery government to operate.

Mr. LOGAN. Now I will ask the Senator another question right in connection with that, because I see that he and I on the general view would not disagree very much in the conclusion we come to except that I would differ from him about the McEnery government being a government at all at the present time. When the McEnery government usurped the authority of the State last September and absolutely ousted and overturned the Kellogg government, which they did, if McEnery had then taken possession of the government, does the Senator think he would have been lawfully in possession?

Mr. MERRIMON. I do.

Mr. LOGAN. You then sustain the rebellion against the Kellogg government?

Mr. MERRIMON. It was no rebellion; it was the right asserting itself against the wrong—not against the President or any lawful authority.

Mr. LOGAN. That is the point. There is a difference of opinion.

Mr. MERRIMON. I maintain that when the rightful government asserted its power at that time, it was not only competent for the President to do it, but I did hope that he would recognize and sustain it. If the President will withdraw the troops and thus put the case out of court, McEnery and his associates have the right forthwith to assert their authority.

Mr. LOGAN. Yes; but he did not do it.

Mr. MERRIMON. Will the Senator wait until I get through with my sentence?

Mr. LOGAN. Certainly.

Mr. MERRIMON. It was not only the right of the President but it was his duty to uphold the rightful government, it having asserted its authority.

Mr. LOGAN. I would differ with the Senator as to which government it was his duty to uphold; but we would both agree that it was his duty to uphold the government. I sustain the President in upholding the Kellogg government; but when the revolution occurred and overturned that government, according to the theory of the Senator McEnery was the rightful governor. If the McEnery government had been inaugurated and had possession, then the President was at fault when he sustained the Kellogg government and put down the Penn insurrection, as I understand the Senator?

Mr. MERRIMON. I did not hear the Senator.

Mr. LOGAN. According to the Senator's reasoning, when the Kellogg government was overturned on the 14th of September and the McEnery government usurped the control—I use that term; perhaps he would not—took the places and installed themselves, then the Senator would maintain that they were rightfully in power and it was the duty of the President then to maintain McEnery in possession of the governorship of that State instead of sustaining Kellogg and putting down the insurrection. There is the difference between the Senator and myself. I say that the President's duty was to put down the rebellion against the government, and he did do it, and did right and proper under the authority conferred upon him as President of the United States. The Senator thinks differently; and there is the conclusion that he is bound to come to, and I am bound to come to the other, for his reasoning sustains the rebellion of the 14th of September and my reasoning would put it down. That is the difference between us.

Mr. MERRIMON. The difference between us is this: I say there was no rebellion there at the time he mentions; I say the rightful government being prevented from the exercise of its rightful authority had a right to assert itself whenever it could do it, except as against the President exercising his power.

Mr. ALCORN. Will the Senator allow me to make a suggestion?

Mr. MERRIMON. Yes, sir.

Mr. ALCORN. I understand the Senator's position to be that it was the duty of the people of Louisiana to maintain the government recognized by the President, and he carried his declaration so far as to declare it to be the duty of the McEnery government to obey the government that had been recognized by the President.

Mr. MERRIMON. To submit to the President—not to the Kellogg government.

Mr. ALCORN. To submit. Then when they failed to submit, when they came forward and took possession of the Kellogg government, they were usurpers and revolutionists, as I understand, according to the logic of the speech of the honorable Senator from North Carolina.

Mr. MERRIMON. No, sir; that is not my logic, nor my meaning. I mean to say that the lawful government had the right to assert itself as against the Kellogg government and all unlawful authority at all times, but not against the President, and not against him because he exercised authority he might under the law exercise.

Mr. LOGAN. That is not his logic. His logic was just the contrary, that they were not usurpers.

Mr. ALCORN. If it was the duty of these people to maintain the Kellogg government, to recognize it, how could they without violating that duty take hold of and usurp the government themselves?

Mr. LOGAN. That is the point exactly. I say they could not; the Senator says they could lawfully do so.

Mr. MERRIMON. I will illustrate my meaning by a rule of law that is practiced upon in the courts every day and has been for centuries. A owns a tract of land and proposes to cut down all the timber and shade trees. B makes claim to the land and brings his suit; pending the litigation he obtains an injunction to restrain A from cutting down the shade trees. A may not resist that injunction, but the moment it is dissolved he may freely exercise his right. Pending the injunction his right was in existence, but he could not exercise it. Take another case: A has been elected to an office; B, an intruder, a usurper, has by some means gotten possession of the office and will not surrender it; A brings his suit to oust the usurper. His office is not lost pending the litigation; it exists all the time; he may take possession of the office whenever he can. And so if one in office lawfully is temporarily restrained in its exercise he does not by such restraint lose his office; he may again exercise it when he can. He may always assert it when lawful restraint is removed.

Mr. ALCORN. Will the Senator allow me one word again?

Mr. MERRIMON. Certainly.

Mr. ALCORN. In a question of forcible entry and detainer, if a party being in possession of the property is ousted by the legal owner and he uses violence to take possession, upon the trial of the forcible entry and detainer the title to the property does not come in question; it is the question of possession, and he will be ousted upon the facts without regard to the manner in which he acquired possession of the property. McEnery in this case, if I understand, had the legal title, according to the argument of the Senator from North Carolina, but he made forcible entry, and the law of the case is that he shall be ousted, having forcibly entered.

Mr. MERRIMON. No, sir; my position is this, and it is perfectly consistent: I say that the moment this lawful government can assert itself it has the right to do it. I say that it is the continuing duty of the President to recognize that lawful government and to sustain it. I say, however, that while the President in the exercise of the authority vested in him by law shall continue to enforce his order the whole people are bound to submit to it, not recognizing it as lawful at all, but they are bound to submit to it by reason of the power vested in the President until the proper authority shall reverse his action or until he shall reverse his action himself. I say that McEnery is the lawful governor and his associates the other lawful State officers, and therefore the President ought to reverse his action now. If he were to withdraw the troops from the State of Louisiana the McEnery government would go into operation in twenty-four hours, and there would be peace and quiet in that State.

But, sir, this interruption is apart from the question now before the Senate. Whatever may have been the action of the President, that ought to have no weight with us in determining this question. If he has erred, it is the duty of the Senate not to err; it is the duty of Congress to reverse his action. The President has a power, but his power is temporary. His judgment there is temporary. He recognized the Kellogg government, and he has told Congress repeatedly that he recognized it, and would continue to do so, until Congress would take further action; and the moment that Congress shall decide he erred or any way, he is willing the lawful government shall spring up and operate at once.

In further support of what I have said I beg now to call the attention of the Senate to the decision of the Supreme Court in Luther *vs.* Borden. I believe it is the only decision bearing upon the powers of the President, and it is an exposition that throws very much light on this very question. The opinion is delivered by Chief Justice Taney, and in the course of their opinion the court say:

> Under this article of the Constitution it rests with Congress—
>
> I repeat that—
>
> it rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no Senators or Representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.
>
> So, too, as relates to the clause in the above-mentioned article of the Constitution providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. They might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide when the contingency had happened which required the Federal Government to interfere. But Congress thought otherwise, and no doubt wisely, and by the act of February 28, 1795, provided that "in case of any insurrection in any State against the government thereof it shall be lawful for the President of the United States, on application of the Legislature of such State, or of the executive, (when the Legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for, as he may judge sufficient to suppress such insurrection."
>
> By this act the power of deciding whether the exigency had arisen upon which the Government of the United States is bound to interfere is given to the President. He is to act upon the application of the Legislature or of the executive, and consequently he must determine what body of men constitute the Legislature and who is the governor before he can act. The fact that both parties claim the right to the government cannot alter the case, for both cannot be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must, of necessity, decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the act of Congress.
>
> Undoubtedly if the President, in exercising this power, shall fall into error or invade the rights of the people of the State, it would be in the power of Congress to apply the proper remedy. But the courts must administer the law as they find it.

I beg to repeat this, because it is so important—

> Undoubtedly if the President, in exercising this power, shall fall into error—

As I contend he has done in this case—

> or invade the rights of the people of the State, it would be in the power of Congress to apply the proper remedy.

So in the case before us there were two contending parties in the State of Louisiana, each claiming to administer the government of that State. Both parties applied to the President for the assistance allowed by the Constitution in such cases. It was his duty to decide which party were the true and lawful officers of the State and properly and lawfully entitled by the constitution and laws of that State to administer the government. I regret that the President did not take that course of action which he ought to have taken in order to decide which of those parties he ought to have recognized. If he had done so I do not believe that Congress would be bothered and the country troubled with this Kellogg usurpation to-day. The President committed a grave error in that he did not hear both parties and decide after a full hearing. There can be no doubt, it seems to me, in the minds of Congress, in the mind of any disinterested person, in the minds of a disinterested public, that the President erred and that the McEnery government is the lawful government of that State. But still he decided. He had the right to decide and the power to decide as he did. It was his duty to decide, and he decided wrong. Like the judgment of a court in a case where it has proper jurisdiction, that decision must stand until it is reversed—reversed by him or Congress, or until he shall cease to act and dismiss the case. What

I ask is, that the President shall correct his own error and that he shall seek the first opportunity to do it. If he will not do it, then I say that it is the duty of Congress to do it, and Congress will not have discharged its duty until it shall so decide. If Congress will take the responsibility to decide that the Kellogg government is the true and lawful government, there is the end of controversy; the people of the State of Louisiana must submit, McEnery and his associates must submit, the whole country must submit, and they can only hold the Congress responsible for having made a false and improper decision. The only remedy in that case against Congress is, as I have said, at the ballot-box throughout the Union, for having made an improper decision and invaded the rights of the State. But Congress having complete jurisdiction and having decided this question even improperly, the whole country must submit or else we shall have a state of anarchy; there is no government; might is right and despotism triumphant. That is the whole of it, sir.

I advise no resistance to the President. Why? Because he had the power to decide. He has decided wrong. I am as clear about that as I am about the fact that I live; but still he had the power to decide. It was his duty to decide; but that decision did not destroy the McEnery government; that did not destroy the lawful government. The right is there. The right is in litigation. The suit is pending to try the right, and the moment that it is determined, or the contest is abandoned, the right springs up and becomes active, if the court will discharge its duty. The government of Louisiana is on trial. The President, in the first place, is its trier. I insist, and the people of Louisiana insist, that the President has decided wrong. Millions of American people insist that he has decided wrong.

But there is another court. There is another supreme tribunal to decide the case. That tribunal is the Congress. It is charged by the Constitution to decide it when it shall properly come before it, and when Congress has decided, whether they decided right or wrong, there is the end. In view of the troubles and general distress in Louisiana and throughout the country on that account, it is monstrous that Congress has not taken proper action. But although Congress has not acted, the President may yet act. I would to God he would act. In my judgment he could not do a nobler act, one that would increase the confidence of the American people in him more than to correct his own error. I know that pride of spirit, pride of party, party interests, and party considerations operate and go a long way to restrain such generous and noble acts; but I had hoped the President would rise above party. Presidents ought to rise above parties. They ought not to know anything about parties in the discharge of their high duties. They ought not to know anything but the Constitution of their country and its laws, and sacredly protect and obey them. I had hoped that, rising above parties, looking only to the best interests of the country, the President would have corrected his own error and would have spurned the bad, designing men who led him into error. If I had his ear I would tell him to correct his error. If I were a republican this day, supporting his Administration, I would go to him and I would implore him, anxiously implore him, and advise him by every consideration, to correct his false step. But if he will not do it, then the responsibility is with him. So far as there could be any expression of opinion, not only by the authorities there but as far as there has been an expression of opinion here in Congress, it is against his act.

Take the action of the House of Representatives practically. The Kellogg candidates for the lower branch of Congress were admitted there, one of them particularly, upon a *prima facie* case. He sat there until a few hours before the late Congress expired. He was then turned out of the House and the members elected upon the McEnery ticket were admitted, thereby giving a practical declaration, one that cannot be controverted, that the lower branch of Congress, overwhelmingly republican, ascertained that the McEnery ticket was elected. Wherever any action has been taken in the Senate the decision is the same way. For more than two years the present applicant has importuned the Senate to admit him as a Senator from Louisiana elected by the Kellogg legislature, and his credentials certified by Kellogg himself. The Senate has for that long time refused to do so. The Senate shrinks, as well it may, from a recognition of that usurpation. I shall mourn the day when it shall do so. Such a recognition will be a terrible and dangerous precedent. I admonish the Senate against it; it will come back again and again to plague us and the country.

Here let me call attention to what the Senate has done further on this subject. It is very interesting as showing the record of some Senators, and I trust they will stand by that record. I would regret exceedingly to see them go back upon it.

The Senator from Illinois a moment ago asked me why I did not vote for a certain bill providing for an election in the State of Louisiana. I gave him my reasons for it. The late Senator from Wisconsin felt very anxious on this subject. He said, for reasons which I do not think sufficient—I gave my reasons for so thinking on another occasion—that there was no State government in the State of Louisiana, that is, there were no legal officers there to fill the offices and administer the government; that the election in that State was void. He introduced a bill in the Forty-second Congress. That bill contained this recital:

That the election held in the State of Louisiana on the 4th day of November, 1872, for governor, lieutenant-governor, secretary of state, attorney-general, auditor of public accounts, and superintendent of education, and for senators and representatives for the General Assembly of said State, is hereby declared to be null and void; and it is further ordered and declared that the persons who were entitled to hold the said State offices on the said 4th day or November shall continue in office and be recognized as the legal officers of said State by the Government of the United States until their successors are chosen and qualified in accordance with the provisions of this act.

That bill containing the declaration that there was no lawful government in the State of Louisiana came to a vote, and I put it to the Senate to say whether a Senator ever could make a more solemn declaration as to his conviction than to cast a vote on that subject. The vote was taken after anxious deliberation, after long debate, and let us see how the vote resulted. Those who voted for the bill were—

Messrs. Anthony, Carpenter, Corbett, Cragin, Ferry of Michigan, Frelinghuysen, Gilbert, Hamlin, Howe, Logan, Machen, Osborn, Ramsey, Sawyer, Sherman, Sprague, Stewart, and Wilson.

Those Senators declared in the most solemn manner that it was possible for them to do that there was no State government in the State of Louisiana; that the result of the election in 1872 was that there was no election at all; that nobody was elected, whereby the State was absolutely dismantled, and that there ought to be another election. After that, in the Forty-third Congress, the late Senator from Wisconsin introduced another bill. In the preamble to that bill he uses these words:

Whereas there is no governor, lieutenant-governor, secretary of state, attorney-general, auditor of public accounts, or superintendent of education in the State of Louisiana, holding said offices, respectively, under an election by the legal voters of the State of Louisiana, in pursuance of the constitution and laws of said State; and whereas there is not in said State any Legislature elected by the legal voters of said State, according to the constitution and laws thereof.

That bill did not come to a final vote, but there were various votes taken during the session which indicated the approval of it by certain Senators. Those who so voted on such occasions were these:

Messrs. Anthony, Bayard, Bogy, Boutwell, Buckingham, Chandler, Conkling, Cragin, Davis, Edmunds, Frelinghuysen, Gilbert, Hager, Hamilton of Maryland, Hamlin, Howe, Jones, Kelly, McCreery, Morrill of Vermont, Sargent, Scott, Sherman, Stevenson, Stewart, Stockton, and Thurman.

After all this, after this solemn declaration on the part of Senators, it seems to me that it is monstrous to ask any Senator here to vote for a resolution declaring, in the face of the solemn action had heretofore, that the Kellogg government is lawful. It seems to me that no one can do so without absolutely stultifying himself.

But, Mr. President, let that government be as it may, let the President's action remain as it is, we can take no action here now to reverse his action. This is but one branch of Congress. This branch of Congress has no right to determine that one State government is the lawful government or another is such by general resolution. We cannot decide this question except in so far as we do so by determining that one person or another has been properly and lawfully elected a Senator to represent that State here. The Senate has no right to pass a general resolution declaring that the Kellogg government is the lawful government or that the McEnery government is the lawful government. That must be the act of the Congress of the United States. The Constitution prescribes that as the tribunal to determine that question. It is true, by admitting Mr. Pinchback the Senate would decide incidentally, and it would be a strong circumstance to determine, that the Kellogg legislature was the lawful legislature; but it would determine the question only in a collateral way; but to pass such a resolution I maintain that it has no power.

Then, Mr. President, to conclude, in the first place, I think I have shown that the doctrine contended for by the Senator from Indiana that a person applying to be admitted as a Senator has the right to be admitted upon a *prima facie* case, as he styles it, is a false doctrine; that it is not sustained by a proper construction of the Constitution, by the practice of the Senate, by right, by justice, by any consideration whatever; that, on the contrary, the true theory and practice is, never to admit an applicant to be admitted when his right is questioned, until that right shall be determined on its merits. In the second place, I have shown that the fusion or McEnery ticket was lawfully elected at the election in Louisiana in 1872; that McEnery and his colleagues were lawfully inaugurated, and that they ought to be administering the government this day. In the third place, I have shown that Kellogg was not elected. I have shown that it has been ascertained in many lawful ways that he was not elected, that on the contrary he was beaten by a majority of ten thousand votes. I have shown that he did not come into office by law, and he is therefore not an officer *de jure*; that he did not come into office by color of law, and he is therefore not an officer *de facto*; that he came into office only by force and usurpation; that he is in every sense a usurper, and that being a mere usurper and an invader of the rights of the people of Louisiana, he ought to be displaced. He ought to be displaced now by the President, and if the President will not do it, Congress, in the discharge of the high duty that devolves on it, ought to displace him at the earliest possible moment by reversing the action of the President and allowing the lawful government to operate and administer the government of that State.

Then in the fourth place I have shown that the President has no original power to determine that one party or another constitute the lawful officers or Legislature of a State government or one class of officers or another; that he derives his power and has it by virtue of the act of Congress; that Congress is the political branch of the

Government and has the right to determine who are the proper officers of the State government and what is the proper State government; and furthermore, that in the matter now before the Senate, the President being subordinate to Congress and acting in pursuance of the authority of Congress, and charged by Congress to decide right, having decided wrong, his action is to have no weight whatsoever in determining the question as to whether we ought to admit this applicant or not.

It is within the power and jurisdiction of the Senate in deciding the case before it to decide that the Kellogg legislature was not the lawful Legislature, and therefore the applicant, Pinchback, was not elected and is not entitled to be admitted. The Senate has the right to determine that his credentials are not sufficient evidence of his election. In that they may determine that Kellogg was not the governor; that the seal on the credentials purporting to be the seal of the State of Louisiana is not the seal; that the person who countersigns the credentials as secretary of state was not secretary. This is the office of the Senate. For one I am ready to cast my vote now, and have always been, that this applicant was not duly elected; and for the reasons which I have submitted, when the time shall come, I shall be prepared to vote to reverse the action of the President and restore the lawful government of the State of Louisiana. And I maintain, sir, furthermore, that while the Senate cannot do it, the Senators as American citizens, and especially the republicans of this body, are charged by their country to advise the President, as they have his ear, into that line of right which he ought to pursue.

I shall rejoice if the right shall prevail in this distressing and complicated case and if no permanent evil shall result from it to the country.

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

Mr. McCREERY. Mr. President, I propose to speak a few minutes if the Senator will give me the floor for to-morrow morning.

Mr. THURMAN. Very well.

The PRESIDING OFFICER, (Mr. PATTERSON in the chair.) The question is on the motion of the Senator from Ohio.

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

IN SENATE.

THURSDAY, *March* 11, 1875.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The VICE-PRESIDENT resumed the chair.

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

EXECUTIVE COMMUNICATION.

The VICE-PRESIDENT laid before the Senate a letter of the Second Auditor of the Treasury, transmitting copies of all accounts which have been received at that office from persons charged or intrusted with the disbursements or application of moneys, goods, or effects of any kind for the benefit of the Indians from July 1, 1872, to June 30, 1873; which was ordered to lie on the table.

COMMITTEE TO VISIT THE INDIAN COUNTRY.

Mr. CLAYTON. I should like to call up the point of order raised the other day upon a resolution offered by myself. I desire to call it up for the purpose of having the point of order settled. If the point of order is settled so that the resolution can be received, I shall not ask to have the resolution itself considered to-day; but merely desire to have the point of order settled.

The VICE-PRESIDENT. The Chair submits the question to the Senate. The Chair will take the opinion of the Senate.

Mr. CLAYTON. I should like to make a few remarks on this subject.

On the 19th day of March, 1873, the Senator from Mississippi [Mr. ALCORN] offered a resolution which reads 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.

The Senator from Connecticut [Mr. FERRY] raised the same point of order upon the submission of this resolution which he raised the other day on the submission of mine.

Mr. THURMAN. Will the Senator allow me to inquire what is the question before the Senate?

Mr. CLAYTON. The Chair will state it.

The VICE-PRESIDENT. The question before the Senate is on the point of order. The Senator from Arkansas submitted a resolution and a question of order was raised upon it; and as the Senate by a yea and nay vote have decided both ways on that question, the Chair submits the question to the Senate.

Mr. THURMAN. But what is the resolution, for it all depends on that?

The VICE-PRESIDENT. The resolution will be reported.

Mr. THURMAN. Is it the resolution for the appointment of a committee to go to the Indian country?

Mr. CLAYTON. Yes, sir.

Mr. THURMAN. Then I understand it; it is not necessary to read it.

Mr. CLAYTON. The resolution to which I have referred was discussed at considerable length *pro* and *con*. On the 25th of March, 1873, the Senator from Mississippi [Mr. ALCORN] submitted a substitute for his resolution which was merely for the purpose of allowing the committee to sit during the recess, striking out all the rest of the resolution. I will state here that prior to the introduction of this resolution of the Senator from Mississippi the following resolution had been introduced and acted upon:

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 of the United States, and providing a tribunal to adjust and decide all contested questions connected therewith, with leave to sit during vacation.

This resolution, says the record, "was considered by unanimous consent, and agreed to."

A resolution offered by the Senator from New York [Mr. CONKLING] to allow the Committee on the Judiciary to sit during the recess was also considered and agreed to.

A resolution offered by the Senator from Wisconsin [Mr. HOWE] to allow the Committee to Audit and Control the Contingent Expenses of the Senate to sit during the recess of the Senate was also considered and agreed to.

A resolution also offered by the Senator from New York [Mr. CONKLING] to allow the Committee on the Revision of the Laws to sit during the recess was also agreed to.

On the 26th of March the resolution of the Senator from Mississippi was brought up again and the point of order was submitted to the Senate. The Senate by a vote of 25 to 19 decided that the resolution could be considered.

I presume, if this was merely a proposition to raise a select committee to consider this question, independent of the power to sit during the recess, no one would question but that it would be in order, and I should like to ask the Senator from Connecticut whether he would consider a mere proposition to raise a committee of this body as being out of order. Can I have the attention of the Senator from Connecticut a moment? I desire to ask him whether if this proposition was merely for the purpose of raising a committee of this body to consider any question independent of the power to sit during the recess, he would consider that out of order?

Mr. FERRY, of Connecticut. I suppose that a committee could only be raised for the purpose of reporting to the Senate on some subject at some time; and to a mere proposition to raise a committee at a called session to report upon business of a legislative character, I should make the same question of order that I now make. If the Senator from Arkansas will permit me, I will submit a word or two, and perhaps relieve the difficulty of discussion on this subject at the present time.

As has been stated by the Chair, two years ago, at the commencement of the called session, some of these resolutions were introduced. I raised the question of order. The Vice-President ruled that they could not be entertained. Subsequently the Senator from New York (Mr. Fenton) introduced a petition looking to legislative business. Objection was taken to that. That question was submitted to the Senate; there was a yea and nay vote, and the Senate decided that the petition could not be received.

Mr. CLAYTON. Will the Senator pardon me a moment while I call his attention to that particular phase of the question? That petition called for the concurrent action of both Houses. The petition to which he refers, if I recollect aright, looked to action from both Houses; it was a petition for Congress to do certain things, and it seems to me that would not be a parallel case to this.

Mr. FERRY, of Connecticut. I was merely stating the precedents. Subsequently a number of resolutions for raising committees or continuing them during the recess were introduced. Some were entertained by unanimous consent. One in particular I remember, introduced by the Senator from Minnesota, [Mr. WINDOM.] I at first raised the question of order, and then, at his request, withdrew it and permitted unanimous consent to be given. Upon the resolution continuing the committee regarding the levees of the Mississippi River another yea and nay vote was taken, which resulted in exactly the reverse of the yea and nay vote which had preceded it. Consequently, as the Chair has said, this question was decided two years ago both ways by the Senate. Now I desire upon this resolution to have it distinctly presented to the Senate, as it is now, whheter at a called session such a resolution will be entertained as in order. The Chair has submitted it to the Senate, and I will very cheerfully acquiesce in the decision of the Senate on a yea and nay vote.

Mr. CLAYTON. That is the attitude of the case exactly. As I understand, the question now before the Senate is merely as to whether this resolution is in order, without any reference whatever to the merits of the resolution or what it proposes.

Mr. MORTON. What is the resolution?