of the settlers on said land, with the approval of the Attorney-General of the United States; that after determining the amount of costs and expenses as aforesaid, the Attorney-General shall certify the said amount, and to whom due, to the Secretary of the Interior, and the Secretary of the Interior shall pay to the parties entitled thereto the sum so allowed and certified to, as aforesaid, out of the proceeds arising from fifteen cents per acre on the sale of said lands.

SEC. 9. That said railroads, or either of them, shall have the right to purchase such subdivisions of land as are located outside of the right of way heretofore granted to them, and which were occupied by them on said 10th day of April, 1876, for stock-yards, storage-houses, or any other purpose legitimately connected with the operation and business of said roads, whenever the same does not conflict with a settler who in good faith made a settlement prior to the occupation of said lands by said railroad company or companies in the same manner and at the same price settlers are authorized to purchase under the provisions of this act.

The question was taken on the motion of Mr. GOODIN; and (two-thirds voting in favor thereof) the rules were suspended, and the bill (H. R. No. 3625) was passed.

LEAVE TO PRINT.

Mr. HOPKINS, by unanimous consent, obtained leave to have printed as part of the debates remarks on railroad combinations and discriminations. [See Appendix.]

ORDER OF BUSINESS.

Mr. PIPER. I am instructed by the Committee on Commerce to report back a substitute for a concurrent resolution. I move that the rules be suspended and that it be adopted.

Mr. HOLMAN. I move that the House do now adjourn.

Mr. PAGE. I make the point of order that the gentleman from Indiana [Mr. HOLMAN] did not make his motion until after my colleague [Mr. PIPER] had been recognized.

Mr. HOLMAN. I submit that a motion to adjourn is now in order. The gentleman from California [Mr. PIPER] has offered his resolution; that he had a right to do; but when it is before the House I am entitled to the floor to move to adjourn.

The SPEAKER *pro tempore*. The gentleman from Indiana has the right to make that motion.

Mr. BURCHARD, of Illinois. Have we not the right to hear read a resolution presented under a suspension of the rules before the question is put on adjournment?

Mr. RANDALL. I call for the regular order.

The SPEAKER *pro tempore*. The question is on the motion of the gentleman from Indiana that the House adjourn.

The motion was agreed to; and accordingly (at five o'clock and twenty minutes p. m.) the House adjourned until Wednesday next.

PETITIONS, ETC.

The following memorials, petitions, and other papers were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. ATKINS: The petition of E. St. Julien Cox, for re-imbursement for expenses incurred in the contested-election case of Cox *vs.* Strait, second congressional district of Minnesota, to the Committee of Elections.

By Mr. CUTLER: The petition of insurance companies representing $104,000,000 of capital, for a change of the postal rates on all the various partly printed documents used by insurance companies to conform to the rates charged on third-class mail matter, to the Committee on the Post-Office and Post-Roads.

By Mr. HARDENBERGH: The petition of citizens of Washington City, District of Columbia, to the commissioners of the District of Columbia, that a sum be appropriated to be used in celebrating the 4th day of July, 1876, to the Committee for the District of Columbia.

By Mr. HARTZELL: The petition of Hugh Worthington, of Metropolis, Illinois, for a rehearing of his case disallowed by the southern claims commission, to the Committee on War Claims.

By Mr. HOLMAN: The petition of Isham Webb, a soldier of the war of 1812, for a pension, to the Committee on Revolutionary Pensions.

By Mr. HYMAN: A paper relating to the establishment of a post-route from Weldon to Ringwood via Aurelina and Brinkleyville, North Carolina, to the Committee on the Post-Office and Post-Roads.

By Mr. McDILL: The petition of Stewart Brothers and 17 other business firms of Council Bluffs, Iowa, that the law regulating the manner of packing tobacco remain unchanged, to the Committee of Ways and Means.

By Mr. SEELYE: The petition of the eastern band of North Carolina Cherokee Indians, for enforcement of treaties of 1835, 1836, 1846, and 1866, for re-imbursement of funds misappropriated and for a final settlement, to the Committee on Indian Affairs.

By Mr. SCALES: The petition of Jesse Benbow, in behalf of the heirs of Thomas White, relative to the title to the land upon which is situated Fort Macon, North Carolina, to the Committee on the Judiciary.

By Mr. WALLING: Memorial of Coleman Cole, principal chief of the Choctaw Nation, in regard to the payment of Government annuities, to the Committee on Indian Affairs.

Also, memorial of the Farmers and Mechanics' Savings Bank of Minneapolis, Minnesota, for an amendment of the law taxing deposits in savings-banks, to the Committee on Banking and Currency.

By Mr. WHITTHORNE: Memorial of A. Watson and others, relating to the conduct of the Signal Service Bureau, to the Committee on Military Affairs.

IN SENATE.

WEDNESDAY, *May* 31, 1876.

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

The Journal of the proceedings of Monday last was read and approved.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of War, transmitting a copy of a letter from the Quartermaster-General relative to the loan of tents to the National Association of Veterans of the Mexican War; which was ordered to lie on the table and be printed.

The PRESIDENT *pro tempore* also laid before the Senate a communication from the Secretary of War, transmitting, in answer to a resolution of the Senate of the 19th instant, a copy of the report made to the Superintendent of the Coast Survey by Assistant George Davidson, describing and illustrating methods employed for the irrigation of land in India and Southern Europe; which was ordered to lie on the table and be printed.

TAXATION IN THE DISTRICT OF COLUMBIA.

The PRESIDENT *pro tempore* also laid before the Senate the following communication; which was read:

OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, May 29, 1876.

SIR: We have the honor to request that the attention of the Senate may be called to the necessity of legislation providing for a just measure of taxation upon property within the District of Columbia, and especially the necessity of providing for a tax to be levied for the fiscal year ending June 30, 1877, so as to provide the public revenues without which the government cannot be carried on in the new fiscal year which will begin in less than five weeks. The act of Congress levying a tax for the support of the government for the fiscal year now just closing became a law on March 3, 1875, and even from that date (three months earlier than the date of this communication) to the time when the tax became payable too short a period intervened for the efficient execution of the provision of the law with reference to the making of assessment and of returns and the preparation of the proper books and records. Since the assessment on which the tax for the present fiscal year was made, taxable real estate of the District has, it is estimated, been increased by upward of $3,000,000 by buildings which have been begun, constructed, or completed during the past year. In order that such property may bear its fair proportion of the burden of taxation for the new fiscal year soon to begin, prompt legislation is absolutely needed.

Furthermore, the present fiscal year will close in less than five weeks, and revenues must be provided for the support of the government during the fiscal year which will so soon begin. The importance of having a well-devised tax law, giving ample time within which it may be carefully executed, cannot be too strongly urged upon the attention of the Senate. The subject is now before that branch of the national Legislature for consideration, a bill having passed the House of Representatives several weeks ago.

In our judgment, it is expedient that the legislation upon this subject at the present session of Congress shall take the form of a permanent law imposing a just measure of taxation within the District and prescribing the tax which shall hereafter be annually levied upon taxable property. In the absence of such a law the property interests of the District are injured by the uncertainty both as to the measure of taxes and as to the property which is to be subject to taxation. The whole system is liable to change in each succeeding year. At the same time, by a permanent law upon the subject, Congress will be relieved from the labor of maturing every year a measure for taxing District property. There will be avoided also the injustice and inconvenience which to some extent must always result when a law upon such a subject is delayed or is hastily prepared or executed. We trust, therefore, that it may be practicable for the Senate at an early day to give its attention to legislation imposing permanently an equitable measure of taxation on property in the District, indicating the property that is to be taxed and prescribing the mode of assessment and collection of taxes.

Very respectfully,

W. DENNISON,
J. H. KETCHAM,
S. L. PHELPS,
Commissioners of the District of Columbia.

Hon. T. W. FERRY,
President of the Senate.

Mr. SPENCER. I desire to say that the Committee on the District of Columbia have been for the last three weeks considering a tax bill for the District. They have not up to the present time perfected it, but have been working as industriously as their other duties would permit, and in due time the committee will be able to report the bill to the Senate. I move that the communication from the commissioners which has just been read be printed and referred to the Committee on the District of Columbia.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. WEST presented a memorial of the Chamber of Commerce of New Orleans, remonstrating against the adoption of the treaty with the Hawaiian Islands; which was referred to the Committee on Foreign Relations.

He also presented the petition of Mrs. Gottlieb Neidhordt, of Louisiana, praying for compensation for damages sustained by the occupation of her property by the Federal forces, and the destruction of the same, during the late war; which was referred to the Committee on Claims.

Mr. SPENCER presented the memorial of the officers and a committee of the Medical Society of the District of Columbia, remonstrating against the passage of the bill (S. No. 593) to incorporate the National Surgical Institute of the District of Columbia; which was referred to the Committee on the District of Columbia.

Mr. HAMLIN presented the memorial of J. D. Hopkins and other merchants and lawyers of Ellsworth, in the State of Maine, remon-

strating against the repeal of the bankrupt law, and praying for its modification; which was referred to the Committee on the Judiciary.

Mr. PATTERSON presented the memorial of the city councils of Port Royal and Beaufort, South Carolina, relating to the establishment of a naval station at Port Royal; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. WRIGHT. A few mornings since the Senator from Illinois [Mr. OGLESBY] presented two petitions from citizens of the State of Iowa praying that power be given to the Federal courts to grant a general injunction restraining all persons from mining or any other operation whatever or any cultivation of the soil so as to interfere with the rights of actual settlers upon what are known as Des Moines River lands in Iowa. I hold in my hand two similar petitions. The petitions heretofore presented were referred to the Committee on the Judiciary, as I remember, and I move that the petitions which I now present take the same reference.

The motion was agreed to.

Mr. CAMERON, of Wisconsin, presented the petition of Moses Anderson and 200 other citizens of La Crosse, Wisconsin, praying for the repeal of the bankrupt law; which was referred to the Committee on the Judiciary.

Mr. ALLISON presented the memorial of F. G. Rathbun and others, of Nashua, Iowa, envelope-manufacturers, &c., remonstrating against the manufacture, selling, and printing of envelopes, newspaper-wrappers, and postal cards by the Government; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CHRISTIANCY presented the petition of Alexander Brigham, of West Branch, Michigan, praying for back pay and bounty for services in the First Michigan Cavalry; which was referred to the Committee on Military Affairs.

He also presented a resolution of the Legislature of California, in favor of the passage of a law to secure to the State of California the title to lands listed to it; which was referred to the Committee on Public Lands.

Mr. CAPERTON presented the petition of 35 citizens of the counties of Webster and Braxton, West Virginia, praying for the establishment of a post-route from Webster Court House to Middleport; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of John H. King, of Washington County, Maryland, praying for compensation for property destroyed by United States troops during the late war; which was referred to the Committee on Claims.

Mr. CONKLING presented the petition of the New York Cheap Transportation Association, praying that no further gifts or benefits be conferred upon the Union Pacific Railroad Company and urging that the vast interests of transcontinental commerce demand such immediate action by Congress as can lawfully be enforced to restrain the said railroad company from further misuse of the privileges and powers now controlled by it; which was referred to the Committee on Railroads.

He also presented the memorial of the National Board of Fire Underwriters, favoring the extension of the usefulness of the Signal Service Bureau, and especially that department relating to the direction and velocity of the wind; which was referred to the Committee on Finance.

Mr. GORDON presented the petition of merchants and business men of Americus, Georgia, praying for the repeal of the bankrupt law; which was referred to the Committee on the Judiciary.

He also presented the petition of the citizens and business men of Lumpkin County, Georgia, praying for the repeal of the bankrupt law; which was referred to the Committee on the Judiciary.

He also presented the petition of Oscar Hinnich, late engineer in the confederate army, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

He also presented the petition of envelope-manufacturers and printers, booksellers, stationers, &c., of Atlanta, Georgia, praying for the discontinuance by the Government of manufacturing, printing, and selling the same; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. JONES, of Florida, presented the petition of O. I. Daniel and other citizens of Jacksonville, Florida, praying that Congress take steps toward deepening and improving the channel of the Saint John River; which was referred to the Committee on Commerce.

The PRESIDENT *pro tempore* presented the petition of R. Goodhart and other citizens of Washington, District of Columbia, residing in the vicinity of Lincoln Park, praying that an appropriation be made for a watchman in that park; which was referred to the Committee on Appropriations.

REPORT ON FISH AND FISHERIES.

Mr. ANTHONY. I present a communication from Professor Baird, United States Commissioner of Fish and Fisheries, transmitting his report for 1875 and 1876. I ask that the report be printed. Some of the statistical portions have not yet been handed in, but it is desirable that it should be put in type. I will postpone the motion for printing extra copies until the whole work is in, so that we may get the estimate.

The PRESIDENT *pro tempore*. The report will be printed under the rule.

REPORTS OF COMMITTEES.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (H. R. No. 1592) to re-imburse Horace Glover for property unlawfully seized and sold by the United States Government, reported it with an amendment.

He also, from the same committee, to whom was referred the petition of Dr. Moody Mansur, praying compensation for services rendered as a surgeon in the United States Army during the Florida war, submitted an adverse report thereon; which was agreed to, and ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 715) for the relief of Samuel H. Canfield, postmaster at Seymour, Connecticut, reported it with amendments, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Mrs. Angela Dauzat, wife of Eugène Brochard, praying compensation for thirty-five bales of cotton taken by the Federal fleet under command of Rear-Admiral Porter, at Fort De Russey, on the Red River, on the 16th day of March, 1864, submitted an adverse report thereon; which was agreed to, and ordered to be printed.

He also, from the same committee, to whom was referred the petition of Margaret Knight, of Meigs County, Tennessee, praying additional compensation for property taken and used by the United States troops during the late war, submitted an adverse report thereon; which was agreed to, and ordered to be printed.

He also, from the same committee, to whom was referred the petition of Thomas H. Yeatman, asking payment of $1,275, the amount of vouchers issued for rental of buildings used by the Quartermaster's Department, submitted an adverse report thereon; which was agreed to, and ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 424) for the relief of Rev. Erastus Lathrop, who claims to have been chaplain of the Sixteenth Indiana Mounted Infantry, submitted an adverse report thereon; which was ordered to be printed, and the bill was rejected.

He also, from the same committee, to whom was recommitted the bill (S. No. 74) for the relief of Mark W. Delahay, late judge of the United States court for the district of Kansas, submitted an adverse report thereon; which was ordered to be printed, and the bill was rejected.

He also, from the same committee, to whom was referred the bill (S. No. 848) for the relief of William Battersby, submitted an adverse report thereon; which was ordered to be printed, and the bill was rejected.

He also, from the same committee, to whom was referred the memorial of the Legislative Assembly of Washington Territory, praying an appropriation for paying Francis W. Pettygrove for services rendered as clerk of the United States district court for the third judicial district of that Territory from April 30, 1853, to February 1, 1857, asked to be discharged from its further consideration; which was agreed to.

Mr. WRIGHT. I am also directed by the same committee, to whom was referred the bill (S. No. 542) for the relief of E. F. Durrence, to report it back, and recommend the indefinite postponement of the bill. I will say in this connection that the committee find the bill without any evidence, nor is there any suggestion in the record that evidence will be found anywhere in support of the bill.

The bill was postponed indefinitely.

Mr. MORRILL, of Vermont, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. No. 558) making a further appropriation for the erection of Government buildings in Dover, Delaware, reported it with an amendment.

He also, from the same committee, who were directed by a resolution of the Senate of the 25th instant to inquire whether any, and, if any, what, provision should be made for the widow of John King, who was killed by the explosion of gas that occurred in the Capitol on the 19th instant, and for L. B. Cutler, who was severely burned and injured by the explosion, reported a bill (S. No. 872) for the relief of the family of the late John T. King and of L. B. Cutler; which was read and passed to the second reading.

Mr. COCKRELL, from the Committee on Claims, to whom was referred the bill (S. No. 845) for the relief of W. H. Woodward, of Indianola, Texas, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 2836) for the relief of Joseph Wilson, of Bourbon, County, Kentucky, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (H. R. No. 2829) for the relief of Ariel K. Eaton and James D. Jenkins, reported it without amendment, the committee adopting the report of the House committee.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the bill (S. No. 688) referring the claim of John H. Russell to the accounting officers of the Treasury of the United States for adjudication and settlement, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. ALLISON, from the Committee on Pensions, to whom was re-

ferred the bill (S. No. 36) amending the pension law so as to remove the disability of those who, having participated in the rebellion, have since its termination enlisted in the Army of the United States and become disabled, reported it with an amendment.

BILLS INTRODUCED.

Mr. MORRILL, of Maine, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 873) to provide for the 8 per cent. certificates of indebtedness issued for work done under the direction of the board of public works and chargeable to the private property benefited thereby; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 874) to amend section 4721 of the Revised Statutes of the United States; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 875) to re-adjust the rates of pension for specific and other serious disabilities; which was read twice by its title.

Mr. INGALLS. This bill has been transmitted to me from the Secretary of the Interior, and is accompanied by a communication which I move be referred, with the bill, to the Committee on Pensions.

The motion was agreed to.

Mr. HITCHCOCK asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 876) for the relief of John A. Rowland and Henry Turner, of the District of Columbia; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 877) to attach the counties of Lee and Bullock to the middle judicial district of Alabama; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. PATTERSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 878) to establish and endow a national scientific industrial institute in Washington County, District of Columbia; which was read twice by its title, referred to the Committee on Education and Labor, and ordered to be printed.

Mr. CRAGIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 879) for the advancement of medical and surgical science and for the protection of cemeteries in the District of Columbia; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. CONKLING asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 880) authorizing the extension of letters-patent to the heirs of Benjamin F. Rice; which was read twice by its title.

Mr. CONKLING. This bill relates to a case of which I have no knowledge whatever. It was sent to me by a constituent of mine who is a respectable man, and at his request I introduce it. I move it be referred to the Committee on Patents and printed.

The motion was agreed to.

Mr. STEVENSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 881) for the benefit of Brittania W. Kenyon; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

WITHDRAWAL OF PAPERS.

On motion of Mr. JOHNSTON, it was

Ordered, That the papers on file in the office of the Secretary of the Senate in the case of R. and Elsie Reynolds be withdrawn and rereferred to the Committee on Patents.

DAVIDSON'S REPORT ON IRRIGATION.

Mr. SARGENT submitted the following resolution; which was referred to the Committee on Printing:

Resolved, That the report of George Davidson, assistant, Coast Survey, describing and illustrating methods for irrigating land in India and in Southern Europe, transmitted by the Secretary of the Treasury in compliance with a resolution of the Senate, be printed, with 150 extra copies for distribution by the Superintendent of the Coast Survey.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. G. M. ADAMS its Clerk, announced that the House had passed the following bills in which it requested the concurrence of the Senate:

A bill (H. R. No. 429) for the relief of Charles C. Campbell, of Washington County, Virginia;

A bill (H. R. No. 735) for the relief of Philip Pendleton;

A bill (H. R. No. 890) for the relief of Randall Brown, of Nashville, Tennessee;

A bill (H. R. No. 1183) for the relief of David W. Stockstill, of Sidney, Ohio;

A bill (H. R. No. 1219) for the relief of D. P. Rowe and Brown & Crowell, of Morristown, Tennessee;

A bill (H. R. No. 1638) for the relief of the heirs of Brigadier-General William Thompson, of the revolutionary army;

A bill (H. R. No. 2019) for the relief of Edwin Morgan, late captain of Company G, Seventy-seventh Regiment Pennsylvania Volunteer Infantry;

A bill (H. R. No. 2242) granting a pension to George McColly;

A bill (H. R. No. 2258) for the relief of Henry Gee, of the State of Florida;

A bill (H. R. No. 2552) to reduce the expenditures for public advertising in the District of Columbia;

A bill (H. R. No. 2691) for the allowance of certain claims reported by the accounting officers of the Treasury Department;

A bill (H. R. No. 3116) providing for the payment of judgments of the court of commissioners of Alabama claims;

A bill (H. R. No. 3184) granting a pension to Emerick W. Hansell;

A bill (H. R. No. 3186) for the relief of Margaret Janet Burleson;

A bill (H. R. No. 3273) for the relief of Mrs. Ellen J. Brosman;

A bill (H. R. No. 3277) granting a pension to Kate Louise Roy;

A bill (H. R. No. 3278) granting a pension to Ellen Fechtel;

A bill (H. R. No. 3279) granting a pension to Benjamin C. Webster;

A bill (H. R. No. 3280) granting a pension to James Johnston;

A bill (H. R. No. 3281) granting a pension to Hannah A. Wood;

A bill (H. R. No. 3282) granting a pension to Sarah Cooey;

A bill (H. R. No. 3359) making appropriations for the payment of claims reported allowed by the commissioners of claims under the act of Congress of March 3, 1871, and for other purposes;

A bill (H. R. No. 3573) to amend an act for the relief of certain settlers on the public lands, approved December 28, 1874;

A bill (H. R. No. 3585) for the relief of Joshua C. Stoddard;

A bill (H. R. No. 3589) to amend section 840 of chapter 16, title 13, Revised Statutes of the United States;

A bill (H. R. No. 3590) to change the name of the scow-schooner J. L. Quimby to that of Perry G. Walker; and

A bill (H. R. No. 3625) providing for the sale of the Osage ceded lands in Kansas to actual settlers.

The message also announced that the House had passed the following bills of the Senate:

A bill (S. No. 3) for the relief of Alvis Smith;

A bill (S. No. 43) granting a pension to Urial Bundy;

A bill (S. No. 121) granting a pension to John Pierson;

A bill (S. No. 165) for the relief of Michael W. Brock, of Meigs County, Tennessee, late a private in Company D, Tenth Tennessee Volunteers;

A bill (S. No. 545) granting a pension to Abraham Ellis; and

A bill (S. No. 641) granting a pension to Julia Scroggin.

The message further announced that the House of Representatives, having proceeded, in pursuance of the Constitution, to reconsider the bill (S. No. 489) for the relief of G. B. Tyler and E. H. Luckett, assignees of William T. Cheatham, returned to the Senate by the President of the United States with his objections and sent by the Senate to the House of Representatives with the message of the President returning the bill, with his objections, had passed the bill, notwithstanding the objections of the President, two-thirds of the House of Representatives agreeing to the same.

The message also announced that the House had non-concurred in the amendments of the Senate to the bill (H. R. No. 2441) authorizing the appointment of receivers of national banks, and for other purposes, asked a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. S. S. COX of New York, Mr. SCOTT WIKE of Illinois, and Mr. JOHN A. KASSON of Iowa managers at the same on its part.

The message further announced that the House had concurred in the resolution of the Senate to print ten thousand five hundred copies of the report of the Smithsonian Institution for the year 1875.

The message also announced that the House had concurred in the amendments of the Senate to the bill (H. R. No. 219) to permit the judge of the district court of the United States for the western district of Pennsylvania to retire.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 219) to permit the judge of the district court of the United States for the western district of Pennsylvania to retire;

A bill (S. No. 708) for the relief of John M. English, of North Carolina;

A bill (H. R. No. 755) for the relief of Jackson T. Sorrells;

A bill (H. R. No. 2459) for the relief of Theodore F. Miller, late private Company G, Third Regiment Iowa Cavalry Volunteers;

A bill (H. R. No. 2826) to refund and remit certain duties to Peter Wright & Sons; and

A bill (H. R. No. 3479) making certain transfers of appropriations in the provisions for the contingent expenses of the Department of Justice for the current year.

SCHOOL LANDS IN CALIFORNIA.

Mr. SARGENT. I move that the Senate proceed to the consideration of the bill (S. No. 805) relating to indemnity school selections in the State of California.

The PRESIDENT *pro tempore*. The bill will be read for information if desired.

Mr. EDMUNDS. Let the bill be read.

The Chief Clerk read the bill.

Mr. SHERMAN. Let the report be read.

The Secretary read the following report, submitted by Mr. BOOTH, from the Committee on Public Lands, May 16:

The Committee on Public Lands, to whom was referred the bill (S. No. 805) relating to indemnity school selections in the State of California, beg leave to report:

That Congress, by act of March 3, 1853, donated to the State of California, for school purposes, every sixteenth and thirty-sixth section in the State.

The Mexican grants existing in said State covered large areas of land, and included within their boundaries many of the sixteenth and thirty-sixth sections, by reason of which the State was deprived of a very large part of her grant for school purposes.

Congress, therefore, in said act provided that the State should be entitled to select other lands in lieu of such sections as were included within Spanish and Mexican grants.

As the act specified no definite time or manner for selecting such lands, Congress, on July 23, 1866, passed an act, in section 6 of which it provided that said act of March 3, 1853, "shall be construed as giving the right to select for school purposes other lands in lieu of such sixteenth and thirty-sixth sections as were covered by grants made under Spanish and Mexican authority, which shall be determined in case of Spanish or Mexican grants when the final survey of such grants shall have been made. The surveyor-general for the State of California shall furnish the State authorities with lists of all such sections so covered, as a basis of selection."

The surveyor-general of the United States for the State of California construed this section as authorizing him, on behalf of the Government, to furnish a list of such sections as were covered by Mexican grants, whenever by actual surveys in the field he ascertained that a sixteenth or thirty-sixth section was actually covered by a grant. He seems to have considered that it was not necessary to wait until the patent for the grant had been issued. This construction was acquiesced in by the authorities of the State of California, and the work of selecting and certifying lands to the State as required by the grant proceeded on that basis. This construction was adopted by the Commissioner of the General Land Office and by the Secretary of the Interior unquestioned and continuously down to March 10, 1876, during which time the grant to the State had been largely satisfied by the lands selected.

The honorable Secretary of the Interior on March 10, 1876, made a ruling giving a different construction to the words in section 6 of the act of July 23, 1866, "which shall be determined in case of Spanish or Mexican grants when the final survey of such grants shall have been made," construing them to mean when the patent for the Mexican grant was issued. This ruling and construction would render irregular the title to many thousands of acres of land, mostly in the hands of innocent purchasers for a valuable consideration from the State of California. Many families would not only lose their lands, but would lose their improvements. The records of the Land Department already show that these lands are being extensively jumped, and, in most instances, the committee is informed from reliable sources, that the actual occupants holding the State title and patents from the State are driven from the lands by the jumpers.

Owing to the extreme hardship and damage done to innocent persons, the honorable Secretary has ordered a rehearing.

As the lands have greatly increased in value and in many cases are worth several hundred dollars per acre, much litigation is arising by parties trying to take the lands away from those having purchased of the State.

The titles to these lands have entered largely into the business affairs of the people of the whole State, and valuable rights and interests are resting on them. They cannot now be disturbed without causing great and irreparable damage to the general prosperity of the State and ruin to many families. The value of the property under consideration is estimated by those well acquainted therewith to be many million dollars.

The work of selecting and certifying these lands to the State has cost the General Government and the State of California many thousand dollars; estimated as high as $50,000.

The lands certified are in satisfaction, acre for acre, of the grant to the State.

The interest of the Government requires that this expense should not needlessly be repeated in reselecting and certifying other lands in place of the lands now selected and certified.

The State of California has passed an act to quiet and perfect these titles and prevent litigation so far as her own laws are concerned, and now, by a resolution of the assembly of the State, and by a petition addressed to Congress, signed by the governor of the State and the other State officers, as well as by nearly seven hundred others, asks Congress also to pass an act quieting these titles and thus ending injurious litigation. The officers of the Government supposed they were complying with all the requirements of the law, and innocent third parties purchased on the faith that the titles were good. It is but an act of justice and equity on the part of Congress to now place these titles beyond question and beyond litigation.

The bill (S. No. 805) referred to this committee has been carefully examined, and has been submitted to the honorable Commissioner of the General Land Office, and is regarded as properly protecting the interests of the General Government, as well as securing the title to the State and its vendees.

The committee, therefore, report the bill back and recommend its passage with an amendment to correct a typographical error.

Mr. SHERMAN. It is manifest that this bill involves very large interests and may affect very seriously the rights of private parties. I know nothing about the bill except what I gather from the reading of the report and also from a printed memorial which was sent, I suppose, to every member of the Senate. I do not know who sent it, but it came from California in behalf of thousands of people in the western part of that State. It showed antagonism to this bill, making the charge that the lands were entered by collusion between the authorities of the State of California and the persons who made the entry; that the decision of the Secretary of the Interior simply repeated plain and mandatory provisions of the law; that the grants for lands in lieu of the sixteenth and thirty-sixth sections only applied to places where the Mexican or Spanish grant was actually settled and followed by a patent; but that in contravention of that law and the plain reason and intent of the law of Congress the State of California issued these substituted lands in the place of lands within Spanish and Mexican grants which had not been settled, which are not even yet settled, and which actually belonged to the United States. Therefore the probability will be, if the statements contained in this printed pamphlet are correct, that under the bill the State of California would not only get the sixteenth and thirty-sixth sections of land in lieu of every Mexican and Spanish grant, but would actually also get the sixteenth and thirty-sixth sections of land in alleged Mexican and Spanish grants, which have been set aside, or will be set aside, not having yet been decided.

Mr. SARGENT. A very small amendment would guard against that.

Mr. SHERMAN. Under the circumstances, this bill, it seems to me, ought to be taken up in its regular order at a time when there will be an opportunity to examine it. It is manifest from the report in this case that it involves large interests. It seems that there is a controversy already between persons who are seeking to enter upon portions of this land under the acts of Congress, and that this bill turns out persons claiming under laws which gave them the right to enter upon the public land. There is a contest between persons who claim under the grant from the State of California and persons who claim under the pre-emption and homestead laws of the United States, and private interests are involved.

Upon the face of the paper it seems that the finding of the Secretary of the Interior is plainly correct. The State of California was not entitled to these substituted sections in lieu of lands covered by Mexican and Spanish grants until it was determined by the courts that the Mexican and Spanish grants were valid titles, and that thus the State of California was not able to get the sixteenth and thirty-sixth sections. It seems that lands were taken by the State of California for the sixteenth and thirty-sixth sections which were contained in grants that had not been approved by the courts and were still in dispute. It seems to me that this is too large a subject to be acted upon in the morning hour, and therefore I think it ought to be passed over. I make these remarks in order to call the attention of Senators to what I understand to be the allegation, because I know nothing more about this matter than what I heard read at the Clerk's desk and also from the printed pamphlet, which I suppose was sent to every member of the Senate by the interests hostile to the bill. Who the memorialists are I do not know. At any rate it seems to be a very careful pamphlet, and it makes assertions and declarations which demand investigation and a hearing.

Mr. MORRILL, of Maine. I desire to give notice to the Senate that on to-morrow or the first legislative day thereafter I shall ask the Senate to proceed to the consideration of the legislative, executive, and judicial appropriation bill.

Mr. SHERMAN. In view of the notice that has been given, I shall, as soon as I can get the floor, move to take up, and I hope we shall finish and pass to-day from the consideration of, the bill in regard to the issue of subsidiary silver. If we are to be crowded by the appropriation bills, I hope the Senate, if it takes up this silver bill, will close it to-day.

Mr. BOGY. I hope the bill referred to by the Senator from Ohio will not be taken up to-day. I desire to speak upon that subject, and I am not prepared to do so now.

Mr. BOOTH. I rise now simply to offer an amendment to the bill which has been read.

The PRESIDENT *pro tempore*. The Chair will state that the question has not been put whether the Senate will proceed to the present consideration of the bill.

Mr. SARGENT. The bill was before the Senate, as I understood, and the report read.

The PRESIDENT *pro tempore*. The bill is not before the Senate. It is true the report was read, but the question has not been put on the motion to take up the bill.

Mr. SARGENT. I should like to address myself to that motion. The United States law, existing for years on the statute-book, and giving to the State of California the sixteenth and thirty-sixth sections, recognized the fact that there are in that State large Mexican grants.

Mr. INGALLS. Is it in order to discuss the merits on a motion to take up?

The PRESIDENT *pro tempore*. It is not, strictly.

Mr. SARGENT. I wish simply to show the importance of the bill, and why it should be taken up, and for that purpose I am compelled to glance at the merits. If my friend from Kansas will allow me, I will proceed.

These large Mexican grants, if we could have no indemnity for the sections lying within their limits, would have diminished the school fund of the State materially. Whether it was wise or not to recognize the equity arising therefrom, Congress did recognize it some twenty-five years ago, and provided that the State should have lieu lands. For years and years the State made its selection of new lands, and the lists coming to the Land Office, they were regularly recognized and the lands listed to the State, and the State thereupon issued its titles to these lands. Every one supposed the law was fully complied with. The State did not make lieu selections of lands where the grant was rejected. It simply made selections in lieu of the land where there has been a decree of court in favor of the validity of the claim, where there was an appeal, only after the final decree had settled the right of the claimants under the Mexican grants to receive those lands; but it did not wait after that in all cases, though it did in many, until the actual patent was issued out of the Land Office, and this was not required by the Land Office or the Secretary of the Interior.

After the selections came up in cases where there had been confirmations of the grants and an actual patent had not been issued, the public surveys showing the area of the land and that the section which it was desired to take other lands in lieu of was within the boundaries ascertained by the decree, the right of the State was recognized, the lands listed to the State, and these were sold to parties who have made valuable improvements thereon. There was created a State title, founded upon lands listed by the Government of the United States.

This state of things continued, and everybody supposed he was secure in these rights until the 10th of March last, when a new rule was laid down by the Secretary of the Interior, he holding that the patent to the Mexican grant itself must have actually issued or the selection was irregular. This at once threw distress on a very large class of the community who had gone in on the strength of the State patent, which was founded on lands listed by the Government of the United States, the authorities here having a semi-judicial power to pass on the question whether the selection was properly made, the innocent purchaser not being able to ascertain this fine distinction subsequently laid down by the Secretary of the Interior.

Of course there are large interests involved. The Senator from Ohio thinks it extraordinary that we should ask for the passage of the bill because there are large interests involved. Interests are involved all over the State, because these Mexican grants were numerous and covered large areas, and very many of our selections are in lieu of lands covered by Mexican grants.

After the 10th of March, when the decision was made and the news of it reached California, in Los Angeles County, we saw the first effect of it. Men who had no claims on the lands whatever as pre-emptors or homestead settlers before the time of that decision on the 10th of March, 1876, when the news reached them some time in April, began jumping other people's lands; that is, they went within men's inclosures, went into their grain-fields where the grain was ripening in the early season, took possession of their houses and cabins and improvements, and by means of shot-guns intimidated the men who were the supposed rightful owners of the soil and drove them from it. This made a feeling of consternation and showed what might be expected in the rest of the State. The Legislature memorialized Congress to confirm the selections, recognizing the irregularity of not waiting until after the actual patent had been issued. Recognizing the irregularity, they asked Congress nevertheless to overlook this irregularity in favor of those who had bought in good faith.

Now, the Senator from Ohio says that under this bill the State will get duplicate lands; not only get the original lands, but get new lands. That position must necessarily be a mistake; but if there is any foundation for it the slightest amendment will fix it, providing that the State shall not receive, in consequence of this legislation or any other, any more than the original lands to which it was entitled twenty-five years ago when the selection of lieu lands was allowed to be made. My colleague has prepared a careful amendment protecting the settlers, protecting the mineral lands, and protecting every other interest which it is possible to protect. He was endeavoring to get the floor to offer it when my friend from Ohio rose and said that the rights of settlers were involved in this matter. Those men who, since the 10th of March of the present year, went on their neighbor's possessions, went inside of their inclosed fields, took possession of their fields of grain, took possession of their houses, and drove others off by means of shot-guns, are not settlers in any sense of the word. To allow them to prevail would be to carry distress and tumult throughout the State of California.

The Senator from Missouri [Mr. BOGY] asks me under what right these new men went in. They said, "Your State selections have been irregular; the Secretary of the Interior has overthrown them, declared them to be null and of no effect, and we will enter upon this land ourselves, and take it, and you must keep off it." That was the "right" which made the claim. It was bad in morals, bad in every sense, and we simply come in here and ask that this thing may be righted.

I understand from my colleague that he will propose an amendment that the bill shall not affect the rights of any man who went upon the land claiming as a pre-emptor or homestead settler prior to that decision. As I suppose it will be impossible in the few moments left of the morning hour to pass this bill, in the hope that this discussion may lead Senators to think upon the subject, I give way to my colleague.

The PRESIDENT *pro tempore*. The question is, Will the Senate proceed to the consideration of the bill?

Mr. SARGENT. I give way to my colleague for the purpose of offering his amendment; I do not yield the floor.

Mr. SHERMAN. I ask the Senator if he will have any objection to letting this matter be recommitted to the Committee on Public Lands, to whom I will send the paper I referred to. Every Senator has received the same document. The Senator from Michigan [Mr. CHRISTIANCY] showed me the same paper which excited my attention. I ask to have the bill recommitted to the Committee on Public Lands, so that their attention may be called to the distinct statements made in the document.

Mr. SARGENT. I have no objection to that course.

The PRESIDENT *pro tempore*. Does the Senator from California [Mr. BOOTH] desire to have his amendment printed?

Mr. BOOTH. As I am a member of the Committee on Public Lands, I will move in committee to have the amendment incorporated in the bill, but I will now read to the Senate what I propose to offer; it comes in after the third section:

Nothing contained in this act shall be construed as affecting the rights of *bona fide* pre-emptors or homestead settlers in actual possession, and whose right accrued before the 10th day of March, 1867, to mineral lands, or to any lands in the city and county of San Francisco, or any incorporated city and town, or to any tide or swamp lands.

The PRESIDENT *pro tempore*. The motion is to recommit the bill to the Committee on Public Lands.

The motion was agreed to.

MARTHA J. COSTON.

Mr. CRAGIN. I move to take up Senate bill No. 728, which is a very short bill, and will not consume time.

The motion was agreed to, and the bill (S. No. 728) for the relief of Martha J. Coston was read the second time and considered as in Committee of the Whole. It appropriates $15,000 to Martha J. Coston, in full of all claim and demand of her upon the Government of the United States for the use of the Coston signal-light, and the manufacture by her of the same.

Mr. SAULSBURY. I should like to have some explanation of the bill. Is there a printed report in the case?

Mr. CRAGIN. There is a printed report, which I ask to have read.

The PRESIDENT *pro tempore*. The Secretary will read the report.

Mr. CRAGIN. I hope Senators will listen carefully to the report, so as to save any further explanation of the bill.

The Secretary read the following report, submitted by Mr. CRAGIN, from the Committee on Naval Affairs, April 12:

The Committee on Naval Affairs, to whom was referred the memorial of Martha J. Coston, have had the same under consideration, and submit the following report:

This claim was considered by the House Committee on Naval Affairs the last Congress, and a bill reported for relief of petitioner, accompanied by report No. 334, which is referred to as embracing a statement of the facts in the case before us.

Mrs. Coston is the widow of Benjamin F. Coston, the inventor of the telegraphic night-signals which bear his name, an invention and system perfected by her since her husband's death, and which was adopted and has been used by our naval and life-saving service for many years.

In 1859 these signals were tested, and at the commencement of the war the Department made a proposition to the petitioner to sell to the Government the right to manufacture these signals for the use of the Navy, and an appropriation for the purpose was passed, which she accepted. The officers of the Government found it difficult (if not impossible) to manufacture them to advantage, and the Secretary of the Navy requested Mrs. Coston to undertake their manufacture for the Navy; and the price per set of twelve pieces was agreed upon at $4.50. This was in the spring of 1861; the signals were delivered, and the price named was paid. The petitioner urged at that time, and now claims, that, by reason of the increased cost of labor and materials, she was entitled to, and should have received, an advance over and above the price stipulated. To this complaint, however, the Department would not listen, as the price had been fixed by agreement, and it is believed by the committee that she continued in the business of supplying these signals to the Government almost, if not quite, without profit.

By law it was provided that on contracts made previous to its passage the taxes and duties subsequently imposed should be paid by the purchaser, and when the petitioner endeavored to obtain the amount of taxes from the Navy Department she was met with the suggestion that no written agreement could be found, contracting with her at the price named; therefore the law was not applicable to her case. Near the close of the war the Department increased the price of her signals to $6 per set, thus acknowledging the justice of her demand; but there were very few delivered after this period and the increase did not cover those already furnished. Subsequent to the time of entering into the agreement referred to, taxes on manufacturers' sales were imposed and had to be paid by the petitioner; additional duties were also levied on some of the articles entering into these signals, the prices for labor almost doubled, and the chemicals used increased in cost from 50 to 75 per cent., and the certificates given her in payment were sold at a discount.

The following letter from Rear-Admiral Smith is made a part of this report:

WASHINGTON, *July* 1, 1865.

SIR: In regard to the reference from you to me of Mrs. M. J. Coston's letter to you of June 28 last, touching compensation to her for the Coston signals, I beg leave to say that the arrangement for employing those signals was made in the Bureau of Detail in the spring of 1861, then in charge of Commodore Paulding. The price was agreed upon, as well as I remember, at $4.50 per set of twelve pieces. The signals were furnished as required, and paid for at that price.

The war greatly increased the cost of the materials, and, consequently, Mrs. Coston petitioned for an increase of price on that before the war agreed upon. This was not granted, on the plea that the price had been fixed. The delivery, receipt, and payment for the signals are ample evidence of that fact.

By the act of June 30, 1864, section 97, persons who shall have made any contract prior to the passage of said act are authorized to add to the prices thereof so much money as will be equivalent to the duty so subsequently imposed. Now Mrs. Coston claims that the price of the signals was fixed before the passage of the act referred to, and that she has a just claim upon the Government for the amount of the tax.

The claim of Mrs. Coston for an increase of price on the signals, after the contingencies of the war had greatly increased the cost of the materials, was just and fair, in my opinion; as that request was denied by the Ordnance Department, she is certainly entitled to the tax on the bills rendered.

I have the honor to be, respectfully, your obedient servant,

JOS. SMITH.

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

The petitioner paid taxes, as per statement, $13,000, and if allowed interest would make her claim amount to some over $21,000.

The committee, after careful examination of the papers before them, have arrived at the same conclusion as the House committee of the Forty-third Congress, and recommend that Mrs. Coston be paid the sum of $15,000, in full satisfaction of her claim against the Government, and report the accompanying bill and ask its passage.

The bill was reported to the Senate without amendment.

Mr. WRIGHT. I wish to make an inquiry of the Senator from New Hampshire. As I remember the reading of the report, the committee find that this lady is entitled to some $13,000. Upon what principle is it that the bill allows more than $13,000?

Mr. CRAGIN. I cannot state exactly the principle. It was clear to the committee that she paid taxes in the neighborhood of $15,000, which the Department ought to have paid under a law that was passed after this contract was made authorizing the manufacturer or contractor to add the tax to the price. It also appeared to the com-

mittee that the price which she received was very low indeed, and as the House committee had reported upon this same subject to give her $15,000 we thought that we would put it at $15,000. The sum was between thirteen and fourteen thousand dollars, and there was some question about the amount, she claiming that she paid $15,000 of actual taxes. I believe the bill to be a very just and proper one, and I hope it may be allowed to pass.

Mr. WRIGHT. I have nothing to say in reference to the justice of the bill. As I understand the claim, so far as it applies to anything in excess of the $13,000, in round numbers, the gentleman from New Hampshire admits it does not depend upon any principle so far as any right to repay interest is concerned, but he rather puts it upon the ground that the committee do not think she is entitled to the interest but is entitled to something more than $13,000, and therefore they fix the amount at $15,000.

Mr. CRAGIN. The sum was not fixed upon any ground of allowing interest at all. It was clear that she paid over $13,000 taxes, and it may have been $15,000. The exact calculation as to dollars and cents was not made, but the taxes amounted to between $13,000 and $15,000; in my judgment as near $15,000 as $13,000.

Mr. WRIGHT. With the understanding from the record and from what has taken place in the debate that it shall be considered and understood that the Senate does not recognize in any way whatever the right of one dollar's interest upon this claim, I shall withhold any objection to the bill.

Mr. CRAGIN. That is the understanding. It was the understanding of the committee.

Mr. WRIGHT. I do not think one dollar of interest should be allowed upon any claim of this kind. As I understand, the committee have made no such allowance; but they find that this $15,000 is what she would be entitled to, independent of and outside of any claim for interest, and this is not coupled with a recommendation to pay interest.

Mr. CRAGIN. That is all.

Mr. COCKRELL. I should like to ask how we are to get around this clause in the report of the committee

The petitioner paid taxes as per statement, $13,000.

That seems to be the statement of the petitioner herself as to the amount of taxes paid, according to the report.

Mr. SAULSBURY. I would not vote against any claim which I was satisfied was correct; but this stands as a claim of indemnity for taxes paid upon a contract made with the Government of the United States in 1861. It is no doubt true that, like all other contractors under the Government, the contractor in this case realized a profit upon the contract. She was subjected by the laws of Congress to taxation upon certain materials used in fulfilling the contract. The party now comes to Congress to be indemnified for the amount of taxes paid upon materials used under the contract, which were furnished to the Government.

Mr. CRAGIN. The Senator will allow me to suggest that he certainly is in error. The law authorized the manufacturer to add the tax to the price of the goods.

Mr. SAULSBURY. I understand that.

Mr. CRAGIN. And the Department claimed that this contract was not in writing. They could not find any written contract and therefore they did not allow her to add the tax. It was not a tax for materials; it was a tax for the gross price of the manufactured articles, and there could be no distinction made in justice or equity whether this contract was in writing or whether it was verbal. The Department did not allow her this tax, while under the law she ought to have been allowed the tax, especially as she was manufacturing these articles at a loss. That is all there is in the case.

Mr. SAULSBURY. I take it for granted if this lady, who had a contract, had come within the terms of the law, the Department would not have refused to allow her the amount of the tax which she paid. At any rate, I am opposed, after persons have entered into contracts with the Government and have made profits upon their contracts, that they should come here and be exempted by the action of Congress from taxes which have been imposed by the laws of Congress upon them. The people of the United States, all over the country, have been subjected to taxation, and have paid taxes when they had no contracts out of which they might have made a profit. In the State in which I live, and in other States of the Union, private citizens having no contract with the Government have been subject to the taxation of the Government, and have paid their taxes. I see no reason why parties who have had contracts and made profits out of their contracts should not be subject to the same measure of justice. I am therefore opposed to the appropriation of money for this purpose.

Mr. WRIGHT. I should be glad if the Secretary would report the bill again.

The Chief Clerk read the bill.

Mr. WRIGHT. I move to strike out "15" and insert "13;" so as to make the allowance $13,000 instead of $15,000.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

On the passage of the bill a division was called for; which resulted—ayes 24, noes 6; no quorum voting.

Mr. SHERMAN. Many Senators are present who are not voting. I call attention to the fact.

Several SENATORS. Let us divide again.

The question being again put, there were on a division—ayes 27, noes 13.

So the bill was passed.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. HOWE, from the Joint Committee on the Library, submitted certain amendments intended to be submitted by that committee to the bill (H. R. No. 2571) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes; which were referred to the Committee on Appropriations, and ordered to be printed.

JAPANESE INDEMNITY FUND.

The PRESIDENT *pro tempore*. The morning hour has expired.

Mr. SHERMAN. I move that the Senate postpone the consideration of all other matters and take up the bill (S. No. 263) to amend the laws relating to legal tender of silver coin.

The PRESIDENT *pro tempore*. The Chair will lay before the Senate the unfinished business, being the bill (S. No. 626) in relation to the Japanese indemnity fund.

Mr. FRELINGHUYSEN. Mr. President——

Mr. SHERMAN. I submit my motion to postpone.

Mr. FRELINGHUYSEN. I do not wish to interfere with any of the rights of the Senator from Ohio; but I understood that I had the floor on this bill when it should be taken up.

Mr. SHERMAN. I was recognized before the bill was called up. I do not wish any controversy with the Senator from New Jersey on the subject. I simply wish to have the Senate decide by its vote which of these bills shall be taken up.

The PRESIDENT *pro tempore*. The Chair submitted the unfinished business to have it properly before the Senate, and the Senator from Ohio had risen pending the statement from the Chair for the purpose of moving a postponement. The Senator from Ohio moves to postpone the present and all prior orders for the purpose of considering the silver bill, so called.

Mr. SHERMAN. Senate bill No. 263.

Mr. FRELINGHUYSEN. This bill has been reported upon six times, and been favorably reported upon. It had been discussed for two or three days fully before the Senate at the time when the Senate took up the matter of impeachment. I think that it will be economy of time to dispose of this bill now without further discussion.

There was an amendment offered striking out that part of the bill which provides for interest, and I wish to call the attention of the Senate now to amendments that I propose to the bill which I think will meet with the approval of all the Senate, and I shall be very brief.

Mr. SHERMAN. I would rather the Senate should dispose of the pending question first. However, if the Senator says it will take but a little time——

Mr. FRELINGHUYSEN. I believe I am strictly in order for this reason, because the brief remarks which I propose to make will show the Senate the propriety of disposing of this subject now.

Mr. EDMUNDS, (to Mr. FRELINGHUYSEN.) The merits of your bill are perfectly open on this question.

Mr. FRELINGHUYSEN. This fund amounts to $1,414,051.96. That is the value of the fund as invested at the price the securities now sell for.

Mr. EDMUNDS. Coin or currency?

Mr. FRELINGHUYSEN. Coin. The amount of charges that there are against the fund, I understand, is $19,956. That is money which has been expended by the Navy Department, which ought properly to be charged to this fund. The prize-money, if the second section is retained in the bill, as I hope it may be, is $125,000. These two sums, taken out of the fund as soon as it is received, amount to $144,956. Now, if we pay the balance to the Japanese, with 5 per cent. interest, they will receive $795,956, and there will be to cover into the Treasury $473,000. So the Senate will see that after taking out the $125,000 and the $19,000, and after you pay the Japanese government the balance with 5 per cent. interest, there will be $473,000 to cover into the Treasury. I think that is right for this reason: That excess of the fund is made up of the items of exchange, compound interest, and the appreciation of the securities.

If this money had been loaned by Japan to this country we would not give them the benefit of the exchange; we would not give them the benefit of compound interest; we would not give them the benefit of the appreciation of the securities; or, if the securities had depreciated, that would not relieve us from our obligation to pay this money. Therefore, it seems to me that the amendments I shall propose must commend themselves to the Senate, and I should think would commend the bill. I propose, if the Senate go on with this bill, so to amend it as that all charges against this fund shall be met, and that we pay the balance with 5 per cent. interest, not paying the compound interest, not paying the appreciation of securities or the profit of exchange, which amount to some $473,000.

I trust the Senate will adhere to this bill, and now finally dispose of it.

The PRESIDENT *pro tempore*. The unfinished business being before the Senate, the Senator from Ohio moves the postponement of

this bill and all prior orders for the purpose of considering what is known as the silver bill.

Mr. SHERMAN. I ask the Senator from New Jersey how long he thinks this bill will occupy?

Mr. FRELINGHUYSEN. I do not think it will occupy more than half an hour; but, if it does take more, it will occupy less time now than at any future period.

Mr. SHERMAN. I am willing to let the matter pass, because I do not wish to antagonize the silver bill with a matter which has been partially discussed. I withdraw my motion for the present.

Mr. FRELINGHUYSEN. I move after the word "fund," in the fourth line of the first section, to insert "originally paid to the Government of the United States."

The PRESIDENT *pro tempore*. There is an amendment pending.

Mr. EDMUNDS. Perhaps the Senator is perfecting the text of what is proposed to be stricken out.

The PRESIDENT *pro tempore*. The Chair is informed that it is not an amendment to the amendment. The Secretary will report the pending amendment.

The CHIEF CLERK. It is proposed to amend the bill by inserting——

Mr. FRELINGHUYSEN. The pending amendment is to strike out all that relates to the accumulation of interest in the ninth line, I think.

Mr. EDMUNDS. I thought the amendment was to strike out the first section.

Mr. FRELINGHUYSEN. No; that has been voted on.

The CHIEF CLERK. The pending question is on the amendment of Mr. THURMAN, in line 9 of section 1 to strike out the words:

Said indemnity fund, including all accumulations of interest.

And in lieu thereof to insert:

The sum paid by said government without interest.

So as to authorize the President—

To pay over to the government of Japan the residue of the sum paid by said government, without interest.

The PRESIDENT *pro tempore*. Does the Senator from New Jersey desire to amend this?

Mr. FRELINGHUYSEN. No; I do not desire to amend that. I think that amendment ought not to be adopted. The amendments which I have suggested will have the effect of taking out the $125,000 and the $19,000 of the money as soon as it was received, so that the Japanese government shall not have interest on the $144,000, and then to pay them the balance with 5 per cent. interest, which will leave about $473,000 in gold to be covered into the Treasury, that excess arising from the profit in exchange, from the appreciation of the securities, and from the manner in which this fund has been confounded, three items which I do not see that the Japanese government have any claim upon.

Mr. SHERMAN. As I understand, then, the Senator proposes to give back the principal of the fund less the amount which we now appropriate for salvage.

Mr. FRELINGHUYSEN. With 5 per cent. interest.

Mr. SHERMAN. Compounded?

Mr. FRELINGHUYSEN. Five per cent. simple interest; and that will leave of the fund $473,000 in gold.

Mr. SHERMAN. I do not think the Government ought to set the example of paying interest. This money was collected from Japan, and we certainly ought not to pay interest on it.

Mr. FRELINGHUYSEN. The reason for it, I think, is this: if we improperly got the money, and compelled the Japanese government to pay 5 per cent. interest to obtain it in England, and 7 per cent. to obtain another portion of it, it is right that we should pay it as if it had been a loan to us at 5 per cent.

Mr. SHERMAN. If so, we ought to pay the compound interest as well.

Mr. FRELINGHUYSEN. I think not.

Mr. SHERMAN. They had to pay it on the Senator's ground.

Mr. FRELINGHUYSEN. If the Japanese government had loaned us the money—and I treat it just in that shape—we should have paid them 5 per cent. simple interest, and that is what I propose to do, after deducting the claims and charges properly made upon the fund when first received.

Mr. SHERMAN. If anybody else had loaned it to us, we should have paid interest annually or semi-annually, regularly, which is the same as compounding interest. I had made up my mind to content myself with simply voting against the bill, to gratify a sentiment that seems to prevail with the Senator from New Jersey and in the Senate that we probably exacted severe and hard terms from Japan, though I do not think the arguments establish that position. If to gratify that desire to do a generous, liberal thing that might probably aid us in our intercourse with Japan, and perhaps with China, it is thought desirable, after deducting the expenses incurred by the United States and paid to our officers in the nature of salvage or as a reward for extraordinary services, to pay back the balance of the principal sum to Japan, perhaps I would content myself even by not voting against the proposition, though I cannot answer the argument of the Senator from Vermont, [Mr. EDMUNDS,] which showed very conclusively that we received this money not only for expenses incurred in putting down a rebellion but we received it for services rendered to Japan in putting down a rebellion, as stated by the treaty itself.

But without enlarging upon that argument, if the Senator from New Jersey will confine his proposition to a simple refunding of the principal sum without interest, deducting only the principal sum that we pay out of the fund, I would not object. I think it rather generous and not a very wise thing to do; but still there is a kind of reason for it that may be given that from it we should derive benefit in attracting to us the kindly feeling and good-will of the government of Japan.

Mr. HAMILTON. I merely rise to put the same question as the Senator from Ohio. If the Japanese government borrowed money from England, did it practically compound interest? I ask if in any case there is not compound interest paid where you pay interest every six months?

Mr. EDMUNDS. It appears to me, if the ground on which this bill is pressed by my friend from New Jersey is sound, there is no escape from the conclusion that we ought to pay back this money with all its accumulations, because his ground is that by force of superior power we coerced the government of Japan into paying us an enormous sum of money in respect of which we had no claim; and thereby there was created a kind of trust—a wrong-doer holding this money—a kind of trust in favor of the government of Japan. On that state of facts it is evident that equity in all such cases, as well as the law, charges the wrong holder of money with all that he has made out of it. If he has put it to profit the profit belongs to the owner of the money; and we have put this money to profit by way of exchange in getting it here, which happened to be largely favorable at that time, I believe; and by way of investing it in our own bonds, so that it accumulates to $1,400,000 and upward. If we took this sum of money of $750,000, or whatever it was, from the government of Japan wrongfully, and that money has earned in our hands by way of exchange and interest enough to make it $1,400,000, the $1,400,000 belongs to Japan on every principle of justice that prevails between man and man.

Mr. HAMILTON. I ask the Senator if the money has earned anything in our possession?

Mr. EDMUNDS. So it is stated, that it has accumulated until it is $1,400,000; that in the first place there was a large accretion to it on account of exchange; and then it was invested by the State Department in our own bonds, which otherwise would have been put into the market for so much, and we used the money, and the bonds are in the State Department in place of it, just as if it had been invested in English bonds or State bonds; so that in truth and in fact, so far as equity goes, this sum of money that Japan gave to us has earned by sheer force of its own industry, if I can use such a term, so much. It has got up to that, not by a system of fictitious book-keeping, but by real gains, as the money, if it had been invested by a private individual in the same way, would have accumulated.

Now I repeat if this money really belongs to the government of Japan in equity and good conscience, and was wrongfully taken from her, (which is the ground on which we are asked to restore it,) then it does seem to me that every dollar it has earned in respect of the exchange which accumulated upon it in bringing it to this country and in respect of the interest upon it, ought to be restored. But the bill itself as reported from the Committee on Foreign Relations, if the Senate will look at it, does not seem to proceed on the theory, after all, that this money was wrongfully extorted from Japan and that it is the money of that government, because you will observe that the first section provides that the President—after taking out a certain sum from it, $125,000—"is further authorized" (I pass over the unimportant words about being incompatible with our relations to foreign powers) "to pay over to the government of Japan the residue of said indemnity fund, including all accumulations of interest." So far it is on the theory named. Now—

Or after correspondence with said government, and in a manner satisfactory to it, to transfer said fund, together with its increase, to the government of Japan in trust, the income thereof to be perpetually used for the promotion of education in Japan.

That is a very extraordinary provision in a bill if this money belongs to the government of Japan and we are wrongfully withholding it.

Mr. FRELINGHUYSEN. That was stricken out.

Mr. EDMUNDS. I understand that it was stricken out; but I am speaking of the theory on which this bill went when it left the hands of the Committee on Foreign Relations, as derived from the face of the bill.

Mr. FRELINGHUYSEN. I will state to my friend that when I called up the bill, after conferring with the members of the committee, that provision was stricken out on my motion, as their organ, and the reason that it was ever introduced there, as I understand, was at the instance of the representative of Japan.

Mr. EDMUNDS. I do not know what the representative of Japan has done. If the representative of Japan is authorized by his Emperor to provide that the money of Japan now held in trust by the Government of the United States shall be turned over to the government that owns it in trust for another purpose, then it is rather extraordinary diplomatic intercourse I must say; but it may have taken place, and I have no doubt my friend so understands it; and as we are dealing with oriental nations perhaps it is fair to infer that it did take place.

But what I was saying was that on the face of the bill as it comes from the committee it is inconsistent, plainly inconsistent to my mind, with the idea that this money belonged to the government of Japan of right and that it was in our hands by wrong. The committee undoubtedly saw the force of that, and the correction was made, striking out anything which would raise an implication of that character.

I do not want to spend the time of the Senate over again (although it is a long time ago since we had the bill up we have had our thoughts devoted to a good many other subjects since) in discussing the merits of the first section, which is the chief section of the bill, in respect to the government of Japan; but I merely wish to repeat what I said before, founded upon what appeared to me to be the clear result contained in the reports of the Department of State on this subject in print, that this money was not obtained from Japan by any unjust exaction of force, that it was obtained from Japan as the treaty states and as the correspondence and negotiation state, as a settlement of all accounts, so to speak, down to that date, and among those with the serious injuries done to the commerce of the United States by the interruption of intercourse through the so-called inland sea and by the interruption of our trade and commerce with ports which by treaty they had from time to time agreed to open and had not opened; and I do not believe that it was a penny in excess of what the real injury was, although not computable in figures, as such injuries never are, arising to our interests in the East from that course of conduct on the part of that empire. But, as I say, I am not going into the reference to the communications on the subject. I do not feel justified in doing so as it has been once done, and merely rose to restate my own conclusions. On the present and exact question, it appears to me plain that if we owe this government anything, we owe all that this money has accumulated.

Mr. DAWES. Mr. President, I had made up my mind from the beginning to vote for this bill. This is no part of the money of the Treasury of the United States; it is a distinct fund by itself, not held in the Treasury as a part of our money. There has been about it from the beginning stamped a character by those who hold it special, like a special deposit for a particular purpose. The first Secretary of State into whose hands it came, and those who have followed him, have all felt that about this fund there was something that prevented them from proposing, for a moment, to cover it into the Treasury and make it the money of the United States. Here it stands a fund by itself for that reason. I have been told from the beginning, ever since I have been here, in connection with the fund, that it really, in the forum of conscience, did not belong to us, and that that was the reason why the Secretary of State had kept it distinct. No one has more impressed me with that belief, or strengthened me in that belief, than the Senator from New Jersey himself, and he will permit me now to express my surprise that he proposes himself to take this fund so kept, stamped with that character, and divide it up. It does not belong to us, he tells us. I believe so. I believe so more firmly after I have heard him than before, and I believe that it never will rest until it reaches the place to which it justly belongs.

It is vain for us now to undertake to make terms with our sense of right and fair-dealing with this weak nation, and say "if they will quit with us by taking a third of it, or a half of it, or anything less than the whole of it, we will settle with them." Those who come after us will do this business over again, if we do not do it fully and fairly and frankly and because we feel that we have not this money. If we have a right to this money, let us say so, as the Senator from Vermont frankly and fairly, from his point of view, speaks as he ought to do. It belongs to us fairly in his opinion. From my standpoint it does not belong to us, and here it is. It has of its own momentum accumulated and grown into double and more. And yet the Senator from New Jersey this morning is willing to take $125,000 of it to pay as prize-money to those who, upon his showing here, had no more right to it than a banditti who had waylaid across the plains or the desert a train of merchant-men and in the name of the government whose flag they bore had arrested it, and then it had come into the hands of the Government itself and we proposed to take out $125,000 and stamp it prize-money and pay it as prize-money over to those parties, and then pay the parties robbed 5 per cent. simple interest on the balance, after taking out also $18,000 which may be or may not be, but I presume is, a proper charge upon it for expenses or something of that kind, as the Senator thinks it is. I do not speak of that; I speak of the item of $125,000. And then the idea is proposed that although 15 or perhaps 20 per cent. upon this fund has been made by the Secretary of State, for the Government of the United States has not done it, the Secretary holding it in trust for those to whom it belonged and for nobody else and investing the trust fund, as every trustee ought to, to the best of his knowledge and prudence and sagacity, and thereby making that trust fund which was once $500,000 now $1,400,000, the accretions shall be retained by this Government, and thereby the United States will strike a balance in this operation and have just as much when they get through as if they had not paid this out.

I prefer to let the matter go on a little longer. Let us postpone this a few years longer, and with a Secretary of State of such business capacity as I hope we shall always have, we cannot only pay back the original sum and 5 per cent., but we can make a handsome speculation; we can found a benevolent institution here, and we can name it something that will be expressive of the origin and the method by which we have acquired this fund; and we can make it, like the Smithsonian, an instrumentality for the diffusion of knowledge among men, or something of that kind. But there will come after us those who will not deem this right, and they will think one of two things: that we have no business to pay back anything to Japan, as the Senator from Vermont thinks, or that we should pay back all that we got from her.

I shall vote against the amendment; and then I shall vote against the bill itself if the amendment be adopted.

Mr. FRELINGHUYSEN. Mr. President, there seems to be no difference of opinion in the Senate as to the amendment which is now pending. Those who are favorable to the bill are in favor of paying no interest, which is the amendment of the Senator from Ohio, [Mr. THURMAN,] and those who have opposed the bill are in favor of paying compound interest. I suppose, therefore, we may all unite in voting down, if that is the opinion of the Senate, the amendment of the Senator from Ohio. I would much rather pay this money back with all the accumulations of interest. I would much rather adopt the theory of the Senator from Massachusetts [Mr. DAWES] and pay it back with all its accumulations. It would be a more generous thing. But it struck me that we should do common justice if we made the deductions which are properly chargeable to this fund at the time of its receipt, and then pay interest on the balance.

My friend from Texas [Mr. HAMILTON] asks me whether if we had paid the interest every six months it would not have been compounded. It would certainly have been compounded, but then the Government of the United States when it owes a claim does not generally pay any interest; and therefore our paying 5 per cent. interest here is exceptional. In looking at the other items which go to make up this fund, while it would be magnanimous and generous to pay over the fund with all its accumulations, still it struck me that it was hardly a demand of justice, for if we had borrowed the money we should have profited by the exchange in our favor. If we had borrowed the money they would have no claim to the appreciation of the securities in which it was invested, and their claim on us would not be affected by the depreciation of its securities. And if we had borrowed the money we should not have compounded that interest to them. It struck me, therefore, that it would be just, not magnanimous, not generous, to pay them back all, after we made the deduction of the proper charges from the fund with 5 per cent. interest; that they could not say they had a claim for the appreciation of the securities in which the money was invested, for the compound interest, or for the exchange, but I would a great deal rather, as the Senator from Massachusetts suggests, that we should pay back to them the whole fund just as it is, for I believe it is unclean money in our Treasury. I believe that we might better pay ten times the amount than cover it into the Treasury. We are a poor people, but we are an honorable people, and the people of this country, without a dissenting voice almost, demand that this money, the result of their treaty with seventeen ships of war threatening them, should be paid back—a fund taken for indemnity when they had within a year paid us every cent that we demanded and when there had been no injury during that year. There is but one sentiment in this country. Six committees of Congress have reported that the money should be paid back.

Talk about its being a sentiment! Common honesty is a sentiment. It is not a romance; it is a reality. I trust that this Congress will pay back the money. I would rather see the whole fund paid back, as my friend from Massachusetts suggests; but common justice requires that we should pay back the balance with at least 5 per cent. interest.

I hope, Mr. President, that the amendment of the Senator from Ohio now pending will be voted down.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Ohio, [Mr. THURMAN,] which is in line 9 of the first section, to strike out "said indemnity fund, including all accumulations of interest," and in lieu thereof insert "the sum paid by said Government without interest."

Mr. SHERMAN. The remarks made by the Senator from New Jersey [Mr. FRELINGHUYSEN] need a little reply. The Government of the United States made the demand upon Japan, enforced that demand, and received this money. That was in 1864. The money has remained in the custody of officers of the United States from that time to the present. Not only that, I find that in March, 1870, the Government of the United States formally demanded of Japan the prompt payment of the balance then unpaid of this indemnity; not only did it in a peremptory way, but told Japan distinctly, in strong diplomatic language, that this was the final demand; and this demand was made by three other civilized and Christian nations of the world. Now, for a Senator of the United States to come here and say that the Government of the United States made this demand in 1864 without any color of excuse; that this was a robbery; that this was money extorted from a weak and feeble nation; that we ought to pay it back; that it is dishonored money in the Treasury of the United States or in the custody of her officers, it seems to me, is to characterize in strong language, stronger that it deserves, the conduct of men who have held office for ten years in this Government, and men who have held office under four leading Christian nations of the world, and I believe it is totally unjust.

Sir, the conduct of Japan in interfering with the commerce of the world in those straits was unjustifiable. Undoubtedly the diplomatic

policy of the Tycoon and of the other authorities there, together with the governor of one of his provinces, the name of which I cannot recall, was full of duplicity—confessedly so. It did put the governments of Christian nations to great trouble to enforce their conceded rights to navigate an open navigable strait. Not only that, but Japan agreed to the payment of this money, and never has set up a claim that the demand for it was unjust, so far as I know. The papers here before us, and the communications which I have now, admit the justice of the claim in 1870, and give reasons why the money had not been fully paid according to the treaty before that time.

It seems to me, therefore, that this is a mere sentiment. It is not a just claim, in any sense of the word, for repaying back money extorted. It is simply a sentiment, a disposition to be liberal and generous, more than generous, to a nation with whom we desire to make friendly relations; and, hence, I do not like to hear our Government charged with being dishonest, and the governments of other Christain nations charged with being dishonored, with being robbers and oppressors upon Japan, merely because we demanded of her the enforcement of our commercial rights, merely because we made a treaty with her in which she acknowledged that this money was due to us, and because we demanded that it should be paid.

It seems to me, therefore, that the Senator from New Jersey, in his eager desire to advocate this bill, goes too far. I do not believe this money was extorted from Japan. I believe this is money that under the laws of the United States should have been covered into the Treasury; and I wish now to call attention, as I have done heretofore, to the tendency of officers of the Government to make these special funds, to have them rest in some place where they can get at them for some other purpose than the general purposes of the law. All the money should be collected and put into the Treasury for the general good. It has been the practice of this Government since its organization to set aside funds in the hands of some officer instead of covering them into the Treasury. We have twenty or thirty special funds. We have the Cherokee fund; we have the Chickasaw fund; we have the Chinese fund; we have the Japan fund; we have also the fund derived from the Geneva award, and various funds kept aside in the nature of trust funds. This should not be. By the plain mandate of the law, this money when received from Japan ought to have been covered into the Treasury of the United States; and I ask the Senator from New Jersey if he can show me any authority of law to keep it out of the Treasury? The law is mandatory.

Mr. DAWES. Does it not require a positive authority of law to cover it into the Treasury?

Mr. SHERMAN. A treaty is the highest law. Here is money received under a treaty. When money is received from an individual in the nature of taxes it is covered into the Treasury. This money was received under a treaty, and the law required it to go into the Treasury of the United States; and, when it is covered into the Treasury, it is under the seal and sanction of Congress.

Mr. DAWES. Of course the Senator from Ohio is very familiar with these things, but I call his attention to a manifest distinction between money covered into the Treasury and money that is in the Treasury outside of any specific authority. Any money covered into the Treasury is subject to all the drafts that may be made on the Treasury; money that gets into the Treasury otherwise than by a special covering of it into the Treasury is not subject to draft. It would remain there for all time as a special deposit. In one sense money put into a bank is a deposit in the bank; but money that is put in on a general deposit is one thing, and that put there as a special deposit is another. This, if it ever could have been treated as a part of the money in the Treasury, could never have been treated as covered into the Treasury subject to the drafts of the Treasury generally, except by special act of Congress.

Mr. SHERMAN. What I complain of is that this money was not covered into the Treasury in pursuance of the law. All money received by the Government of the United States from taxes, or any other source, unless the law makes it a trust fund, is by law in the Treasury, and it is made the mandatory duty of the proper officers to cover it into the Treasury. What is meant by the term "covered into the Treasury?" It means simply to put it under the bar and seal of the Treasury of the United States, so that it cannot then be paid out except in pursuance of an appropriation made by law. This money has been lying there for years. I do not blame the Secretary of State, for he has only followed the example of his predecessors and of many officers, for there has been a tendency constantly to set aside special funds to be kept in reserve. I do not say that the officers would do anything improper with the money so reserved; but when this money was collected under a treaty it ought to have been covered into the Treasury of the United States, and then we never should have had this controversy; but, it being separated and segregated as a trust fund without any law, it is now, of course, subject to some other disposition. It is kept out of the Treasury.

I do not like to hear or see my Government arraigned and the governments of other Christian nations arraigned in their intercourse with Japan merely because of a sentiment, of a desire simply to be generous and magnanimous with this country, with whom our relations are becoming important. There is a disposition to give it back this fund. We may reconcile it to our sense of propriety to do that as a matter of commercial interest as well as commercial honor, if it is deemed public policy to do so; but I do not like to hear our Government classed as a robber plundering a weak and feeble nation, nor do I believe such a position can properly be assigned to it. I think now the better way would be to cover this money into the Treasury of the United States, where it ought to have gone the very day it was received by any officer of the United States. There it would have been surrounded by the safeguards of the law and the Constitution and could only have been paid out in pursuance of appropriations made by law. It then could long since have been applied to the reduction and extinguishment of a part of our national debt.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Ohio, [Mr. THURMAN.]

Mr. SHERMAN. I call for the yeas and nays on the amendment of my colleague.

The yeas and nays were ordered.

Mr. SHERMAN. This amendment is to pay the principal sum without interest.

Mr. MAXEY. Before the vote is taken I wish to say that on this question I am paired with the absent Senator from New Jersey, [Mr. RANDOLPH.] He, if present, would vote against and I should vote for the amendment.

The question being taken by yeas and nays, resulted—yeas 18, nays 23; as follows:

YEAS—Messrs. Bogy, Cameron of Wisconsin, Caperton, Cockrell, Goldthwaite, Harvey, Hitchcock, Howe, Ingalls, Johnston, Kelly, McCreery, Norwood, Robertson, Sargent, Sherman, Wadleigh, and Withers—18.

NAYS—Messrs. Anthony, Booth, Boutwell, Bruce, Christiancy, Conkling, Cragin, Dawes, Edmunds, Ferry, Frelinghuysen, Hamilton, Hamlin, Kernan, McMillan, Mitchell, Morrill of Vermont, Morton, Spencer, Stevenson, West, Windom, and Wright—23.

ABSENT—Messrs. Alcorn, Allison, Barnum, Bayard, Burnside, Cameron of Pennsylvania, Clayton, Conover, Cooper, Davis, Dennis, Dorsey, Eaton, Gordon, Jones of Florida, Jones of Nevada, Key, Logan, McDonald, Maxey, Merrimon, Morrill of Maine, Oglesby, Paddock, Patterson, Randolph, Ransom, Saulsbury, Sharon, Thurman, Wallace, and Whyte—32.

So the amendment was rejected.

Mr. EDMUNDS. In order to take directly the sense of the Senate on this question of the duty of paying back this money to Japan, separated from all question about prize-money and bounty, I move to strike out the first section, and ask for the yeas and nays. I have no remarks to make about it.

Mr. FRELINGHUYSEN. That vote was taken.

Mr. EDMUNDS. Not as it is now stated.

Mr. FRELINGHUYSEN. But the question?

Mr. EDMUNDS. I do not remember that.

Mr. FRELINGHUYSEN. That vote has already been taken, I think, without the section being even altered.

The PRESIDENT *pro tempore*. So the Chair understands. The motion to strike out was rejected.

Mr. EDMUNDS. Has not the section been amended since?

The PRESIDENT *pro tempore*. It has not been.

Mr. EDMUNDS. Then I do not want to make the motion over again, and I do not suppose it would be in order if I did.

Mr. SARGENT. Has not the amendment which the Senator from New Jersey reported to the bill, so aptly stated this morning, been offered yet?

The PRESIDENT *pro tempore*. The Senator from New Jersey has not offered an amendment to-day.

The bill was reported to the Senate as amended.

Mr. SARGENT. I do not understand this proceeding. The chairman of the committee stated that he was going to offer certain amendments, and very carefully stated the character of them. I wanted the pleasure of voting on those amendments. I do not understand why they are not offered.

Mr. FRELINGHUYSEN. My friend from California was not in his seat when I made a statement to the Senate, which I suppose will be accepted as the reason why they are not offered. I hoped to make this bill more acceptable to the Senate—to those who have voted against it, and for whose opinion I have the highest respect; and therefore I proposed to prune the bill down, so that it might be nothing more than an act of cold, narrow justice. I proposed to deduct from the sum charges which might be made against the fund, to make that deduction when the fund is first received, so that they would carry no interest, and then to pay over the balance, with 5 per cent. simple interest, not giving to Japan the benefit of any compounding of interest, or of any exchange, or any appreciation of securities. I found, however, that that made the bill more unpalatable to those who were opposed to it, and that the amendments were not acceptable even to the friends of the bill, and for that reason I do not propose to offer them. I think that as a matter of magnanimity, of generosity, the bill is better without the amendments than with them.

Mr. EDMUNDS. What is the pending question, Mr. President?

The PRESIDENT *pro tempore*. The question is on concurring in the amendments made as in Committee of the Whole.

Mr. SHERMAN. I ask for the reading of the bill as it stands amended.

The PRESIDENT *pro tempore*. The bill will be read as amended.

The Chief Clerk read the bill as amended as in Committee of the Whole, as follows:

That the President be, and hereby is, authorized to reserve from the Japanese indemnity fund the sum of $125,000, to be used in the manner hereinafter provided; and is further authorized to pay over to the government of Japan the residue of said indemnity fund, including all accumulations of interest.

SEC. 2. That the President be authorized to ascertain the claims of the officers and crew of the United States ship Wyoming for bounty, ransom, or prize-money on account of the destruction of piratical vessels on the 16th day of July, 1863, in the Straits of Simonoseki; and also the claims of that portion of the officers and crew of the United States ship Jamestown who manned the Takiang in the bombardment of the hostile forts at the Straits of Simonoseki on the 5th, 6th, 7th, and 8th days of September, 1864; and if, in his judgment, they are found either in law or equity to be justly chargeable against this fund, then he is authorized and directed, in full satisfaction thereof, to cause the sum of $125,000, reserved from said indemnity fund, or such part thereof as, in his judgment, shall be just and equitable, to be distributed among said officers and crews, in accordance with the laws and regulations governing the distribution of prize-money in the Navy of the United States: *Provided*, That no money in said distribution shall be paid to the assignee of the mariner, but only to the mariner or his duly authorized attorney in fact, or, in case of his decease, to his legal representative, excluding any assignee: *And provided*, That if, after the satisfaction of the aforesaid claims, any part of the $125,000 reserved for this purpose shall remain unused, then he is further authorized to pay over to the Japanese government the said remainder in the manner provided in the first section of this act.

Mr. HAMILTON. I move to strike out the whole of section 2.

The PRESIDENT *pro tempore*. The first question is on concurring in the amendments made as in Committee of the Whole.

Mr. EDMUNDS. There is no objection to those amendments, I take it.

Mr. SARGENT. Let me make one remark. I listened to my friend from New Jersey while he gave the reasons for not offering his amendments which he suggested this morning. To my mind the reasons given are hardly satisfactory, and I should still like to have an opportunity to vote for the amendments.

The question of the amendment offered by the Senator from Ohio now absent [Mr. THURMAN] was decided by a very slight majority, and it may be that there are Senators who might not vote for that who would still vote for the amendments proposed by the Senator from New Jersey on the ground that they provide for simple interest at 5 per cent. from the time the money was paid to the United States, and would prefer to pay that simple interest rather than to return the whole amount, less that which is retained to reward our sailors; and that they would prefer that it should be 5 per cent. rather than none.

I am opposed to the whole bill, as is well understood. I am opposed to it both on principle and on policy. I desire to protect the Treasury so far as I can, and if I cannot prevent any of this money being paid, then I am in favor of preventing as much as possible. I voted for the amendment of the Senator from Ohio because it retained the largest amount for the Treasury. I should, if I had the opportunity, vote for the amendment of the Senator from New Jersey because it retains the next largest amount, and I should certainly vote for an amendment to reduce the amount in any way. I do so because I do not believe we have improperly received the money. I do not believe we ought to pay it back in advance of a request by the Japanese government therefor. I think there are claims very much more pressing on us than these claims, appealing more strongly to our sense of equity and to our sense of justice. We received consideration by treaty from France years and years ago, and yet we have always refused to pay the French spoliation claims, and thereby bankrupted hundreds of our own citizens, and allowed their just claims to remain unpaid. True Congress on repeated occasions recognized them, but the Executive at one time, on account of the condition of the Treasury, or for some other reason he might give, refused his assent. Sometimes one House has passed a bill to pay them, and it has not received action in the other House during the same Congress. Then again the House which had before refused or declined to pass the bill has passed it, and the other branch has not given its consent. So years have rolled away and this money has not been paid, although the right to it has been recognized as just by repeated reports to Congress, and by the action of the different branches of Congress, and there have been Presidents in the executive chair who never had an opportunity to sign such a bill who unquestionably would have done it if the opportunity had been presented, they believing in its full justice.

It seems to me it would be very much more magnanimous and just for us to attend to that matter, to apply this money to the payment of those claims, and whatever additional amount is necessary, rather than to engage upon this Quixotic, allow me to say, contest with other nations, whether we first shall carry back money of which we, in connection with them, as we say by our action, have robbed Japan.

I am opposed to it because it casts a reflection upon other nations who acted with us. I am opposed to it because the bill itself confesses that there were meritorious services rendered by our sailors in Japanese waters, the necessity for which was raised by the acts of Japan and by those whom they should control and those for whom they are responsible if they do not control. Our sailors were compelled to go there and protect our commerce and the honor of our flag and vindicate our national right; and for the insult to our flag which they redressed or punished who can estimate the damage? Who can say that one million or two million is too great to cover up a spot like that? If there were an insult to the flag, an interruption of our commerce, and annoyances such as one nation may inflict upon another, then the reparation which was made and which was agreed to by the United States and by the other powers and by Japan cannot be held to have been too great.

Therefore I am opposed to the bill, both in principle and in policy. I am opposed to it because it is contrary to our own proceedings heretofore. If this is demanded of our equity, there are many instances in our history where that equity is more strongly appealed to. We treated with ruthless hands the Indian tribes which were nations upon this continent from time immemorial, when, in spite of the strongest equity presented by themselves and considerations for their improvement in the arts of civilized life, we drove the Cherokees from Georgia and practically confiscated their lands, and have continued the same course down to the time when we just now have invaded the Black Hills to rob the Sioux of the minerals which are in their domain. During all these years we have used with ruthless hands the Indians, have robbed them of their territory, and meanly doled out the compensation made for them. If our equity, our sense of justice, is appealed to, here is a field where it may have ample exercise. If the Treasury of the United States is to be depleted in order that we may do justice to those whom we have oppressed heretofore, they being weak and we being strong, let us make some ample reparation to the Indian tribes who under our fell influence have been wasting from us and have had all opportunities to rise in the scale of civilization cut off.

I might allude to other instances in our history where we have stolidly and steadily refused to pay the money which we as honestly owed as if it had been determined by the judgment of a court. I could give instances of moneys advanced for the United States raising both legal and equitable considerations which Congress studiously has refused either to recognize or to pay. I will not take up the time of the Senate by referring to these matters, but I do say that this amount of $1,400,000 which the Senator who reports the bill is now willing shall all go to Japan would lessen materially the burdens of the people. I think it is well for us to consider that we are trustees for the people and should look to their direct benefit. Before we are generous and lavish to others we should be just to our own people. We should remember that the tax-collector visits every door; that not an article goes upon our table or upon our backs or those of our families but is taxed; that a great national debt and an expensive Government compel these things; that in our appropriation bills we cut down discretionary items to the lowest point. Still the burden is very heavy upon the people and must continue to be until our debt is paid off. Yet we can coolly take a million and a half of money in gold out of the Treasury of the United States upon some fantastic idea that one nation which we select, having dealt with a rough hand toward many, is entitled to receive from us this amount because we were robbers and thieves. That is the theory of the bill, and I say it is unjust to our own people to take means which should relieve them of taxation and send it elsewhere unless we are prepared to confess our sins from the start, unless we are prepared now to make a clean breast, unless we are ready to say *mea culpa;* we have been robbers heretofore but we intend now, in view of a judgment which is likely to overtake us if we persist in our sins, to confess them and make reparation to Mexico, to the Indians, and to all those to whom we owe just and honest debts which for these years we have refused to pay.

I really hope that I shall have an opportunity to vote for an amendment cutting down this bill. If not, the last resource which is left to me and others who think with me is to vote against the bill entirely. My impression is that with a full vote of the Senate the bill could not pass. Upon the proposition to strike out the first section the other day, there was only a majority of four against it, and Senators have had time to think of it since, and have had time to remember that the people are burdened and that they have a right to require that we shall be just to them and lift their burdens before we are lavish with their money in sending it abroad.

Mr. MORTON. Mr. President, it seems to me that the proposition embraced in this bill is an extremely plain one, and is not to be answered by saying that we have done wrong to others in other directions and do not propose to redress those wrongs. The simple fact is that we have taken from Japan a large sum of money for which we have given no consideration, for which we have suffered no loss, for which we have endured no wrong. We have gotten over a million dollars for nothing, absolutely for nothing. It is simply money taken by the strong hand, in which there is neither justice, equity, nor reason; and now we are asked to pay it back to a nation that is trying to become civilized and to take her place in the family of nations—a nation full of friendship, that desires to cultivate amicable and commercial relations with us. I believe upon every principle of natural justice we ought to refund this money, first deducting expenses that we have incurred or those debts which we ought to pay to our officers and sailors.

Mr. SARGENT. If we got it for nothing, we should pay it all back.

Mr. MORTON. When the damages which have been sustained by our commerce have been repaired and made whole, if we have suffered nothing and all our sailors who have incurred damages and have rendered services are paid for them fully, what right have we to retain a single dollar beyond that? What argument is it to say that we have robbed the Indians? What argument is it to say that we have robbed Mexico? What argument is it to say that we have plundered anybody else? Is one wrong to justify another wrong? Japan was in the hands of three or four nations. She simply paid what they demanded, and we came in and divided the plunder; and we have taken, as has been said before, perhaps over $1,200,000 for

nothing over and above all these expenses. As a Christian nation, as a civilized nation, can we afford to do it? It is a wrong that will rest in the minds of the Japanese and will rankle through all time, while if we come forward and restore it, it will give to us a claim upon the friendship of Japan that nothing else will give. As long as we keep this money, the people of Japan will never cease to forget that we have robbed her, absolutely robbed her, by the strong hand, of over $1,200,000.

Mr. WITHERS. Mr. President, I would not have detained the Senate by any remarks upon the bill before us, but would have contented myself with quietly voting against it, had it not been for the allegations which have been made and repeated in this body that we have no right to this money, that it is unclean, that we have ruthlessly robbed the people of Japan of it by reason of our superior strength, and that our claim to it is founded in neither justice, nor reason, nor equity. I do not desire without a word of explanation to occupy the position here of voting for a bill which can be properly susceptible of such severe strictures.

In the first place, have the people of Japan ever presented themselves here and made such allegations as to the action of the American Government in connection with this matter? Have they ever asked us to restore this money? Have they ever presented any claims to us to show that this money is theirs beyond a fair equivalent for the damage which we have suffered at their hands? Have they ever exhibited in any manner, shape, or form, through the recognized action of their officials, any consciousness of the fact that they have any claim upon our Government for the rendition of this money?

Mr. INGALLS. They have a minister resident here.

Mr. WITHERS. They have a minister resident here; they are represented in our diplomatic circle; and yet we hear of no movement from Japan, either through the minister resident here or from our accredited agents abroad, asking that this money should be returned.

Mr. FRELINGHUYSEN. If my friend will permit me, I think he has fallen into an error in intimating that we criticise this Government. I do not understand that the United States ever made any demand that Japan should pay us $785,000 in gold. I have examined the diplomatic correspondence pretty carefully and I have never discovered any such demand. As I understand the history of the affair, it is this: When England, France, and the Netherlands determined to make this attack upon the batteries they applied to Mr. Pruyn, our minister, and told him that it was very desirable to have the moral support of the United States in that attack. I remember the language: that while the governments understood the relations of this country the people did not. Therefore he hired the Takiang, put the crew of the Jamestown into it and joined in that expedition, and then joined with those powers in this treaty.

The statement made by the Senator from Ohio [Mr. SHERMAN] was entirely correct, however, that after the treaty was made, inasmuch as Congress did not remit the third payment, the Secretary of State, as he was bound, made demand of Japan that the payment be made through our minister there, Mr. Bingham. He delayed for some time making the demand for the third payment; but, as Congress took no action, he did, as instructed by the Secretary of State, make the demand. Therefore my friend from Virginia is wrong in saying that while this is unclean money, as I believe, it is dishonest money for us to hold. I do not charge the Government of the United States with anything, because this was a matter which occurred entirely without their direction. Our minister made this treaty and sent it to us, and Congress has been delayed in its action. Six committees have reported that we ought not to have received these other payments; but, because of the delay, the executive department has gone on and collected it. Now the thing for us to do is to pay it back.

Mr. WITHERS. I have listened with a great deal of patience to the explanation of the distinguished Senator from New Jersey.

Mr. FRELINGHUYSEN. I am much obliged to my friend for yielding to me.

Mr. WITHERS. But it entirely fails to satisfy me that the report of the committee and the arguments which have been used to support this measure are not a direct attack upon the Government and upon its action in this matter. I hold that the Government of the United States is fully responsible for the retention of this indemnity, not only by the fact which has been quoted, and which the Senator from New Jersey very speedily saw would substantiate the allegation that they had demanded in explicit terms the payment of the third portion of the indemnity fund, but at the time this indemnity was fixed and agreed upon we had a diplomatic representative in Japan. He himself acted conjointly with the commissioners of other powers. This sum was agreed upon. The proportion allotted to the United States was agreed upon. The report of this agreement was made to the Department of State, and the Secretary of State, Mr. Seward, and the Senate of the United States, by accepting the result of that apportionment, made themselves responsible to all intents and purposes, as far as any government could make itself responsible, for the action of its accredited agents abroad.

I take issue with the distinguished Senator from New Jersey. I repeat my allegation that if the Empire of Japan had presented themselves here and claimed that this money had been improperly paid, if they believed that the damages in which they were mulcted were excessive, if they asked us to return this money because we had exacted from them far more than the amount of damage we sustained would justify, this plea would come before us with additional force. But how stand the facts in the case? The Empire of Japan is not represented on this floor at all. It does not come before us in the bill asking the return of this indemnity, but the whole thing has been concocted in a different quarter. There are certain persons who are presumed to be interested in certain educational enterprises which have been inaugurated in Japan. They come before us with their minds filled with holy horror at the outrage and wrong which have been perpetrated upon the Empire of Japan. They ask us to return this money in order that they themselves may be the beneficiaries.

I deny, in the second place, that this amount which we have received was defined to be merely indemnity for losses actually sustained. The able and exhaustive statement of the distinguished Senator from Vermont, [Mr. EDMUNDS,] when this question was up for consideration before, established in my mind conclusively the fact that the Tycoon of Japan had prevaricated, in numerous instances avoiding the responsibility for the outrages which had been practiced by the daimio in that strait with the almost unpronounceable name. When this daimio was finally conquered and brought to terms, he presented the original papers showing that the rulers of Japan, as he asserted himself, had given him orders to fire upon vessels passing through those straits. The money was given not merely for remuneration for losses sustained by our vessels of war and for expense to which the Government was subjected in putting down this resistance to commercial treaties, but there is such a thing as punitive damages, exemplary damages. It was as a punitive measure, not merely remunerative, that this sum was fixed upon. It was designed as a punishment to the Empire of Japan for a violation of her treaty obligations, and it was made exemplary, as I understand it, for that very purpose.

The allegation that this amount was extorted by the hand of violence, and that the people of Japan were ruthlessly robbed by the gentleman who fixed this sum as a consideration to which we can equitably lay claim, I think is hardly justifiable from the facts. For a violation of her treaty stipulations, for attempting to fire upon the vessels of other nations passing through this strait, through one of her high officials, she was held to be responsible not merely for the actual damage sustained by this firing, not merely for the actual expenses incurred in fitting out a military expedition to punish and suppress this outrage, but she was punished in order that it might afford a warning to all other nations that these treaty stipulations cannot be violated with impunity and that such acts or violations would not be countenanced by the United States.

Mr. THURMAN. If my friend will allow me an interruption for one moment, I think if he will look into the reports upon this bill—I do not at this moment remember which one it is—he will find this state of facts: that the amount of indemnity demanded of Japan was suggested by the French minister, the object being, if possible, to get Japan to make a treaty which would open certain other ports to the Christian powers; and this sum of indemnity was purposely put much beyond what was necessary to indemnify all concerned in the hope that rather than pay so large a sum Japan would open her ports. I think it is stated in the correspondence with the Japanese government that the object was not money which we wanted but free trade with that country. If I am mistaken about that, I would thank some Senator to correct me.

Mr. MORTON. It was given as indemnity for losses.

Mr. THURMAN. But the sum was suggested, I think, with a view to the opening of certain ports.

Mr. FRELINGHUYSEN. It is expressed in the treaty itself that the indemnity is to be remitted on their opening certain ports.

Mr. THURMAN. I know that was the idea.

Mr. WITHERS. It makes very little difference in my mind as to what was the particular motive which influenced those powers to fix upon the sum of $3,000,000, which I read was the amount of indemnity fixed by them. I care not what was the motive which influenced them, whether it was indemnity for actual losses sustained, whether it was a punitive measure to pay for an insult offered to our flag and the flags of other nations, or whether it was designed to secure the opening of other ports in Japan for foreign trade. Suffice it for me that the official representatives of the United States abroad sanctioned the amount which had thus been fixed upon; that through every official mode of recognition possible under such circumstances the Government did indorse the action of our minister and of the Secretary of State in the premises.

I fully concur with what has been said by the Senator from Ohio [Mr. SHERMAN] and the Senator from California [Mr. SARGENT] upon the subject of this money being held as a special trust. The Senator from Massachusetts [Mr. DAWES] advocated this idea, that this money was different from any other money; that it was reserved as a special trust fund; that it could never be regarded, therefore, as properly belonging to the United States Government at all, but was reserved as a special fund subject to particular regulations, and could not be expended as money which was regularly in the Treasury. That may be all true; but I concur with the sentiments of the distinguished chairman of the Finance Committee in saying that this ought not to be the case.

Mr. SHERMAN. If my friend will allow me at this point I should like to read the law. As a matter of course, having been suddenly called upon, I could not turn to the statute at once.

Mr. WITHERS. I would be very glad to have my views and the Senator's strengthened by a citation of the authority.

Mr. SHERMAN. There is no doubt at all that the attempted use of this money in the nature of a fund has created all this difficulty. I call the attention of the Senator from New Jersey to the law of the United States, grouped in the Revised Statutes. He will see that the law is stronger even than I stated it. Section 3617, on page 717, provides that—

> The gross amount of all moneys received, from whatever source, for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

That is the law of August 6, 1846. The next section excepts all proceeds of sales of old material, condemned stores, supplies, &c., which are set aside as a special fund for a special purpose, and then provides that—

> Every officer or agent who neglects or refuses to comply with the provisions of section 3617—

The one I have already read—

> shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld to which he might otherwise be entitled.

Then there is still another statute stronger yet. I will read the law of 1857, section 3621:

> Every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, and take his receipt for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury.

This applies to all officers and to all money. Then there is still another section, primitive in its character. Section 3639 provides that—

> The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character are required to keep safely, without loaning, using, depositing in bank, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and, when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law or by any regulation of the Treasury Department made in conformity to law.

That is the law of 1820. It is plainly manifest that money received under a treaty is money of the United States and ought to have been covered into the Treasury. In that case no interest could accrue upon it, and therefore there is no pretense or ground for the claim of interest, because, if the law had been complied with, it would have been in the Treasury, subject to appropriations made by law.

Mr. WITHERS. Mr. President, after the quotation from the Revised Statutes to which we have just listened, I scarcely think that it will be possible to find a loop upon which to hang a doubt as to the duty of the officials of the United States with regard to the proper treatment of this money. There was no reason for reserving it as a sacred fund. It was an unclean one perhaps, but, for the life of me, I cannot see how this particular fund is more unclean than any other, except in the general term that it consists of "filthy lucre." It is clear, from the authorities which have been just read, that it was the duty of the officials of the Government to put this money into the Treasury of the United States where it would form a part of the common treasure of this Government. The reason why it was not thus treated, it seems from what I can gather from the debate, was that from some custom or regulation or ruling of the State Department dating back to some period in the remote past, "to which the memory of man runneth not to the contrary," they had been thus accustomed to treat such moneys. I do not think such precedents and such customs should be permitted to override the plain letter of the law. I believe the Secretary of State and all other Government officials should be required to conform to law in every particular.

We are told by the Senator from Indiana that this money has been extorted from the Japanese government, and it has been reiterated by nearly every speaker who has advocated the passage of the bill that therefore, because we have wrested it from them by the strong hand of violence, it ought to be returned. The distinguished Senator from Indiana very properly quoted the old adage that two wrongs never made a right; but he attempts to make this case an exception to the general rule which has prevailed in this country with regard to all similar difficulties. We must remember that when differences between nations are subject-matters of negotiation, we deal in honeyed phrases and ambiguous terms; but when these fail to bring the opposing nations to a proper sense of propriety and of right, the silver tongue of diplomacy is laid aside and the mailed hand of war intervenes. They know little of diplomacy then. What is violence? Military power is a tyrannical and an arbitrary power, and it is that power to which nations resort when all other expedients have failed in asserting their proper rights. It was this mailed hand of war that wrested from Mexico, California, New Mexico, and all those fertile and beautiful provinces of the West, which certainly are worth far more than any expense to which this nation was subjected in carrying on that war, or any loss or damage to particular citizens, from which it directly resulted. By parity of reasoning we ought now to have an accurate computation made of the value to this country of the mines of California and Nevada, or gravely propose to return these beautiful and wealthy provinces to Mexico, because we wrung them from her by the strong hand of power when we had her down and our foot upon her neck. The argument is just as potent and valid in the one case as in the other, and if carried out to its legitimate conclusion we should lose that fairest jewel in the diadem of the sisterhood of States by reason of wrong and violence perpetrated when it was wrested from Mexico and incorporated as a component part of this Government.

For these reasons, very briefly given, I shall oppose the passage of this bill. I shall vote against it, seeing that we have done nothing in this case but what has been done time and again by this and every other nation, in exacting indemnity for loss and subjecting other countries to penal process for the wrongs which they have done us and the indignities which they have offered to our flag. I shall vote against the bill for the additional reason that the Empire of Japan has never asked for a return of this money, but other parties are moving in it in the plentitude of their benevolence. I think it is time enough to return the money to the Empire of Japan when that empire asks that it may be thus returned.

Mr. THURMAN. Will my friend allow me to call his attention to one point? He has stated the reasons why he would vote against the bill. I submit to him that the reasons which he has given do not touch the second section of the bill at all, but only relate to the first section, which proposes to return a certain sum of money to Japan. His reasons do not touch the question whether or no for their meritorious services our officers of the Navy ought to receive what the second section provides to give them in strict consonance with more than a dozen—I was going to say more than twenty—examples in the history of the United States.

Mr. WITHERS. It is true that the second section makes provision for the payment of prize-money under certain conditions; but it is so small a matter comparatively, taken in connection with the provisions of the first section, that it had really passed from my consideration at the time I was discussing the bill on its merits. While I will not say that I shall vote against the second section, I think that very strong reasons might be urged why we should not at present pay it, because prize-moneys are not usually paid from such sources.

Mr. MORTON. As I understand the logic of my friend from Virginia, it is that inasmuch as Japan has not asked directly to have this money refunded which we obtained from it for nothing, without consideration, and by the strong hand, therefore we are authorized to keep it.

Mr. WITHERS. The Senator does not state my position correctly. If he will pardon me for the interruption, he has erroneously stated it. In attempting to state my position he says that I oppose the bill because Japan has not asked the rendition of this money which we have wrested from her without consideration by the strong hand of power, without any justice or equity. That is not my position.

Mr. MORTON. I understood the Senator's reason was because Japan had not asked the return of this money.

Mr. WITHERS. Yes, so far the Senator states my position correctly.

Mr. MORTON. That is just the point I was going to meet, that Japan had not asked it, and therefore we ought not to return it. Japan paid what she was compelled to pay at the mouth of the cannon. She had no choice in the matter. She felt the injustice of paying a large sum for nothing, and the conscience of all mankind must recognize that; but Japan, weak as she is, has some little pride, and does not go on her knees to these strong nations, asking them to refund what she by treaty agreed to pay; and therefore, because she has not thus humiliated herself, we are justified in keeping this money of which we have plundered her! That is the force of my friend's argument. The strong man knocks the weak one down, takes his pocket-book, and when he is asked by somebody else to return it, he says, "I am authorized to keep this; the man whom I robbed has never asked me to return it to him; he has some pride or something in the way; he has never asked me to refund the plunder; therefore I am authorized to keep it." This is a stronger case than that. A weak nation has agreed to pay this extortion, and because she does not ask the strong nations to return it to her, they are justified in keeping it! I do not recognize that logic at all, Mr. President.

But I come now to the argument of my friend. He concedes that, so far as we are concerned, we have sustained no injury; no ship was fired into for this money on our part; we sustained no loss under heaven. The firing was on the ships of other nations, not ours. We joined in the bombardment; but we sustained no loss. No American ship was fired into. My friend says the payment was in the nature of punishment; I suppose something in the nature of impeachment!

Mr. DAWES. I should like to correct the statement if the Senator will permit me. We did not join in it; we only gave it our moral support.

Mr. MORTON. We did not even fire a gun.

Mr. DAWES. Sharing the plunder, however.

Mr. MORTON. That makes the case still stronger. We did not even spend any gunpowder. It was all grab, all plunder. If we had wasted a few shot and shell, there might have been a little better argument; but nothing of the sort occurred, according to my friend

from Massachusetts. I am not so familiar with this transaction now as I once was.

This was punishment! If the Senator will look at the treaty, he will see it was not punishment at all. What were we to punish her for? Any wrong on us? Not at all. She had done nothing to us; we had no cause of punishment as a nation so far as we were concerned. The treaty says that if she will open her ports the money shall be remitted. It was to compel her to open her ports. Japan had her own policy, a policy of hundreds of years' standing, a policy of exclusion. We thought it was against our interest as a commercial nation; but she had a right to her policy; she was not bound to trade with anybody unless she wanted to do so. But we wanted her to open her ports and let us trade. We said to her: "You cannot have your own policy; you cannot pursue your own pleasure; we will compel you to pay this enormous sum; but if you will abandon your time-honored policy and throw open your ports and let us trade with you and extend to you our civilization and Christianity"—just as we did to the Indians—"we will remit the money." That is what the treaty says.

Mr. WITHERS. Will the Senator read the treaty?

Mr. MORTON. There were no past offenses as far as we were concerned.

Mr. WITHERS. They fired on a vessel of ours.

Mr. MORTON. They fired on a vessel, but that firing was a year before, and was paid for and the whole thing settled. But afterward she fired on the ships of other nations.

Mr. FRELINGHUYSEN. In 1863 the Pembroke, an American steamer, was fired into by the rebel batteries. Then the Wyoming made an attack upon the vessels of Japan in those waters, and, as the diplomatic correspondence shows, punished them by sending a ball through the boiler of one, which destroyed forty men, and by sinking the other, thereby doing a damage of $350,000, destroying that much of their property; and then Japan paid to a cent all that was demanded of her for that transaction, besides. A year afterward, without any American commerce that ever I have been informed of, or that the diplomatic correspondence shows, being fired into at all, Mr. Pruyn employed the Takiang to join with the English, French, and Netherlands' ships in their attack upon these batteries. The minister of England had expressed his opinion very decidedly that no such attack ought to be made; but the dispatch did not reach there until the allied powers had made the attack.

Mr. MORTON. There was a wrong done which was fully indemnified. Revenge was taken in the first place by the destruction of ships and men, and this wrong was paid for in money, and after that we suffered no wrong. We after that took this money for nothing. I think that proposition is not to be changed at all. The third section of the treaty provides:

Inasmuch as the receipt of money has never been the object of the said powers—

Why not? Because they had lost nothing. If damage had been done the receipt of money would be an object always to repair the damage—

but the establishment of better relations with Japan, and the desire to place these on a more satisfactory and mutually advantageous footing is still the leading object in view, therefore, if His Majesty the Tycoon wishes to offer, in lieu of payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Simonoseki, or some other eligible port in the inland sea——

Mr. WITHERS. As material compensation for losses sustained?

Mr. MORTON. Yes, sir; but not to us; we had not sustained any.

Mr. WITHERS. Is not that signed by all the commissioners, ours included?

Mr. MORTON. Certainly; but they say the receipt of money never was the object; it is "better relations." In other words, there is no damage to be repaired, and if there was damage it was not to us, or so far as we are concerned. Some French ship might have been fired into, but not ours. What right had we to mix ourselves in it and become a party to the quarrel? It was enough for us to do to take care of our own quarrels.

Therefore, if His Majesty the Tycoon wishes to offer, in lieu of payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Simonoseki, or some other eligible port in the inland sea, it shall be at the option of the said foreign governments to accept the same, or insist on the payment of the indemnity in money, under the conditions above stipulated.

There is a construction of the whole purpose. This proceeding is very much like that of the English government about the admission of opium into China. The Chinese people were destroying themselves by the use of opium. The government issued a decree forbidding the importation of opium. It interfered with English trade. England battered down her forts and compelled her to admit English opium, by which she destroyed her people. If Japan says she does not want to trade with the world, she has a right to say so if she chooses; but we say to her, "We compel you to pay this money unless you open your ports"—a large sum for nothing. I repeat, therefore, my first remark to my friend from Virginia that this money is simply plunder, simply robbery by the strong hand.

Mr. WITHERS. I know very well that the distinguished Senator from Indiana would abide by his first declaration. I never supposed he would recede from it an inch, knowing his tenacity of purpose so well as I do; but I am a little obstinate myself, and would merely re-assert my position. But that is not the way to meet the question. I propose to call the attention of the distinguished Senator to one or two inconsistencies, if he will pardon me for thus characterizing them, in his argument. In the first place, he asserts that the amount which we received far exceeded any damage that we sustained; and that if any party sustained damage it was not we; and he goes on then to read from the treaty itself, which has attached to it the sign-manual of our diplomatic agent in Japan, and in which it is asserted that this is a consideration for losses sustained. That we had not sustained any loss in this last and final attack may be true; but it does not at all involve the position I took originally, that this was a punitive measure designed to bring the government of Japan to a proper consideration of the rights of the United States and other foreign nations into which she had entered into treaty relations. In 1863 an American merchant-ship was fired into. For this the Senator says that ample reparation was made by the bombardment and blowing up of several steam-vessels. That may be true; we may have received remuneration for the amount of damage actually sustained at that time; but how were the facts? These representatives of the great powers had, each of them or one or more of them, some of their vessels fired into, and, inasmuch as this was an alliance offensive and defensive of these parties against Japan, we were just as much bound under the law of nations to aid them in redressing this grievance as if the outrage had been on a vessel of our own Navy.

I here would suggest to the distinguished Senator that it is too late now to go back behind the award of that commission and attempt to show that the Government of the United States, as it is claimed here, acted as a ruthless robber in extorting this amount from this feeble nation, because the proper time to have made that issue was when our diplomatic agent reported the decision of this commission, and when it came up for consideration at our State Department, and when the report from the Secretary of State was sent to the Senate for confirmation and the Senate confirmed the treaty in every letter and portion of it. Then was the time to have made the issue that it was wrong to have extorted this money from this weak nation. Then it was that we ought to have been shown that we had made an unjust claim and that here was unclean money which would contaminate and defile every other dollar in the Treasury with which it was put. But after we have indorsed by our official action the conduct of our diplomatic representative, after the Secretary of State has given his sanction to this treaty, and after the Senate of the United States have in solemn session given their indorsement to the whole procedure, I submit that it is too late now to raise the question of the consideration which underlay the award made by the commissioners.

Mr. DAWES. It seems to me that it is late for us to raise the question. We are bound no doubt by the official action that the Senator from Virginia has brought to our notice; and cannot set up that we had been wronged or anything of that kind; but this bill does not go on that ground at all. It admits that the United States committed itself——

Mr. WITHERS. With the Senator's permission I will state that I did not allude to the bill itself as taking that ground. I was replying to the position of the Senator from Indiana.

Mr. DAWES. The whole proceeding goes on the ground that the United States, in all its departments and officers, committed itself to this thing, and now finds that it committed itself to a great wrong. The fact that our minister in Japan recommended this proceeding, that our Secretary of State indorsed it, that the Senate of the United States, following these indorsements, committed themselves in the form of a treaty, is not the question raised by this bill. If we had gone on step by step very many steps further, if there were any more steps to be taken, it would not alter the character of the first step. It is the character of the first step that is called in question, and that character is not changed at all by the fact that very many officials, following that first step, indorsed it. Is there such a thing as undoing what we have done? The Senator from Virginia I know does not mean to say that, because we have done a thing, therefore we will not ever look at the character of an act we have done to see whether that is a proper act. I know the Senator does not mean that; but somehow it seems to me the Senator conveys the idea that because we have multiplied approvals of this act we have thereby changed the character of the act itself.

I have been utterly amazed that anybody should set up that by the law of nations these nations had a right to complain of Japan because she closed those straits of which we have heard so often. As I look at the map, there would have been just as much propriety in Japan insisting that she had a right to command Hampton Roads, or Lake Champlain, or Lake Michigan. As it looks to me on the map, here was an inland water within the government of Japan, as much as those bodies of water to which I allude are inland waters of the United States; and I am amazed when I look at it that the Government of the United States could join with those other governments in forcing at the cannon's mouth admission into those waters. I know that it contributed to their commerce. Would it not contribute to the commerce of the other nations of the world if they could plow our waters?

Mr. WITHERS. Will the Senator permit me a moment? I ask him to address his remarks to this point: The analogy does not hold where by treaty they had agreed to open the navigation of this strait.

Mr. DAWES. By treaty! They had just such a treaty as this, just such a sort of procedure as Tom Corwin, if I may be allowed to use the term, used to describe so graphically the Mexican war; it was Christianizing the Mexicans, with the Bible in one hand and the revolver in the other!

Mr. FRELINGHUYSEN. I think the Senator from Virginia is in error. They had by treaty agreed to open certain ports, but those ports were not reached through these straits and there was no treaty to open these straits.

Mr. DAWES. It was a short way around; a short way of reaching the ports.

Mr. WITHERS. I have not the treaty before me, but it has been repeatedly stated in the debate that the free navigation of the strait was agreed upon in the treaty with Japan.

Mr. FRELINGHUYSEN. Not a treaty before this, I think.

Mr. BOGY. I will state to the Senator from Massachusetts, if he will pardon me, that no treaty had been made opening the strait he is now speaking of; but it is claimed that by the law of nations well known it was a sea open to the trade and commerce of the world, not by treaty, but by the law of nations; not like Lake Michigan and Lake Champlain, but an open sea.

Mr. DAWES. That was the claim unquestionably.

Mr. FRELINGHUYSEN. That is a fact subject of discussion.

Mr. DAWES. But put it on the map by the side of Lake Michigan, or Hampton Roads, or Lake Champlain, and it dwindles by the side of them.

Mr. EDMUNDS. Except that it is connected with two oceans.

Mr. DAWES. How connected with two oceans? Not in any such sense as makes it a highway of nations. It was a very convenient roadstead, it was a very convenient course to take, safer than it was to go around, as if there were a ship-canal across Cape Cod, and because it was inconvenient to go around into Buzzard's Bay, around the cape there, the nations of the earth could come straight across! That is the way it strikes me, and I say it amazes me to think that we should with ships of war, seventeen ships of war of different nations going out on this void of civilization, as Mr. Corwin said, at the cannon's mouth, claim the right to go through, out of which grew this demand that the nations made upon Japan and upon China that they should cease the exclusive right that they asserted over their own waters and over their own ports. The time came when they were obliged to yield to this demand, and having yielded to it in part the nations became more aggressive in these demands, and here were three nations undertaking this work, and not quite satisfied with the character of the work they wanted, in their own language, (I use their own language,) "the moral support of the United States," and the United States chartered a merchant-vessel and put their flag on that merchant-vessel, and sent it up there to overlook this Christianizing and civilizing mission of those three nations. They got together when they had the Japanese nation at their feet to see what amount they should make it pay for being Christianized and civilized in this summary manner. Then our minister and the British minister, I think, or he and the minister of one of the powers, got together and thought the sum ought to be $2,000,000; that two millions would be about sufficient; but when they came to confer again they said, in substance, and what will go down into history as the true interpretation of it, that they could just as well get three millions as two, and it would divide easier. That is what goes into history as being the proper interpretation of it, and that is why the Secretary of State, in the years past, when it came into his hands, instead of paying it into the Treasury of the United States, where it would disappear with the other receipts of the Government, addressed a letter to Congress, pointing out the impropriety of our retaining this money, and year after year it came from the official representing this nation that this fund which has so been kept was not proper money to go into the Treasury; it was in too much of a sense blood-money.

Mr. FRELINGHUYSEN. My friend said he could not give the exact language when they changed the two millions to three millions. I will give it. Mr. Pruyn, in his letter to Mr. Stewart, in 1864, said:

I assented the more readily to the proposition of the envoy of His Imperial Majesty the Emperor of France to fix the amount at $3,000,000, because I thought it more likely to lead to the substitution of a port as a material compensation for the expenses of the expedition.

Mr. DAWES. Yes, "we will put an exorbitant sum in our demand, and perhaps they will buy their peace rather than pay it;" and thus see how we proposed to them the opportunity to buy that peace; see the language to which our minister put his sign-manual and the ministers of the other governments put theirs. I ask the Senator from Virginia to listen to this language:

Inasmuch as the receipt of money has never been the object of the said powers—

O, no—

but the establisment of better relations with Japan—

That is the sublime mission of these governments.

Mr. WITHERS. Go on; "and"—

Mr. DAWES—

and the desire to place these—

That is these relations—

on a more satisfactory and mutually advantageous footing is still the leading object in view, therefore, if His Majesty the Tycoon wishes to offer, in lieu of payment of the sum claimed, and as a material compensation for loss and injury sustained—

If he wishes to offer instead of the $3,000,000—

the opening of Simonoseki, or some other eligible port in the inland sea—

If he wishes to offer it—

it shall be at the option of the said foreign governments to accept the same, or insist on the payment of the indemnity in money, under the conditions above stipulated.

That is to say, we will put $3,000,000 on them and then we will make them believe that they can avoid its payment by opening the port; and we put it into the treaty that if they offer the port, after all it shall be at our option whether we will take it or not! As the poor Indian said "that is not saying turkey a single once" to Japan. Now suppose she had offered the port; they had got the three million in their grasp, and they say, "O, well, if you do not want to pay three million then open this port;" and when she offers to open the port, they say, "Well, we guess on the whole we will not take the opening of the port."

Mr. WITHERS. Suppose they had accepted and agreed to open this port?

Mr. DAWES. Suppose who had?

Mr. WITHERS. Suppose the Tycoon of Japan had accepted the alternative therein offered, and opened the port, and the representatives of the powers had agreed to accept that as ample restitution for all the wrongs done and injuries sustained, would the Senator now be found advocating the closure of that port?

Mr. DAWES. They did not agree to it.

Mr. WITHERS. Suppose they had done so; they had the option.

Mr. DAWES. What I say is that they pretended to agree, when they did not.

Mr. WITHERS. But if they had agreed, would the Senator now advocate the closing of the port? because ethically the same argument would apply.

Mr. DAWES. I have as much trouble to-day as I can attend to in dealing with the case before us.

Mr. WITHERS. I agree with you.

Mr. DAWES. I rose simply to call the attention of the Senator from Virginia to what seemed to me to be the conclusion that would be naturally drawn from his remarks, so wide from what I knew he intended; for I knew that he intended to be entirely just. I do not see how it made this proceeding just at all or changed its character in the least because through successive steps it had received the sanction of our Government. Go back to the origin of it, straighten it, and make it plain English, and spread it out on the map beside these inland waters of Japan, and history will record in the margin of this record that this was another of the many instances where the weak have been compelled to yield to the strong and where principles have gone into the laws of nations, the origin of which has been that might makes right. If this money had gone into the Treasury straightway from the hands of our minister as we received it from Japan, I should have despaired of ever justice being done to Japan in this matter. But the conscience of the nation has kept it from going there. It seems so much like "the thirty pieces of silver," that there has been no time since it came into our hands when it could be got into the Treasury by any process. I once engaged myself in the advocacy of a resolution to cover it into the Treasury of the United States, because at that time I saw that it was to be plundered by those who were trumping up claims against Japan and because I did not then quite understand as I do now the real merit of this case; but from the hour I did understand it I have endeavored to keep it; and since those who were out with those claims have left it for a period, I have been strengthened every hour in the belief that it would do good to our name and our credit among the nations whose commerce with us and whose trade with us and whose relations with us in every respect are growing more and more important every day, if we should feel that it was incumbent upon us to do absolute justice. That is why I felt so this morning at the idea that it was to be divided. I would rather see the bill defeated than to see anything short of full and ample justice done in this case; and unless we can do that, we had better do nothing. I do not fear as long as the fund is in the custody of the Secretary of State but that sooner or later it will go where the dictates of justice require that it should go. The only haste I have in this matter is the fear that some such claim as that contained in the second section of this bill will succeed and that other claims, encouraged by the success that may await it, would, if that section should be attached to this bill and become a law, spring up thick enough and fast enough until the whole fund itself would be diminished below even the original principal, so that we should have no trouble about the accumulations of interest or accretions to the general fund.

Let us decide whether this is our money in the forum of fair and honest dealing. If it is, as the Senator from Vermont believes, let us say no more about it and put it into the Treasury. If it does not belong to us in that forum, then the sooner we put it where it does belong the better for our interests, the better for our material interests, and the better for our future relations with that nation.

Mr. HAMILTON. Mr. President, I renew my motion to strike out the second section of the bill.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The pending question is on agreeing to the amendments made as in Committee of the Whole. When these are acted upon, the motion of the Senator from Texas will be in order.

Mr. KELLY. Is it in order now to offer an amendment to the second section?

The PRESIDING OFFICER. The Chair would state to the Senator from Oregon that the pending question is on concurring in the amendments made as in Committee of the Whole. After that question is disposed of the bill will be open to amendment.

Mr. KELLY. Very good. I shall offer an amendment after that.

Mr. BOGY. I merely wish to say a few words in relation to this treaty. The Senator from Massachusetts and also the Senator from Indiana have read only a portion of the treaty. If there be anything at all in a treaty, this money was not obtained from Japan as a means to compel that country to open one or more ports for the purpose of carrying on our trade, but was an amount fixed as a just indemnity for past wrongs. If the treaty be not founded in what really these commissioners believed to be true, that is the end of the whole thing; but presuming that the commissioners, not only the minister who represented this country but the ministers who represented the other three powers, were men of honor, the treaty means very different from what has been stated both by the Senator from Indiana and the Senator from Massachusetts.

The Senator from Indiana read one or two lines of a section without reading what preceded, and so did the Senator from Massachusetts. Now I will read a little further on, and it will be very plain that the amount here, let it be large or small, too large or not large enough, was intended as a reasonable compensation by way of indemnity for wrongs perpetrated by the government of Japan upon American commerce for an unlimited number of years before. It is true that a year or two prior to that time a specific wrong had been perpetrated by the government of Japan, as mentioned and related by the Senator from New Jersey, and for that a settlement had been effected and was complete in every respect; but that was a specific arrangement for a specific purpose, for a wrong perpetrated at a particular time. But the amount of money obtained by the four powers under this treaty was obtained by way of just indemnity for wrongs committed by Japan perhaps for more than forty or fifty years on the commerce of these different powers. I will read:

The undersigned, representatives of the treaty powers—

Leaving out several unnecessary lines—

animated with the desire to put an end to all reclamations concerning the acts of aggression and hostility committed by the said Mori Daizen—

Who was the prince of that province where the main acts were perpetrated—

since the first of these acts, in June, 1863, against the flags of divers treaty powers—

Wrongs committed against the flags of nations with whom Japan had made treaties—

and at the same time to regulate definitively the question of indemnities of war, of whatever kind, in respect to the allied expedition to Simonoseki, have agreed and determined upon the four articles following.

It was by the way of indemnity for wrongs perpetrated by the government of Japan against the flags of the powers having existing treaties at that time with Japan. If I am wrong in this, the treaty is false, because I take it from the treaty. If this be not true history, the treaty is a false one. If the treaty is true, the history is correct. This amount of money was agreed to be paid as indemnity for wrongs committed by the government of Japan against nations having existing treaties with Japan.

Mr. THURMAN. Will the Senator allow me to ask him can it be possible that the indemnities could have been for anything that preceded the treaty we had made with Japan? How could we claim indemnities for any acts done prior to the treaty of peace and amity which we had made with Japan? Are not then the wrongs that are spoken of wrongs that occurred after the making of that treaty, and not wrongs that went back forty years?

Mr. BOGY. That question cannot be answered without having before us the treaties previously made, one or more, and the correspondence connected with those treaties. I take the comprehensive language of this treaty itself, which says that it is for indemnity for wrongs committed against the flags of divers treaty powers. It cannot be possible that Japan was and is to-day so utterly incapable not only of helping itself but so utterly incapable of using proper language in that treaty. It cannot be true that its ministers had so far left all sense of honor and propriety as to have put a thing of this kind in a treaty when it was utterly false. It is impossible. These persons at that day had all the facts before them better than we have now. They say that this sum of money, $3,000,000, was obtained for these things. Whether the previous treaties had included indemnities, I am unable to say; but I will read to my friend from Ohio again:

Animated with the desire to put an end to all reclamations concerning the acts of aggression and hostility committed by the said Mori Daizen, since the first of these acts, in June, 1863—

No doubt this referred to acts committed after June, 1863—

against the flags of divers treaty powers, and at the same time to regulate definitely the question of indemnities—

Then they go on to stipulate—

the amount payable to the four powers is fixed at $3,000,000, this sum to include all claims—

Admitting that claims existed, I cannot go outside of a public treaty. Mr. Pruyn was a gentleman of honor; the other ministers who were there representing the governments of England, France, and the Netherlands, we must presume were men of honor; and according to this treaty claims did exist—

this sum to include all claims, of whatever nature, for past aggressions on the part of Nagoto, whether indemnities, ransom for Simonoseki, or expenses entailed by the operations of the allied squadrons.

If you analyze the arguments of Senators who have spoken, they wish us to confine the question of the amount of money we were entitled to merely to the expenses entailed by the operations of the squadron, for the expenses, no doubt, under the circumstances must have been small, because it was a chartered vessel on which the flag of the United States was raised. It was not even an expensive ship of war, but a mere merchant-vessel. Doubtless the expense was small. But that is only one of the enumerated items. The sum is to include indemnities, and "all claims, of whatever nature, for past aggressions" on the part of this prince. He might have been, and no doubt was, but a subordinate of the Japan Empire. My friend from New Jersey shakes his head. I should like to be corrected.

Mr. FRELINGHUYSEN. I would only correct my friend in this: He was in no manner representing the Japan Empire, either as a subordinate or a co-ordinate. He was a rebel against the Japan government. That is why I shook my head.

Mr. BOGY. It may be that he was in that sense at that time and had acted even against the specific and positive orders of his superior officer, the Emperor of Japan—call him Tycoon, or Mikado, or whatever name you give the man in whom is vested the sovereign and supreme power. But it was stated here that he had fired upon the American vessel by positive orders of the Tycoon. Whether that be so or not is of no consequence. The superior power vested in the Tycoon is responsible to all outside nations for anything which may have been done by any of his princes within his dominions, whether they were at the time being rebels or not. You cannot make war against one of them; you cannot hold him responsible; you cannot make a treaty with him by which the indemnity shall be paid; you are compelled, *ex necessitate*, to look to the head of the nation, and that is the Tycoon. Whether this prince be a rebel or not does not change the law in that respect. As a matter of necessity, you look to the head of the Japanese government, although it was stated by some Senator who is more familiar with this subject than I pretend to be that he had done this act of aggression by the orders of the Emperor of Japan; but whether he had or not I say does not change the question. The sum is to include "all claims." Again, the whole sum is to be paid in quarterly installments; and—

Inasmuch as the receipt of money—

Not the amount fixed upon; not the amount which they had agreed should be paid by way of indemnity for past aggressions, as well as for the expenses entailed by the operations of the allied squadron, but for all claims of past indemnities the amount had been fixed at $3,000,000; still—

Inasmuch as the receipt of money has never been the object of the said powers, but the establishment of better relations with Japan, and the desire to place these on a more satisfactory and mutually advantageous footing is still the leading object in view; therefore, if His Majesty the Tycoon wishes to offer, in lieu of payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Simonoseki—

If he chooses to give a port, then the amount of money shall not be exacted; but the question of material compensation for loss and injury sustained is again reiterated in this third section of the treaty. Thus, there must be nothing at all in this treaty but falsehood, fraud, deceit, dishonesty, disgraceful not only to the American minister who made it, but equally disgraceful to the allied powers that were there represented, if what is stated here is true; and according to that the amount fixed was indemnity for the past.

My friend from Massachusetts speaks of this strait being somewhat like Lake Champlain or Lake Michigan or any of these inland seas. This is not so. It is a strait connecting two seas, over which the commerce of the world has an undoubted right to pass without being molested; and although both shores may belong to Japan, yet Japan has no right, according to the law of nations, to interfere with the trade in that strait or the passage of merchant-vessels through it; but she had done so.

Without detaining the Senate to argue this point, it does strike me that this thing has less foundation than any claim presented in the Senate since I have been a member, and which we are in the habit of rejecting every day. It is a sentiment which prompts it. It may be very commendable, and I am inclined to commend my friend from New Jersey. I think he is inclined to a little sentimentality at times; but I think he is only carrying out here rather a lofty sentiment. Nevertheless, it is nothing but a sentiment. To my friend from Massachusetts it is an enlightened policy that would impress all the minds of the oriental nations that we are extremely generous. I do not believe in the sentiment or in the wisdom of the policy. I take the treaty to be what it is, that the government of Japan had committed wrongs against the flag of the United States, and were liable therefor by the law of nations.

Mr. FRELINGHUYSEN. Permit me to put a question to my friend?

Mr. BOGY. With pleasure.

Mr. FRELINGHUYSEN. Admit that that was a public highway

of the nations, my friend will not deny that Japan had the right to have batteries on each side of it the same as we have at the Narrows. That he will admit, of course?

Mr. BOGY. I admit that.

Mr. FRELINGHUYSEN. Japan did not put the batteries there, but a rebel put the batteries there whom she could not control. My friend will not deny that the Japanese government was not answerable to this or any other nation for the acts of rebels that she could not control, any more than we are answerable for the acts of those whom we could not control during our recent rebellion, and therefore I do not see the force of his argument. He makes it an indemnity. They were not bound to indemnify for the acts of rebels. They had a right to have the batteries there.

Mr. BOGY. I am astonished at my friend, who no doubt is a good lawyer, and I have no doubt he understands international law better than I profess to do. I do not profess to be a very great international lawyer, but I will tell my friend, as a matter of law, that he is entirely mistaken. Although it may be true that that prince at that moment was in a state of rebellion, all acts committed against the outside world by him involved his government in responsibility, and there is no escape from it. You cannot make comparison by the condition of the Southern States, because there an explanation could be given, but I put it down as a proposition of law, and I am perfectly satisfied my friend cannot find a single line written in any book of international law that will sustain his position to the contrary, that any person in an empire who is holding office involves his principal in acts of aggression against foreign nations.

Mr. FRELINGHUYSEN. I confess that I cannot agree with my friend. I do not understand that this nation or Japan would be answerable, even to its own citizens, for a rebellion which it could not control, and nobody ever has claimed that any nation would be. Nobody has ever claimed that this nation was answerable for the forts at Charleston which might do damage to neutral powers. There is no such principle.

Mr. BOGY. The explanation of course would be too late to show why we were not responsible when a state of open war existed between this Government and the Southern States, and they had been recognized as belligerents according to the law of nations. But if it were not so, then Japan or Mexico or any of those nations could commit any acts of aggression they might please, provided they were not done by the specific authority of the chief of the state, without being held responsible.

Mr. FRELINGHUYSEN. That would be fraud.

Mr. BOGY. It matters not; the fact is so that you do hold a prince as but a link in a chain. We know enough of the government of Japan to know that the Tycoon and Mikado were the supreme authority, one representing the temporal and the other the spiritual power, and that a chain went from them down connecting all the princes of the empire with the government; and although it might be true that for the time being this prince was at war with his chief, yet the acts he committed against the outside world involved his chief in responsibility. There can be no doubt of it, and the heading of this very convention admits this fact, for the Tycoon assumed the responsibility of the acts of this subordinate.

Therefore it seems to me that this was a treaty by high functionaries representing four of the leading powers of the world with this empire of Japan, by which the empire of Japan stipulated to pay for wrongs done by it for years past a given sum of money; we have received our portion, which was less than $800,000; and now, twelve or ten years after, we are called upon to refund that money, not only the principal but we are called upon to refund the money with interest, and I think if the calculation is made it will be found to be compound interest. The amount is said now to he nearly $1,500,000, while we received $785,000; and you cannot at the rate of 5 per cent. interest make that sum double itself in ten or twelve years' time; therefore there is here compound interest. We are called upon to return the money with compound interest.

If the law had been obeyed, as stated by the Senator from Ohio, [Mr. SHERMAN,] and this money had at once been turned over into the Treasury, as it ought to have been, there would have been no discussion of this kind; but it has been held as a specific fund, as a trust fund, and it has been inviting this thing for years. I have heard such a discussion before; I heard of it in the Committee on Foreign Relations; but I have never heard a single good reason why this sum of money should be returned to Japan. It may be good policy in the estimation of certain Senators, but there is no good reason founded in that sense of justice which should govern the relations of one nation with another; but if we are to return the money we ought to return the whole of it, and not make any appropriation of a portion of it by way of prize-money to men who did nothing, who never fired a gun. The Senator from Indiana says these men never fired a gun, never expended a single grain of powder. He so stated here this morning that they did nothing, that they only gave their moral support. That was satisfactory. If that be true——

Mr. THURMAN. Why, Mr. President, my friend never was more mistaken in his life.

Mr. BOGY. The Senator from Indiana made that statement, not I.

Mr. THURMAN. You must have misunderstood the Senator from Indiana.

Mr. BOGY. I did not.

Mr. THURMAN. So far from their not firing a gun, I will say that eight of them lost their lives. They did not fire a gun! Let us see how that was. The first report on this subject was made in the House of Representatives on the 2d of February, 1870, more than six years ago. Mr. Archer, from the Committee on Naval Affairs, made the following report:

That in the month of July, 1863, the American steamer Pembroke was fired upon in the Straits of Simonoseki, in the Japan Sea, by two vessels of war, a brig of ten guns and a bark of eight guns, belonging to the Japanese prince of Nagato. Commander McDougal, then in command of the Wyoming, in the China and Japan Seas, being informed of the attack, ordered the vessel to sea and proceeded to the locality of the outrage. On the morning of the 16th of July, he approached the Straits of Simonoseki and upon entering the straits he discovered a steamer, bark, and brig of war, and as he approached them and passed between the brig and bark was fired upon by the vessels and six batteries on shore. Commander McDougal returned the fire at short range, and placing his vessel in proper position maintained the fight for about an hour. The boilers of the hostile steamer were exploded by the shell of the Wyoming, and the other vessels were believed to be badly disabled, and the brig to be sinking, and Commander McDougal reported that he had accomplished great destruction on shore. Having thus maintained the fight, Commander McDougal withdrew from the action, the fire being continued by the batteries as long as he was in range. The Wyoming lost four men—

I wish my friend would pay a little attention to this report—

The Wyoming lost four men killed and seven wounded, and received considerable damage in her smoke-stack, and the rigging aloft was hulled eleven times and sustained other injuries, as papers will show. The straits were three-quarters of a mile wide, with a strong current, and the want of charts greatly increased the difficulties of the position in the presence of a much superior force.

And here I may mention that he fought that battle—I have the exact figures somewhere—with three hundred men and I believe a comparatively small number of guns against thirteen hundred and odd men and more than ten times the number of guns. I will go on with the report:

The action was maintained by Commander McDougal, his officers and men, with skill and bravery. In the Japan Commercial News of the 24th of July, 1863, it is thus described: "The captain, all his officers and crew, behaved with the utmost coolness and bravery. The Wyoming was run into the midst of the enemy's vessels, receiving and returning broadsides at pistol range, at the same time sustaining a hot and continuous fire from the shore batteries." The committee believe that Commander McDougal, his officers and men, punished the outrage committed upon an American vessel skillfully and gallantly, and that their conduct entitles them to the gratitude of their country.

That was the first report. Speaking, however, further upon that subject the committee say:

The firing into the Pembroke and the attack upon the Wyoming were piratical acts, and have been so treated both by the United States and Japan. Prize is allowed in piratical cases only when the craft is captured and condemned, in which case the proceeds of the capture are equally divided between the government and the captors.

If this large Japanese vessel, instead of having been blown up and sunk, had been captured and brought in and condemned in a prize court, as it would have been in that case, there would have been no necessity for this bill.

In this case there was no capture, although the benefits which accrued to our Government were infinitely greater than if an actual capture had been made, and it does not come within the letter of the law. Can the claim, then, rest upon the equity that the "officers and crew, constrained by a discreet and patriotic sense of duty," fought "three piratical or hostile Japanese vessels," and sunk and destroyed two, and that the United States subsequently justified their conduct, by concluding a convention with Japan, whereby she received a full indemnity? The conduct was gallant; it aided to suppress formidable hostilities to our commerce, and contributed to securing the convention of October, 1864—

That is the treaty in question—

whereby an indemnity was received far beyond the injuries done to the Pembroke and Wyoming. The sum of $650,000 has been paid to our government by Japan as indemnity, and is now in registered bonds, subject to appropriation by Congress. The committee think it proper that prize- money be allowed out of the money received under the convention.

Mr. BOGY. What is the date of that report?

Mr. THURMAN. It is the first report, and was made February 2, 1870.

Mr. BOGY. And what is the amount named?

Mr. THURMAN. Six hundred and fifty thousand dollars.

Mr. BOGY. I think my friend from New Jersey stated it at $785,000.

Mr. FRELINGHUYSEN. A portion alone at that time had been paid. The other installment raised it to $785,000.

Mr. THURMAN. A subsequent report was made by Senator Scott, of Pennsylvania, than whom a more careful man never was in this body, as I think all will agree who knew him. The bill then included the case of the Kearsarge. That was stricken out of the bill because there was no reason in the world why the officers and crew of the Kearsarge should be paid out of this Japanese indemnity fund. They were put upon a separate bill. That case is precisely analogous to this case. They did not capture the Alabama; they sunk her; just as McDougal blew up one of the Japanese vessels, their largest vessel, a vessel larger than the Wyoming too, and sunk another, and silenced their shore batteries. We paid the officers and crew of the Kearsarge, and upon the same principle we ought to make this allowance to the officers and crew of the Wyoming.

After giving the order of Mr. Pruyn, our minister, to Captain McDougal, Mr. Scott goes on to say—and it is the whole committee speaking, this report having been made from the Committee on Naval Affairs:

In obedience to the orders of the properly constituted authorities of the United States Government, the Wyoming weighed anchor at Kanagawa on the 13th of

July, 1863, and set out on her voyage to the Strait of Simonoseki. She entered the Bay of Simonoseki on the morning of the 16th of July. When she approached the entrance of the bay the fort next to her fired a signal gun, which was answered by all the forts and by the ships in harbor. At this time the Wyoming had no flag up, but upon the signals being fired she hoisted her flag and proceeded into the bay, keeping as close as she could to the northern shore, contrary to the expectations of the Japanese. The first fort immediately opened a heavy fire upon her, and so did all the others, as she moved slowly on, shelling the forts with such an effect as to silence such of them as received her fire. The men in the forts which received shells from the Wyoming were observed to rush off and to jump from the heights in such a precipitate manner as to lead to the belief that the shells must have told with greater effect and done more damage than the Japanese anticipated.

The bark and the brig Lanrick—the two vessels which fired on the Pembroke—were still there, and another vessel also, the steamer Lancefield. Those vessels lay close under the town, the bark being inside, the Lanrick next to her, and the Lancefield outside, with steam up, and a great number of men on board, apparently making preparations to approach and board the Wyoming. Captain McDougal ordered the Wyoming to be taken between the Lancefield and the Lanrick, and prepared to give each of them a broadside in passing. The Lanrick fired first, but immediately after the Wyoming delivered her broadside on the two Japanese vessels and sent a ball through the stern of the Lanrick in such a way as to leave her apparently sinking. The Wyoming moved on slowly, firing into the forts of the town as she went, and making a curve to enable her to return fire on the ships again; but, as she was turning, the Lancefield moved on across the track of the Wyoming, further into the bay, to escape at the western outlet, but the Wyoming while curving brought her great pivot-gun to bear on the Lancefield in her new position, and sent a ball right through her boiler, causing her to blow up, and scattering destruction through every part of the vessel; steam, cinders, &c., were blown out in all directions, and such of the crew as were not immediately overwhelmed jumped overboard. The Wyoming returned under a slack fire from the forts, and having done all that she deemed necessary for that time, she returned to Kanagawa to report what had taken place. She arrived here about two a. m. on the 20th of July. The engagement lasted an hour and ten minutes. The Wyoming received eleven shots, and had four men killed in action and seven wounded, one of whom died on the passage back.

The committee say in respect to this fund:

It is also manifest that the officers and crew of the Wyoming did their duty gallantly, and that the fund now invested in bonds is really the product of their service. If it were proper to institute a comparison of deserts as to payment out of this fund, no other officers or men of the Navy can present stronger claims to it than those of the Wyoming.

I might read from three other reports, all to the same effect; one made by Mr. ANTHONY, from the Committee on Naval Affairs of the Senate, one by Mr. Myers, from the Committee on Naval Affairs of the House, and the report now before us made by the Senator from New Jersey, from the Committee on Foreign Relations. Here, then, are two reports in the House and three reports in the Senate, all to the same effect.

I said something about the number of men. McDougal had six guns and one hundred and sixty men. The piratical prince had thirty-four guns and about thirteen hundred men. As I said on a former occasion, this action of McDougal, at pistol-shot range, with one vessel unsupported by any other, has been called in my hearing by as gallant officers as are in the American Navy, "Dave McDougal running a muck." There is not in all the history of our Navy anything more gallant, anything that sheds greater luster upon the bravery, the skill, and the fortitude of our sailors and seamen than this action in the Strait of Simonoseki. There is no principle involved in this matter that has not been again and again affirmed. Again and again has our Government awarded prize-money where there was no legal right to it at all, but where the services were great, meritorious, and such as ought to be recognized by any government that wants to maintain its naval force, that wants to stimulate its army and its navy to great and heroic deeds and recommend their services to the country. This case falls within that category, and has been established by numerous precedents, some few of which I ask my friend to allow me to read, begging his pardon for occupying his time so much. Let us see some of them.

Congress voted to the officers and crew of the United States frigate Constitution for the destruction of the British frigate Guerriere $50,000, to be distributed as prize-money, when there was no law for that allowance.

Mr. CRAGIN. Allow me to say right there that in that engagement there were only seven men killed and seven men wounded on the Constitution, about the same number as on the Wyoming; and the Guerriere was destroyed.

Mr. THURMAN. Sunk.

Mr. CRAGIN. The same as these vessels in this case.

Mr. THURMAN. To Captain William Bainbridge, his officers and crew, for the destruction of the British frigate Java $50,000 was voted to be distributed as prize-money. That required a special act of Congress. There was no law under which they could get prize-money.

To the officers and crew of the sloop of war Wasp, for the capture of the British sloop of war Frolic, $25,000 was voted.

To Captain Oliver H. Perry and the officers and crew of his squadron, for the capture of British vessels on Lake Erie, September 10, 1813, $255,000 was voted; and to Captain Perry $5,000 in addition to his share of the aforesaid sum. Joint resolutions of Congress were passed expressing thanks to Captain Perry, his officers, and crew for the aforesaid service, and requesting the President to present suitable medals and a sword to each of the commissioned officers and giving to each petty officer, seaman, and marine three months' pay in addition to regular pay; and that in addition to the previous vote I have mentioned.

The next case is the grant to the officers and crew of the sloop of war Wasp, for the capture and destruction of the British vessels Reindeer and Avon. Congress had given them $25,000 for capturing the Frolic. This is for capturing the Reindeer and Avon, $50,000, and one year's pay in addition.

To Commodore Decatur, his officers and crew, for the capture of the Algerine vessels, which were afterward released and restored to the Dey of Algiers, $100,000 was voted.

To the officers and crew of the United States steamer Kearsarge for the destruction of the Alabama $190,000 was appropriated, the full estimated value of the Alabama; and here permit me to say that the sum which this second section proposes to give to the officers and crew of the Wyoming is less than they would have received had the vessels that they sunk been brought into a prize-court and condemned, for the testimony is conclusive that one alone was worth at least $300,000. The officers and crew would have been entitled to one-half if she had been captured and brought into a prize-court and condemned. Here we propose to give them only $125,000; but in the case of the Kearsarge we gave the value of the Alabama, $190,000.

These are some out of the numerous precedents that might be cited to show that it has been the rule and policy of this Government to recognize such deeds of gallantry and heroism as marked the conduct of McDougal and his seamen and sailors, and I hope never to see the day when this Government shall refuse to recognize such services. We have had a small Navy. This Government never had a large one; not even in the civil war did we have what could be called a large and effective Navy; but no government, not even Great Britain herself, ever had a navy that shed more luster upon the country than the Navy of the United States has shed upon ours, and I, for one, must say that, so long as I have a vote, conduct such as that which I have laid before you from these reports shall receive my recognition.

Mr. BOGY. I yielded to my friend to make an explanation, but he has made so good a speech that I will ask him to include that speech as part of my own. [Laughter.] That is the only indemnity he can give me for taking my time.

I will say no more on this subject; but call the attention of the Senate to the fact which I stated two or three times before, that this sum of money was not only to cover the expenses of the expedition of the joint powers, but as indemnity for wrongs committed by the empire of Japan not only upon the commerce of the United States, but for wrongs committed in the very act alluded to by my friend from Ohio. Some of our men lost their lives, a serious engagement took place, and for all these numerous acts of aggression the sum of $785,000 was allowed to us. This sum is insignificant, and I think so far from its having a good effect to pay the money back now, it will only be telling Japan, "We did hector over you and we did take advantage of your weakness; we were strong enough to do it; but we in a spirit of policy, because we want to trade and have commerce hereafter, will return you the money." It will be adding insult to injury. The treaty has been made, and I think the facts read here sustain the propriety of that treaty; and I am therefore opposed to paying back any portion of the money whatsoever to Japan.

The PRESIDING OFFICER. The question is on concurring in the amendments made as in Committee of the Whole.

The amendments were concurred in.

Mr. KELLY. I offer two amendments changing the phraseology of the second section of the bill.

The PRESIDING OFFICER. The amendments will be reported.

The CHIEF CLERK. In section 2, line 3, it is moved to strike out the words "bounty, ransom, or prize-money, on account of," and insert "gallant, meritorious, or specially valuable services in," so as to read, "claims of the officers and crew of the United States ship Wyoming for gallant, meritorious, or specially valuable services in the destruction of piratical vessels on the 16th of July, 1863, in the straits of Simonoseki."

Mr. FRELINGHUYSEN. I see no objection to that.

Mr. CRAGIN. It seems to me there is objection to striking out the words "in the nature of prize;" this simply comes within that consideration.

Mr. FRELINGHUYSEN. There are more extended words put in the place of them. The friends of that measure have prepared it, the Senator from Ohio and the Senator from Oregon. I have no objection.

Mr. CRAGIN. Very well.

The amendment was agreed to.

The CHIEF CLERK. The next amendment of the Senator from Oregon [Mr. KELLY] is to strike out of the same section, lines 11 and 12, the words "either in law or equity to be justly chargeable against this fund" and insert "to be worthy of special recognition," so as to read, "and if in his judgment they are found to be worthy of special recognition, then he is authorized and directed, in full satisfaction thereof, to cause the sum of $125,000, reserved from said indemnity fund, or such part thereof as in his judgment shall be just and equitable, to be distributed among said officers and crews."

The amendment was agreed to.

Mr. HAMILTON. I move now to strike out the second section.

The PRESIDING OFFICER. The Senator from Texas moves to strike out the second section of the bill.

Mr. HAMILTON. I beg to say a word. It seems to be conceded generally that the United States did not acquire this money from Japan properly. If that is so, the Government cannot keep any portion of the interest which has accrued on the fund; and still less, in my judgment, can the Government of the United States pay for meri-

torious services to any officers or seamen of this country out of a fund that does not belong to the Government of the United States, whether it is in the shape of bounty, prize-money, or a mere *douceur*. If the money belongs to Japan, it ought to go back to Japan, the whole of it, and all that has accumulated upon it. We ought to make a decent job of the thing and end it. I move therefore to strike out the entire section.

Mr. THURMAN. I have only one word to say in reply to that. Those who favor the first section of the bill, everybody admits that we were entitled to receive from Japan, not merely what would pay the actual injury to the Pembroke and the Wyoming, the two American vessels that were injured, but such sum as would fairly and properly reward our officers and sailors who were engaged in that undertaking—that is, a proper indemnity—and there is not a word in the second section of the bill that is inconsistent with the first section, not one word.

The PRESIDING OFFICER. The question is on the amendment moved by the Senator from Texas.

Mr. HAMILTON. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BOGY. The second section is confined alone to the question of indemnity, is it not?

The PRESIDING OFFICER. The section will be read, if the Senator desires it.

Mr. FRELINGHUYSEN. It is confined entirely to indemnity in the nature of prize.

The Secretary proceeded to call the roll on the amendment of Mr. HAMILTON.

Mr. PADDOCK, (when his name was called.) On this question I am paired with the Senator from Florida, [Mr. CONOVER.] If he were here, he would vote "nay," and I would vote "yea."

Mr. MAXEY. On this question I am paired with the Senator from New Jersey, [Mr. RANDOLPH.] If he were present, he would vote in the negative and I in the affirmative on this motion.

The roll-call having been concluded, the result was announced—yeas 15, nays 29; as follows:

YEAS—Messrs. Booth, Boutwell, Cockrell, Dawes, Hamilton, Harvey, Howe, Ingalls, Key, Logan, McCreery, McMillan, Mitchell, Wadleigh, and Wright—15.
NAYS—Messrs. Allison, Anthony, Bayard, Bogy, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Caperton, Christiancy, Conkling, Cooper, Cragin, Eaton, Frelinghuysen, Hamlin, Johnston, Jones of Florida, Jones of Nevada, Kelly, Kernan, Morrill of Vermont, Patterson, Ransom, Sargent, Sherman, Spencer, Thurman, Windom, and Withers—29.
ABSENT—Messrs. Alcorn, Barnum, Burnside, Clayton, Conover, Davis, Dennis, Dorsey, Edmunds, Ferry, Goldthwaite, Gordon, Hitchcock, McDonald, Maxey, Merrimon, Morrill of Maine, Morton, Norwood, Oglesby, Paddock, Randolph, Robertson, Saulsbury, Sharon, Stevenson, Wallace, West, and Whyte—29.

So the amendment was rejected.

Mr. FRELINGHUYSEN. I would move to amend the first section, in the sixth line after the word "authorize," by inserting "after deducting all payments properly chargeable to the said fund;" so as to read:

That the President be, and hereby is, authorized to reserve from the Japanese indemnity fund the sum of $125,000, to be used in the manner hereinafter provided, and is further authorized, after deducting all payments properly chargeable to the said fund, to pay over to the government of Japan the residue of said indemnity fund, &c.

The amendment was agreed to.

Mr. SHERMAN. I now offer the amendment that I suggested a while ago, to insert in the eighth line after the word "Japan" "the principal sum received from the government of Japan," so as to confine the payment to the refunding of the principal sum, less the payments already made. The amendment of the Senator from New Jersey just made causes a repetition of the words "government of Japan," but the Clerk can alter that. My purpose is to confine the payment to the re-imbursement of the principal sum, less the payments already made and the sum of $125,000 reserved under the second section.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. SARGENT. I now move to strike out the first section, and on that I call for the yeas and nays.

The yeas and nays were ordered.

Mr. DAWES. I did not quite understand the amendment which has just been adopted.

The PRESIDING OFFICER. The Clerk will report the amendment offered by the Senator from Ohio.

Mr. SHERMAN. I ask the Clerk to read the whole of the first section as it will stand.

The CHIEF CLERK. The first section of the bill as amended and now proposed to be stricken out reads:

That the President be, and hereby is, authorized to reserve from the Japanese indemnity fund the sum of $125,000, to be used in the manner hereinafter provided; and is further authorized, after deducting all payments properly chargeable to the said fund, to pay over to the government of Japan the principal sum received from that government.

Mr. DAWES. Without the interest? Is that in the amendment?

Mr. SHERMAN. That is already in by confining it to the principal.

Mr. DAWES. I hope no friend of the bill will vote for the bill after that amendment has been adopted.

Mr. FRELINGHUYSEN. I think that amendment was not understood by the Senate when the vote was taken, and I hope the vote will be taken over again.

Mr. SHERMAN. I have no objection to that being done if Senators say they misunderstood the amendment.

The PRESIDING OFFICER. Is there objection to reconsidering the vote by which the amendment of the Senator from Ohio was agreed to? The Chair hears no objection, and the amendment is before the Senate.

Mr. SHERMAN. I wish to change the phraseology of the amendment a little. It is a little obscure as it now reads.

Mr. FRELINGHUYSEN. I hope the amendment will not be adopted. We really have had a vote upon it once this morning. It is only a change of words, repeating the same proposition. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. SHERMAN. This would simply leave the matter to stand as if the money had been paid, as it ought to have been paid under the existing law, into the Treasury of the United States, and it would give the government of Japan the balance of that sum, whatever it was, $785,000, less $125,000 and the amount previously named, which I think is $19,000.

Mr. FRELINGHUYSEN. This money was used by the Government as we received it, to pay our troops in the field. If we had not had this money we should have been obliged to have paid interest on it all the time.

Mr. SARGENT. I should like to ask my friend if he is literally correct in that statement. I understand this money was put into a separate fund by itself, into United States bonds; that it never has been used for any purpose whatever by the United States, but simply has been rolling over like a snow-ball, and gathering its accumulation.

Mr. FRELINGHUYSEN. The money is not kept in the State Department. The money was sent to the Treasury and used to pay our troops, and the account was carried the same as we would be obliged to carry an account if we had borrowed the money from anybody else.

Mr. MORRILL, of Vermont. May I ask the Senator from Ohio whether his amendment returns to the Japanese government the amount which we originally received from them, after deducting this $125,000 from the amount that they paid?

Mr. SHERMAN. It does deduct, as I understand, the $125,000.

Mr. MORRILL, of Vermont. Would it not be better to leave the exact amount and say nothing at all about that?

Mr. SHERMAN. I think, as we had to lose some valuable lives and had a very severe battle, which my colleague seems to think was one of the great events in American history, we ought to have that returned to us at all events. We ought to get that much of the fund.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Ohio, [Mr. SHERMAN.]

The Secretary proceeded to call the roll.

Mr. MAXEY, (when his name was called.) On this question I am paired with the Senator from New Jersey, [Mr. RANDOLPH.] If he were present he would vote "nay" and I should vote "yea."

Mr. PADDOCK, (when his name was called.) On this question I am paired with the Senator from Florida, [Mr. CONOVER.] If he were here he would vote "nay," and I should vote "yea" on this amendment.

Mr. WITHERS, (when his name was called.) I will state that I am paired with the Senator from Indiana, [Mr. MORTON.] If present he would vote "nay," and I should vote "yea."

The Secretary resumed and concluded the call of the roll, which resulted—yeas 22, nays 21; as follows:

YEAS—Messrs. Bayard, Bogy, Cameron of Wisconsin, Caperton, Cockrell, Cooper, Eaton, Goldthwaite, Harvey, Hitchcock, Howe, Ingalls, Johnston, Kelly, Key, McCreery, Morrill of Vermont, Sargent, Sherman, Thurman, Wadleigh, and Wright—22.
NAYS—Messrs. Allison, Anthony, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Christiancy, Conkling, Cragin, Dawes, Frelinghuysen, Hamilton, Hamlin, Jones of Florida, Kernan, McMillan, Mitchell, Patterson, Ransom, Spencer, and Windom—21.
ABSENT—Messrs. Alcorn, Barnum, Burnside, Clayton, Conover, Davis, Dennis, Dorsey, Edmunds, Ferry, Gordon, Jones of Nevada, Logan, McDonald, Maxey, Merrimon, Morrill of Maine, Morton, Norwood, Oglesby, Paddock, Randolph, Robertson, Saulsbury, Sharon, Stevenson, Wallace, West, Whyte, and Withers—30.

So the amendment was agreed to.

Mr. FRELINGHUYSEN. I wish the attention of the Senate for a short time. This subject is coming about to the spot we had it this morning. The bill as it now stands deducts $144,000 from $785,000, and pays over the balance, about $640,000, without interest. I think the Senate ought, without any question, to add this amendment:

With interest at 5 per cent. per annum.

Let me give my reasons. That would pay to Japan about $780,000. I have calculated the interest at 5 per cent. per annum on that balance, and can give the exact figures if it is necessary. The value of that fund in our hands to-day amounts to $1,414,000. If you vote the 5 per cent. interest, it would leave to be covered into the Treasury $473,000 in gold. I do not think this is great injustice, as I said before. I think the other would have been better; I think it would have been more honorable and magnanimous, but we certainly ought to add 5 per cent. interest. This fund is so large, as I have stated, because of the appreciation of the securities, because of the com-

pounding of interest, because of the profit we made on the exchange. Let us keep the benefit of those items; but inasmuch as we had this money and used it, and as we deduct from the principal sum $144,000, I offer the amendment I have suggested to insert at the end of the amendment which has just passed the words:

With interest at 5 per cent. per annum.

Mr. THURMAN. When I moved the other day to strike out the provision for interest, I gave the reason that operated upon my mind. If that reason has any force, it applies to the present amendment as much as to the original text. I objected to the payment of interest because it introduced a new principle in respect of the obligations of the Government. It has been a fixed rule ever since the Government existed, and I believe it is the rule of all governments, not to pay interest on claims. We do not pay interest, and I see no reason when we are doing an act that we are not bound to do except by a moral sense of duty to a foreign power, for the purpose of setting a good example to the nations of the earth, why we should be more just to a foreign power than we are to our own citizens. We do not pay to our own citizens, to the most meritorious soldier, sailor, or civilian who ever lived in the country, interest upon his claim. There may have been, there have been, I know, a few exceptional cases; but the general rule no one can deny. When we propose to do an act of great moral justice, to perform an obligation of this kind to a foreign power, I cannot feel that any moral responsibility rests upon me in respect to a foreign power any stronger than the moral responsibility that rests on me toward one of my own fellow-citizens. I shall, therefore, vote consistently with my former position against the amendment now proposed.

Mr. CAMERON, of Pennsylvania. I am surprised to find so good a lawyer as the honorable Senator from Ohio call this a claim. There is no claim on the part of the people of Japan or the government of Japan.

Mr. THURMAN. I stated distinctly that there was no claim, no legal claim.

Mr. CAMERON, of Pennsylvania. I understood the Senator to call it a claim. Of course we are not called upon to pay a claim, because a claim is always a doubtful question. There always is a doubt in the mind of the Government whether a claim is just, and until it is liquidated we do not know that the claim exists at all. Therefore we pay no interest upon claims. The principle is correct. But that is not the case in this instance. We took this money from that weak people. The strong power went there with a force superior to them and compelled them to give us this money. After it had been paid the United States found that we treated them unjustly, and therefore in the spirit of magnanimity we pay the money back, retaining however a sum of money sufficient to pay prize-money, which by the way is a doubtful right in itself. We retain a sufficient sum to pay prize-money to all the gallant men who risked their lives against a weaker power to be sure, but who went there in the performance of their duty. We give them as much prize-money as we would give to a man who was on board of a small vessel and risked the vessel and lives of everybody against a superior power. There was no difficulty about compelling the people of Japan at that time to pay anything which we required them to pay.

If we do this thing at all, let us do it in the spirit of magnanimity in which it originated. The money was here in our Treasury and we used it. It came in gold, and if we had not received it from Japan we should have paid interest for it to other people.

The truth is that these people, in their weakness, were compelled to borrow the money at 10 per cent. to pay us; with our strong arm and our great cannon in their faces. The amendment proposes to pay only 5 per cent., one-half of the interest which they paid then and have paid ever since for that fund. I trust we shall not cavil about the interest.

The PRESIDING OFFICER. The question is on the amendment of the Senator from New Jersey to insert the words:

With interest at 5 per cent. per annum.

The amendment was rejected; there being on a division—ayes 13, noes 26.

Mr. SHERMAN. I now offer an amendment to which I suppose every one will consent. I move to add to the end of the first section what I send to the desk, in order to dispose of the balance of this fund according to law.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. It is proposed to insert at the end of the first section:

And the residue of said Japanese indemnity fund, so far as the same is in bonds, shall be delivered to the Secretary of the Treasury, to be retired and canceled as in the case of bonds paid by the United States, and so much as is in money shall be covered into the Treasury of the United States.

The amendment was agreed to.

Mr. SARGENT. My amendment is now pending, I believe.

The PRESIDING OFFICER. The Senator from California moves to strike out the first section of the bill, upon which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. MAXEY, (when his name was called.) On this vote, as on all others connected with this question, I am paired with the Senator from New Jersey, [Mr. RANDOLPH.] If present he would vote "nay," and I should vote "yea."

Mr. WITHERS, (when his name was called.) On this question I am paired with the Senator from Indiana, [Mr. MORTON.] If present he would vote "nay," and I should vote "yea."

The Secretary resumed and concluded the call of the roll, which resulted—yeas 20, nays 22; as follows:

YEAS—Messrs. Bogy, Caperton, Cockrell, Cooper, Dawes, Goldthwaite, Hamilton, Harvey, Hitchcock, Howe, Ingalls, Johnston, Kelly, Key, McCreery, Mitchell, Sargent, Sherman, Wadleigh, and Wright—20.

NAYS—Messrs. Allison, Anthony, Bayard, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Eaton, Frelinghuysen, Hamlin, Kernan, McMillan, Morrill of Vermont, Patterson, Ransom, Spencer, Thurman, and Windom—22.

ABSENT—Messrs. Alcorn, Barnum, Burnside, Clayton, Conover, Davis, Dennis, Dorsey, Edmunds, Ferry, Gordon, Jones of Florida, Jones of Nevada, Logan, McDonald, Maxey, Merrimon, Morrill of Maine, Morton, Norwood, Oglesby, Paddock, Randolph, Robertson, Saulsbury, Sharon, Stevenson, Wallace, West, Whyte, and Withers—31.

So the amendment was rejected.

Mr. HOWE. I move to amend the second section by striking out all after the semicolon, in the sixth line, down to and including the words "1864," in the tenth line.

The PRESIDING OFFICER. The words to be stricken out will be read.

The Chief Clerk read as follows:

And also the claims of that portion of the officers and crew of the United States ship Jamestown who manned the Takiang in the bombardment of the hostile forts at the Straits of Simonoseki on the 5th, 6th, 7th, and 8th days of September, 1864.

Mr. HOWE. I said some time ago that I did not believe in paying prize-money to the officers and crews of our vessels out of moneys belonging to anybody else but the Government of the United States. On this point I am overruled by the Senate. The Senate concludes that this money belongs to Japan, and therefore we may just as well pay prize-money to one as another out of it. Perhaps to a certain extent we had better submit to that doctrine; but I do protest against paying prize-money to the vessel named in these lines out of any funds belonging to anybody in the world. I would not pay that in dry goods or groceries. That vessel was not a war-vessel; it was a merchant-vessel, hired by the month, crew and all, to go up there and hold up our flag while the fighting was going on. She had just so many dollars per month, and she went. There was a gun on board of her, and they say that gun was fired. The exact number of times the Secretary of the Navy tells you; I forget just now how many times it was. And I believe somebody said it was fired with great gallantry, which I do not dispute at all. I think it requires great gallantry to fire a gun at all on board a vessel. It did not hurt anybody. Nobody was hurt. The two offices that the boat performed were to bear the flag and to take care of the wounded when they were retired from the other vessels.

I do think we cannot with any propriety whatever vote to pay prize-money for such services as those. Actually the papers in the case show that at first the plan contemplated for having our flag represented during that fight was to tow up an old hull and fasten the flag to her, but it was finally concluded she might interfere with the operations of vessels that would have some fighting to do, and therefore they hired this vessel which could go alone, paid her by the month, and she went up there for these two offices. Now it is proposed to take money from Japan to pay prize to the officers and the crew of this boat.

Mr. CRAGIN. Mr. President, I hope this amendment will not prevail. The Senator from Wisconsin says that this steamer Takiang was hired to go up there to take part in this engagement for the purpose of showing the American flag. That is partly true. The Jamestown drew so much water that she could not be taken into those straits or it was feared she could not. Therefore the commander of the Jamestown hired this vessel, and Ensign Pearson was put in command of her, and seventeen men were taken from the Jamestown, each one given a Sharp's rifle, to go on board the Takiang; but Ensign Pearson was not satisfied with that, so he took from the Jamestown a Parrott gun and put it on board this vessel, the Takiang, and he and his seventeen men from the Jamestown went into this engagement; and they conducted themselves with such gallantry, performed such services, and handled that gun with such efficiency that the British admiral commended them in special orders.

As I have before me the diplomatic correspondence, I will read what Mr. Pruyn on that occasion said:

Ensign Pearson, of the Jamestown, who was placed in command of the United States chartered steamer Takiang, I am happy to say, conducted himself so as to receive the special written thanks of Admiral Kuper, commanding the combined fleet, and a large bronze thirty-two-pounder gun was assigned to said ship as a trophy. The thirty-pounder gun of the Jamestown was used by him with such precision and efficiency as to command universal admiration. The wounded of the British were placed on board that ship, in charge, in part, of Dr. Vedder, of the Jamestown,

That is Mr. Pruyn's dispatch to the Secretary of State, Mr. Seward.

Mr. HOWE. How many times was that gun fired?

Mr. CRAGIN. It does not say; but it was fired with great efficiency.

Mr. HOWE. It did hit the land, I suppose.

Mr. CRAGIN. I have no doubt that as this money is in the Treasury or somewhere else and apparently to be refunded to Japan, these men ought to be paid out of it. There will be but a little for them.

Only Commander Pearson and seventeen men can receive any benefit from this part of the second section. The main part of the $125,000 will go to the officers and crew of the Wyoming, for they had a large number of officers and a large number of men. Less than $25,000 will go to Commander Pearson and the men who are under him.

I hope this amendment will not prevail.

Mr. HOWE. I had seen this testimony of Mr. Pruyn and the British admiral before. I do not wish to make any point on the credibility of those witnesses, but upon their competence to testify I entertain serious doubts. I do not quite believe the men who were fighting that battle did take very accurate notice of the range of Ensign Pearson's gun. That they might have discovered some evidence that his shot struck land, I think is very possible; but that they could say that it struck anything else or any particular thing on land in the fort or the fort itself, I no more believe than I believe I could testify to it or any man in the Senate. Undoubtedly Mr. Pearson did all his duty. I am inclined to think he did more than his duty. He was told that he was in command of a vessel not built for fighting purposes and admonished to keep out of danger. I do not remember the language of his instructions, but that is about the effect of them as I remember. I guess he did keep pretty near out of danger, but he went so near that he did fire the gun and fired it several times. I think the amount of shell and ammunition he consumed the Secretary estimates at about $230 or $240 or $250. I make no doubt that he discharged his whole duty. I do not think he hurt anybody, and I know he was not hurt, and there was not anybody hurt on his vessel, and there was not a splinter so far as I have been able to ascertain taken from the vessel.

Mr. THURMAN. I do not wish to occupy any time on this matter except merely to correct a misapprehension, as I conceive it to be, of the Senator from Wisconsin. This action in which the Takiang was engaged took place about a year after the occasion in which McDougal was engaged with the Wyoming, and this is the account that is given of it in one of the reports made in the House of Representatives. After describing the action in which the Wyoming was engaged, the report goes on to say:

For a time the punishment inflicted on the Prince of Nagato seemed to be al that could have been desired, but he rebuilt his forts, and fresh insults were offered to the flags of several nations. This conduct was evidently inspired from higher authority, the edict of the Mikado against foreigners being its main instigation, and Great Britain, France, and the Netherlands sent fleets to the bay of Simonoseki to open the passage of the straits, inviting the United States to give the moral force of their presence and to participate in the action. We had at Yokohama at the time but one ship, the Jamestown, a sailing-vessel, and as the current in the straits was very rapid, it was deemed best to charter a small steamer called the Takiang, which, with the vessels of the powers named, participated in the naval engagement against the shore batteries of the daimio on September 4, 5, 6, 7, and 8, 1864.

Lieutenant Frederick Pearson, of the Jamestown, was placed in command of the chartered steamer Takiang by Captain Price, commanding the Jamestown, under the following orders.

My friend from Wisconsin will find that the Takiang was no merchant-ship with a merchant-crew. She was chartered to join in that expedition because she was a steamer and the Jamestown was a sailing-vessel, and the currents were such there that a sailing-vessel would not be under command as a steam-vessel would be, and she was manned entirely by the sailors of the Jamestown. This order was given to Lieutenant Pearson:

UNITED STATES STEAMER JAMESTOWN,
Yokohama, Japan, August 11, 1864.

SIR: You are hereby appointed to the command of the chartered steamer Takiang, and will proceed in her to the Straits of Simonoseki to act in concert with the treaty powers, who will appear in large force at that place.

The object of sending the Takiang is to show the American flag there, and to manifest to the Prince of Nagato that we are in accord with the other treaty powers, and equally demand with them the passage through the straits without let or hinderance.

As the steamer under your command is not a man-of-war or prepared to attack the forts, you will render any and every other aid in your power to promote the common object—such as towing boats, landing men, and receiving the wounded on board of you if required to do so. To this end you will consult the senior officer present, particularly the British admiral, who will be senior officer of the expedition, and who will have the largest force there. * * *

It is very true that a subordinate duty seemed to be imposed upon Pearson; but the Senator is entirely mistaken in construing this that he was to keep out of danger entirely; and it is a new idea to me that an officer whose duty, whether it be to fire a gun or whether it be, in the language of this instruction, "towing boats, landing men, and receiving the wounded on board of you if required to do so," is not just as much exposed and perhaps more exposed than if his vessel is a powerful war-vessel, and that his services are not equally meritorious with one who is in an iron-clad. I should say that his services were more meritorious, that he ran greater risk, and deserved therefore to be more highly esteemed.

But Pearson was not a man to be where fighting was going on without having a hand; and, by the way, to show that it was expected that he would get where he would be in trouble, he was given the Parrott gun of the Jamestown, and she was put on board the Takiang—a thirty-pound Parrott gun. As I said, he was not a man when fighting was going on to have a thirty-pound Parrott gun and not use it. And so what did he do?

Lieutenant Pearson, not satisfied with these orders, obtained permission to take the Takiang under fire. With three officers and fifteen men, armed with a Parrott gun, or howitzer, and Sharp's rifles for each man, the Takiang went into the battle.

The engagement continued five days and ended in victory to the fleets, the Japan prince making an unconditional surrender, and, according to Minister Pruyn, "agreed to pay such sum as the ministers of the treaty powers might demand for the expenses of the expedition." (Diplomatic Correspondence 1864-'65, part 3, page 553.)

Here follows what was read by the Senator from New Hampshire, the thanks of the British admiral. But it does not stop there:

"Ensign Pearson, of the Jamestown, who was placed in command of the United States chartered steamer Takiang, I am happy to say, conducted himself so as to receive the special written thanks of Admiral Kuper, commanding the combined fleet, and a large bronze thirty-two-pounder gun was assigned to said ship as a trophy. The thirty-pounder gun of the Jamestown was used by him with such precision and efficiency as to command universal admiration." And the diplomatic correspondence of J. Hume Brumley to Mr. Seward (Diplomatic Correspondence 1865-'66, part 2, page 17) shows the warm appreciation of the services of the Takiang by the lords commissioners for the ready co-operation which that gallant officer afforded to the British admiral during the whole of the operations in question.

The result was that the Tycoon, being forced to acknowledge and recognize the active hostilities of his subject prince as acts of piracy, was constrained to enter into a conventional treaty with the diplomatic authorities of the United States of America, Great Britain, France, and the Netherlands, which was concluded on the 22d day of October, A. D. 1864, and afterward accepted and ratified by all the aforementioned powers, the public proclamation of all which was formally made by the President of the United States on the 9th day of April, A. D. 1866.

Thus it will be seen that the lord commissioners of the admiralty of Great Britain caused their thanks to be communicated to Mr. Seward for the co-operation of that American ship in that engagement and the gallant conduct of Pearson, his officers, and men.

I hope the motion will not prevail.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from Wisconsin to amend the second section.

Mr. HOWE. I think before the debate is closed I ought to make my acknowledgments to the Senator from Ohio, not for having corrected what I said, but for having corroborated what I said on a former occasion. I had not seen that report for some time, and was a little loose in my recollection about it. It seems to me, however, it confirms everything I said.

Mr. THURMAN. One thing it certainly does not confirm. The Senator said Pearson was directed not to go into danger. I say the report shows that he could not perform the duties he was ordered to perform without going into danger.

Mr. HOWE. Precisely where the boat stood when the boat fired does not appear from that report. Whether she stood within range of the Parrott guns or the Sharp's rifles is not made apparent. But the Senator is mistaken when he supposes that the boat was taken up there by the crew of the Jamestown.

Mr. THURMAN. Not in the least.

Mr. HOWE. It was the crew of the boat.

Mr. THURMAN. No, sir; not so. This very report shows that some seventeen men from the Jamestown, with Pearson and three officers, went on her.

Mr. HOWE. Seventeen men of the Jamestown went on board undoubtedly, but the crew of the boat was on board also.

Mr. THURMAN. If they did, how many did they amount to?

Mr. HOWE. I do not know, but the charter of the boat will show that.

Mr. FRELINGHUYSEN. I hope we shall have a vote.

The amendment was rejected.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. SARGENT. I call for the yeas and nays on the passage of the bill.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. COCKRELL, (when his name was called.) On this question I am paired with the Senator from Nevada, [Mr. JONES.] If present he would vote "yea," and I should vote with much pleasure "nay."

Mr. MAXEY, (when his name was called.) On the passage of the bill I am paired with the Senator from New Jersey, [Mr. RANDOLPH.] If he were here he would vote "yea," and I should vote "nay."

Mr. PADDOCK, (when his name was called.) On this question, as before stated, I am paired with the Senator from Florida, [Mr. CONOVER.] If he were here he would vote "yea," and I should vote "nay."

Mr. WITHERS, (when his name was called.) As already stated, I am paired with the Senator from Indiana, [Mr. MORTON.] If present he would vote "yea," and I should vote "nay."

The roll-call having been concluded, the result was announced—yeas 24, nays 20; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Cameron of Wisconsin, Christiancy, Conkling, Cragin, Eaton, Frelinghuysen, Hamlin, Jones of Florida, Kernan, Morrill of Vermont, Norwood, Ransom, Saulsbury, Spencer, Stevenson, Thurman, and Windom—24.

NAYS—Messrs. Bogy, Caperton, Cooper, Dawes, Goldthwaite, Hamilton, Harvey, Hitchcock, Howe, Ingalls, Johnston, Kelly, Key, McCreery, McMillan, Mitchell, Sargent, Sherman, Wadleigh, and Wright—20.

ABSENT—Messrs. Alcorn, Barnum, Burnside, Clayton, Cockrell, Conover, Davis, Dennis, Dorsey, Edmunds, Ferry, Gordon, Jones of Nevada, Logan, McDonald, Maxey, Merrimon, Morrill of Maine, Morton, Oglesby, Paddock, Patterson, Randolph, Robertson, Sharon, Wallace, West, Whyte, and Withers—29.

So the bill was passed.

EXECUTIVE SESSION.

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

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

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *May* 31, 1876.

The House met at twelve o'clock m. Prayer by Rev. J. G. BUTLER, D. D.

The Journal of Monday last was read and approved.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was presented by U. S. GRANT, jr., one of his secretaries.

MEXICAN CLAIMS COMMISSION.

Mr. MONROE. I ask unanimous consent to make a report from the Committee on Foreign Affairs touching some points connected with the Mexican claims commission. This report does not ask any action at the present time; it is designed only to be printed and referred to the Committee on Appropriations for their action.

There being no objection, the report of the Committee on Foreign Affairs recommending the adoption of the following amendment to the sundry civil appropriation bill was presented, referred to the Committee on Appropriations, and ordered to be printed:

That so much of the appropriation heretofore made for salaries of the United States and Mexican claims commission as may remain unexpended on the 30th day of June, 1876, as shall be necessary for the purpose may be used in payment of salaries of the agent, secretary, clerks, translators, and messengers at the rates now respectively allowed to them for a period not to exceed six months from the 1st day of July, 1876; and the unexpended balance for contingent expenses may be used for the contingent expenses of such commission for a like period; and that the amount which may remain unexpended on the 30th day of June, 1876, of the appropriation of the salary of the umpire, or so much thereof as may be necessary for the purpose, may be expended under the direction of the Secretary of State in acknowledgment of the service of the umpire.

REPEAL OF THE SPECIE-RESUMPTION ACT.

Mr. JONES, of Kentucky, by unanimous consent, submitted the following resolution; which was referred to the Committee on Banking and Currency:

Resolved, That it is the sense of this House, as well we believe of the country at large, that the Congress of the United States should without delay pass a bill unconditionally repealing the act approved January 14, 1875, entitled "An act to provide for the resumption of specie payments," or so much of said act as requires resumption at any fixed time; that the bill should prohibit any further contraction of the existing currency, and, if necessary to meet the demands of the commercial and industrial interests of the people, it should provide for its increase; that it should provide for the gradual abolishment of the national-bank system and the displacement of its notes with United States notes which require no interest; that it should also provide for as speedy a return to gold and silver, the constitutional basis of our currency, as the circumstances and exigencies of the country will permit, to the end that the people may have hope and encouragement that so soon as practical and wise legislation can effect it they may be relieved from the distressed condition under which they now labor.

INTERNAL-REVENUE TAXES PAID BY RAILROADS.

Mr. BAKER, of Indiana. I ask unanimous consent to offer a resolution of inquiry, asking information from the Secretary of the Treasury. I trust there will be no objection to it.

The Clerk read as follows:

Resolved, That the Secretary of the Treasury, if not incompatible with the public service, be, and he is hereby, requested to report to this House the amount of internal-revenue taxes paid by the Baltimore and Ohio Railroad Company and its branches and by the Central Pacific Railroad Company and its branches from the 1st day of July, A. D. 1864, to the 31st day of December, A. D. 1871, on undivided profits, on profits used for construction or improvements, or carried to the account of any fund.

Mr. O'BRIEN. I object to the resolution, and call for the regular order.

ORDER OF BUSINESS.

The SPEAKER. The regular order being called for, the first business in order is the continuance of the consideration of the contested-election case of Spencer *vs.* Morey.

Mr. BANNING. The regular business this morning is the Army bill, which was made a special order immediately after the reading of the Journal.

The SPEAKER. The other takes precedence, if insisted on, as a matter of higher privilege. If not, the Chair will then recognize the gentleman from Ohio [Mr. BANNING] as entitled to the floor.

Mr. RANDALL. Both come over as unfinished business, one following the other.

The SPEAKER. As no one insists upon taking up the contested-election case, the Chair will now recognize the gentleman from Ohio.

Mr. DURHAM. On the 9th of May this day was set apart especially by order of the House for the consideration of the bill reported from the Committee on the Revision of the Laws relating to corrections and omissions in the Revised Statutes. I desire to know from the Chair how that matter stands, which, as I have stated, was set specially for this day?

The SPEAKER. The Chair understands the order concerning the bill referred to by the gentleman from Kentucky is the ordinary one making it the special order for this day.

Mr. DURHAM. Yes, sir.

The SPEAKER. The House at its last session, and at the close thereof, made by special assignment another and inconsistent order. The House had a right to do that then because it would have a right to do it now if it had not done it then. The question, in other words, of consideration if not made then could be made now. Having been made then the Chair must hold it as well made, and needs not now to be repealed. The Chair must further hold that it is now competent for the House to disregard the order made on Monday and proceed to the consideration of the bill assigned as special order for this day.

Mr. DURHAM. I wish to make another inquiry. Will my bill take precedence after these other special orders are through?

The SPEAKER. Is the order making the gentleman's bill a special order one that runs from day to day?

Mr. DURHAM. Yes, sir.

The SPEAKER. The Clerk informs the Chair that it is a special order running from day to day, and therefore the gentleman's bill will not be injuriously affected by this proceeding.

Mr. DURHAM. I understand the Speaker to decide my bill comes in after these special orders.

The SPEAKER. Subject, of course, to the action of the House.

Mr. HOUSE. Has not the Louisiana election case precedence?

The SPEAKER. It would, but the Chair called it in proper time and order and no one responded.

Mr. HOUSE. I responded and was endeavoring to get the ear of the Chair to insist on it. I insist on it now.

The SPEAKER. The Chair must accept the gentleman's statement.

Mr. HOUSE. I was on my feet endeavoring to get the attention of the Chair.

The SPEAKER. The Chair must accept the statement of the gentleman from Tennessee.

Mr. RANDALL. The Louisiana contested-election case, as well as the bill reported from the Committee on Military Affairs by the gentleman from Ohio, come over as unfinished business.

The SPEAKER. So the Chair understands, but the election case is of higher privilege than the other. That is the only difference there is between them.

Mr. DURHAM. I rise to the question whether or not my bill shall not be considered; and I ask the Chair to put it to the House.

The SPEAKER. Under the circumstances the Chair must take the sense of the House, therefore, as to whether it will now proceed with the further consideration of the question of privilege.

Mr. DURHAM. I ask unanimous consent of the House to state why I now press my motion.

Mr. MOREY. Before that is done, I rise to a personal explanation.

The SPEAKER. The gentleman can do that after the House has ordered what business it shall proceed with.

Mr. MOREY. My remarks will have a bearing on the propriety of taking up the contested-election case now. I think if the gentleman will listen one or two moments, he will not press his case against this.

Mr. DURHAM. I have no objection to hearing the gentleman's explanation, but I wish to state to the House why I am pressing my business.

The SPEAKER. Is there objection to the gentleman from Louisiana making a personal explanation?

There was no objection.

PERSONAL EXPLANATION.

Mr. MOREY. Mr. Speaker, a week or two since, just after the organization of the committee to investigate the conduct of Louisiana officials, a witness was examined here by that committee, who, among other things, attacked my character very seriously. This man had been an agent of the Post-Office Department, on duty in the State of Louisiana, and also had been a deputy United States marshal, and had, in pursuance of his duty, served various processes during the fall of 1874. This witness charged various crimes in which he made an attempt to implicate me. I wish to say that so far as all his charges are concerned that in any way affect my honor and integrity they are both false and infamous. From the evidence that he gave he showed that he himself was infamous. And he made a very labored attempt to prove that I was equally guilty.

Now, Mr. Speaker, in the summer of 1875 this witness sent to me by mail an abstract of what he called a history of occurrences in the fall of 1874 in the State of Louisiana. I was West when that was mailed to me here, and it reached me in the city of Denver in August, 1875. To that I paid no attention. In October, when I returned to Washington, I heard that this man had gone to New York and proposed by the meeting of Congress to make a publication of this statement.

In December, 1875, I was aware that I was to be faced in this House with a double contest: a contest for my seat *prima facie* and a contest for my seat on its merits. This House included in its composition a large number of new members, with whom I had not the pleasure of acquaintance. I felt that a publication of this sort, from any man who had held an official position, in which there was just enough truth interwoven to carry probability with it, would prejudice me; and I felt that, if by paying this man a few hundred dollars I could stop that current of abuse and falsehood, I was justified in doing it. Whether I was justified or not in doing it, I did it. Twelve months ago if anybody had asked me if I would under any circumstances consent to be blackmailed, I should have said no. But we do not know what we will do until the circumstances arise. I felt that, if a publication of that sort were spread broadcast through the country,

when I came to this House I would fail to have anything like an unprejudiced hearing.

The testimony of this witness in the aggregate went to show that I was the virtual commander of the Army in Louisiana as well as of all officials there, as he says, "Everybody seemed to obey his orders, from General Emory down."

Now what are the facts? I will ask the Clerk to read a brief extract from the testimony of General Henry A. Morrow, of the United States Army, who was sent in November, 1874, to North Louisiana by General Emory to make an investigation of the condition of things there, particularly in regard to the use of troops.

In his report he reflected very severely on this witness Selye for the unnecessary rigor and harshness exercised by him toward those whom he arrested. On his arrival at Monroe General Morrow came to see me, and we consulted freely in regard to the subject with the investigation of which he was charged. I saw his report, and talked with him afterward on the same subject. General Morrow received the highest indorsement from General Sherman as an officer of judgment and discretion.

The Clerk read as follows:

Question. One of your particular objects was to inquire into the use of the military force in Louisiana?

Answer. Yes, sir; that was my first object.

Q. What was the result of your inquiries?

A. With the permission of the committee I will hand in copies of my official reports, which cover that ground. I did not think there had been any necessity for the use of troops in the parish of Ouachita, Jackson, Lincoln, or Claiborne, and I so reported; and I believe that my report on that subject was considered very acceptable, for I know that it was shown to Mr. MOREY, the member of Congress from that district, who expressed himself, not only to the officer who showed the report to him, but to me subsequently, as entirely satisfied with it, and stated that it was a very fair, manly report.

Mr. MOREY. Now, Mr. Speaker, it is no secret that every two years for six years past I have fought the extreme element of my own party in my State, and have been renominated and re-elected against its opposition.

As to my course on this floor in that time it does not become me to speak, beyond stating the fact that upon every proposition looking toward the political equality of all of the people of this country, upon every proposition tending to enhance the material prosperity of the section which I have the honor in part to represent, my vote has always been recorded on the side of liberality.

For six years I have been the opponent of extremism in my own party, as well as in the democratic party in Louisiana, and during that time I have never failed to poll a large conservative vote outside of my own party vote. With the exception of perhaps a couple of hundred votes, there was no falling off in this character of support in 1874. My majority was cut down from about 4,000 to about 900 through the treachery and corruption of a few republican leaders in two strong republican parishes, who deceived their followers by spurious tickets with the name of my contestant thereon in place of my own. These parishes are not in contest, and I can therefore properly speak of the matter now.

Were it not that it is possible that I may not again after to-day have the opportunity to speak on this floor, I should have remained silent under the prejudice created by the testimony of this witness until I could call witnesses of the highest respectability to disprove every charge made by this black-mailer. This opportunity is given me through the courtesy of the Louisiana committee, and my witnesses are awaiting my arrival in New Orleans, for which place I depart as soon as my contested-election case is disposed of.

I wish now to distinctly deny any and all charges and statements made by this witness that in any manner impugn my honor or integrity, and to declare them to be absolutely untrue.

I wish to say to my friends on this floor on both sides of this House that for the many expressions of their confidence given to me since this slanderous testimony was first published they have my warmest gratitude. What has been most gratifying to me is that the strongest tokens of it have come from those with whom I have had the pleasure of serving the longest and who have had the opportunity of knowing me best. It would be a poor compliment to them, indeed, were I to suppose for a moment that they had any sympathy with wrongdoing. On the contrary, I take it as an evidence of their belief that I have done nothing unworthy or dishonorable.

I wish to say in conclusion why I desire that this contested-election case should be taken up now. The Louisiana Investigating Committee have gone to Louisiana. They are now in session. They have extended to me the courtesy of calling my witnesses for the purpose of disproving this slander. My witnesses are there now awaiting my arrival to be examined; and I think in justice to myself that the case should be now allowed to proceed. The gentleman from Iowa, [Mr. MCCRARY,] I understand, first has the floor. At the conclusion of his remarks he desires to submit a proposition to the House. If the House see fit to entertain it and vote on it, there may be no necessity for any further remarks in the case. If, however, the House decide to go on with the case to its conclusion, then I will take the floor, to be followed by the gentleman from New York [Mr. BEEBE] to close the case. That I understand is the arrangement.

I thank the House for its indulgence in permitting me to make this explanation.

ORDER OF BUSINESS.

Mr. DURHAM. I desire to state why, under the privilege granted to me some time ago, I press the consideration of the bill which has been made a special order for to-day. I ask the gentleman from Tennessee [Mr. HOUSE] who has charge of the election case to listen to me for a moment.

The committee of the Senate and the committee of the House acted upon separate and independent bills. We found after going through nearly two thousand proposed changes or corrections in the Revised Statutes we had nearly agreed upon the whole of them; after we had got through with the bill the two committees met together and we reconciled all the differences that existed between the bills prepared by the respective committees, and I was instructed by the committee to report this bill, and when I reported it only a few days ago the House assigned it as a special order for to-day. It is the joint work of the two committees, and I apprehend that it will not take ten minutes to pass it. Unless I am asked questions as to the specific amendments, I will call the previous question and put the bill on its passage.

I may state, also, that Senator BOUTWELL, the chairman of the committee of the Senate, is to leave for Mississippi in two or three days, and desires that the bill shall pass the House to-day, that he may report it to the Senate and have it passed there before he leaves for Mississippi.

These are the reasons why I press the consideration of the bill under the special order. I hope the House will grant me fifteen minutes. I think we can finish it in that time.

Mr. HOUSE. Is the gentleman willing to be limited to fifteen minutes?

Mr. DURHAM. I am willing to be limited to half an hour. If the bill is not disposed of in half an hour I will let it go over. I will move the previous question in twenty minutes.

Mr. HOUSE. And when that is disposed of the election case will come up?

The SPEAKER *pro tempore*, (Mr. SPRINGER.) There are several matters of business in order at this time. That which is of the highest privilege is the election case of Spencer *vs.* Morey, but when questions are raised as to the priority of business they must be determined by the House.

Mr. HOUSE. Then I must insist on going on with the election case now.

Mr. JONES, of Kentucky. The gentleman from Tennessee [Mr. HOUSE] certainly has the right to yield to the gentleman from Kentucky, [Mr. DURHAM.]

The SPEAKER *pro tempore*. But the gentleman from Tennessee declines to yield, as the Chair understands.

Mr. HOUSE. Yes, sir; I decline to yield. I desire to go on.

Mr. SOUTHARD. The question of the privilege of the special order of the gentleman from Kentucky was decided by the Speaker before he left the chair. He decided that the gentleman from Kentucky has the right to make his motion and submit it to the House. That motion he has made, and I submit he is entitled to a vote upon it.

The SPEAKER *pro tempore*. The Chair desires to state to the gentleman from Ohio that in the matter of priority of business the Chair will put the question first on the question which is of the highest privilege. If the House declines to take up that, he will then put it on the next highest question of privilege.

Mr. GARFIELD. What is the second question of privilege anyhow?

The SPEAKER *pro tempore*. The unfinished business, being the bill of the gentleman from Ohio [Mr. BANNING] in relation to the Army.

Mr. GARFIELD. Then there are three questions of privilege?

The SPEAKER *pro tempore*. Yes; there are three questions of privilege pending.

Mr. MOREY. I rise to a parliamentary inquiry. If the gentleman from Tennessee [Mr. HOUSE] should now see fit to yield twenty minutes to the gentleman from Kentucky, [Mr. DURHAM,] cannot that be done by him without losing any of his rights?

The SPEAKER *pro tempore*. If the House, by unanimous consent, agrees that that order be taken, it can be done; but the Chair must first put the question on the consideration of the contested-election case.

Mr. DURHAM. I do not want to lose any rights I have, and I now raise the question of priority of consideration. I desire to save my rights all through this matter.

The SPEAKER *pro tempore*. The gentleman raises a point of order?

Mr. DURHAM. No; I raise the question of consideration.

The SPEAKER *pro tempore*. The Chair deems that the contested-election case is of the highest privilege, and the question on its consideration must first be put to the House.

Mr. DURHAM. Very well, sir.

The question was put on the question of consideration of the contested-election case; and on a division there were ayes 97, noes not counted.

So the motion was agreed to.

CONTESTED ELECTION—SPENCER VS. MOREY.

The House resumed the consideration of the contested-election case of Spencer *vs.* Morey from the fifth district of Louisiana, upon which Mr. MCCRARY was entitled to the floor.

Mr. BANNING. If it is in order I would like to hear it indicated how long this case will take for consideration.

The SPEAKER *pro tempore*. That will be for the House to determine.

Mr. MOREY. It will take until about four o'clock, or three hours longer.

Mr. McCRARY. Mr. Speaker, what I desire to submit to the House in reference to this case may be very briefly stated. I know how difficult it is for members of this House to give that attention to the details of these cases of contested elections which they ought to give to them, and yet I think every gentleman will agree with me that there is no subject upon which we are called upon here to vote which ought to receive at our hands more careful consideration; for in this matter, Mr. Speaker, we sit as judges of the law and as jurors to consider and pass upon the facts, and we are called upon to act with that care, deliberation, fairness, and impartiality which should characterize a court of justice.

I have no patience whatever with a practice which has been too common, of deciding these cases with reference to the political views of the parties to them. I do not say this, Mr. Speaker, for the first time standing here in the minority, for the record will show that when standing here with a large majority of my political friends I assumed and to the best of my ability maintained this position; the record will show that during the Forty-second Congress the Committee of Elections reported to this House seventeen contested-election cases, and that of that number eleven were decided in favor of gentlemen belonging to the minority in the House. There was one case in which both parties belonged to the majority, and in that case the seat was declared vacant. I think, therefore, Mr. Speaker, that I cannot be charged with any improper motive when I ask the House to consider this case without any reference to political or partisan considerations.

Now, sir, there are four things, either of which the House may do in this case: it may resolve that the contestant, Mr. Spencer, was duly elected; it may resolve that the sitting member, Mr. Morey, was duly elected; it may determine to declare the seat vacant, and refer the matter back to the people of the district for their decision; or it may decide to order that further testimony shall be taken in order to arrive at a just conclusion.

In my opinion, Mr. Speaker, the least that the House can do in fairness and in justice is to adopt the last of these propositions. I do not believe that under the testimony in this case the House ought to resolve that Mr. Spencer, the contestant, was duly elected to represent this district. The House must bear in mind that in order to reach this result it is necessary to exclude altogether from the count a very large number of votes, by throwing out the whole vote of several of the wards or voting precincts in the district. The majority of the committee have recommended to the House that precincts giving the sitting member a majority of 2,244 votes shall be rejected. They recommend that the vote of the fifth precinct of Concordia Parish shall be excluded altogether, and that the vote of the first, second, and third precincts of the parish of Carroll shall also be excluded. Those precincts on an aggregate gave to the sitting member a majority of 2,244 votes, and it is proposed that they shall be excluded altogether in order that the contestant shall be seated.

Now, Mr. Speaker, if this is a necessary conclusion, if there is no alternative but to exclude from the count altogether such a large proportion of the district, then of course the House will have to meet that alternative. But, sir, it is a well-settled rule, and one to which the House always adheres, that a whole precinct or a whole county, embracing a large number of votes, shall not be altogether excluded unless it is impossible to ascertain what was the result of the vote therein.

Now, sir. as to the first precinct that has been rejected by the majority of the committee, the fifth precinct of the parish of Concordia, the ground of rejection is this: that the votes, after being cast and deposited in the ballot-box, were not counted and canvassed at the place of voting, but that the box was taken to the county seat and the vote was there canvassed. The law required the ballots to be canvassed at the place of voting.

Now, Mr. Speaker, I think it may be fairly said that where a ballot-box is carried away from the place of election to some distant point before the votes are canvassed it raises a presumption against the fairness and validity of that canvass. I am willing to concede so much that it raises such a presumption as ought to be overcome by evidence sufficient to satisfy the House that there was no unfairness, no tampering, no fraud; that, although the vote was not canvassed at the place of voting, yet at the county seat the votes were fairly canvassed, honestly canvassed; that no wrong was done by the fact that they were not canvassed at the place of voting. I have read over all the evidence in relation to this precinct, and it is entirely clear to my mind that the votes were fairly, honestly, and correctly canvassed, and that no wrong was done to anybody by the fact that the count was not made at the place where the votes were cast. And there is a perfect and satisfactory explanation as to why the votes were not canvassed at the polls but were carried to the county seat. The law of Louisiana in force until a short period before this election required the ballot-box to be carried to the county seat and the canvass made there, and the officers of this election precinct were not aware that a change had been made in the statute, and believed it to be their duty to take the ballot-box and canvass the votes at the county seat, as they had been in the habit of doing in prior years.

Now, Mr. Speaker, this House had almost exactly this question before it in a case which arose in the Forty-second Congress where, in the State of Virginia, the officers of the election were not aware of a change which had been made in the law of that State regulating elections. In ignorance of a change of the law they numbered all ballots cast. Their action was clearly illegal and in violation of the rule which protects the secrecy of the ballot. Although the judges of election did in that case violate the law in that particular, the House declared that inasmuch as the officers who numbered the ballots acted honestly and no harm was done to any body the vote should not be excluded. This was decided by this House in favor of a democrat when we had a two-thirds majority on the republican side. I refer to Braxton *vs.* McKenize, Forty-second congress.

To show the grounds upon which the House proceeded in that case let me read a sentence or two from the report of that committee:

> We are further of the opinion that the numbering of the ballots cast at an election, in the absence of a statute expressly so declaring, does not of itself invalidate an election, unless some injury is shown to have resulted to the party complaining.

That is what I want to call to the attention of the House.

> In Virginia the law which was in force until near the time of this election in question this provision repealed. It seems that at a few precincts the officers of election were not advised of this repeal, and consequently numbered the ballots as they had been in the habit of doing before. Although it would be possible from the numbering of the ballots to ascertain how each person voted, it is not claimed in this case that this was done or that the tickets were numbered for any such purpose or for any improper or unlawful purpose whatever.

And so I say here that, although the law required the ballots to be canvassed at the place of voting, yet there is no pretense that they were carried to the county seat for the purpose of any wrong or with any intent to commit any fraud, but rather under the honest impression on the part of the election officers that the law still required the ballots to be canvassed at the county seat.

Now, sir, in such a case as that I submit to the House that where the evidence is clear that the ballot-box was carefully and scrupulously guarded, that every ballot was fairly and honestly counted, where there is no attack upon the fairness or honesty of the count, the House ought not upon a mere technical ground take it for granted that these officers of election, ignorant of the change made in the law, did not act in good faith in taking this ballot-box to the county seat in accordance with the law previously prevailing, and there making the canvass. I think, therefore, that this precinct should be counted. But I submit that, if the House is not of the opinion that it should be counted on this evidence, the least the House can do is to order further and more satisfactory testimony as to the real, honest vote of the electors in that precinct. Now, as to the votes in the first, second, and third wards of Carroll Parish; they are all thrown out upon the ground that the returns which the law required to be sent to the county seat and deposited with the clerk of the court are not to be found on file in the proper office. It seems, sir, that for some unexplained reason the returns were lost or stolen; at all events they are not to be found in the proper place, in the custody of the clerk of the court; but it is conceded on all hands that no blame attaches to the sitting member in regard to that matter; there is no pretense that he had any connection with any scheme for abstracting the returns from the proper office, and the only question before the House is (it being conceded that there was an election in Carroll Parish) whether we have sufficient evidence as to the result of that election in the precincts in question. It is simply a question as to the sufficiency of the proof. Now, upon that subject I admit that there is room for difference of opinion. Gentlemen may contend, and may contend, I admit, with a great deal of force, that as to some of these wards the best evidence would be the testimony of the voters themselves.

I apprehend, Mr. Speaker, that the rule is this: If a return was made, and if that return was not attacked for fraud, and it has been lost or stolen so that it cannot be produced in evidence, then it is entirely competent for either party to the contest to call any witnesses who can testify to the contents of the return and prove the contents just precisely as they could prove the contents of any lost or destroyed instrument in writing.

But if there was no return; if after the ballots were fairly cast, if after they were deposited in the ballot-box, the officers of election for any reason failed to make a return, then I apprehend that the best evidence as to the result of the election in such a precinct would be the evidence of the voters themselves, who should be called and sworn and allowed to testify as to how they voted. Of course the ballots themselves, if they could be found and clearly identified, might be better evidence; but I believe it appears here that the ballots and returns are both missing as to some of these precincts.

As to the first precinct I think the vote is sufficiently proven. The return which was made in duplicate is, it is true, not found on file in the clerk's office, where the law requires it to be deposited; but one of the original copies is identified and sworn to by one of the officers of the election, identified and sworn to as one of the original duplicate copies of the return. It appears entirely regular upon its face; it is sworn to by all the officers of the election as required by law; it is fully certified, and there is no objection to it except that it was not found on file in the clerk's office, and that no return was found on file in the clerk's office.

Now, because there was no return on file in the clerk's office, because after due search in the place where the return ought to be found

no return was found, it became entirely proper to call a witness to prove the correctness and genuineness of the other copy of the original return which was kept and not deposited with the clerk.

So as to this first precinct, I think the proof is entirely sufficient, and the return ought to be counted. It is simply a case where the copy of the return which was left in the clerk's office was lost or mislaid or stolen, and cannot be found, and the other original duplicate return duly certified, duly sworn to by the officers of the election belonging to both parties, has been brought in to supply the loss of the copy which was left in the clerk's office. There can be no objection to such testimony as that. It is the very best evidence that could be produced. I apprehend that the very purpose of the law in requiring these returns to be made in duplicate was, that if one copy should be lost or destroyed the other could be proven and produced in evidence.

As to the other wards of Carroll Parish which were rejected, there might perhaps be more difficulty. I do not wish to go into the details. The question is made that, instead of calling the officers of the election to prove what the vote was, the sitting member should have called the voters themselves to testify. Now, if I grant that—and I do not think it is necessary to grant it—but, if I grant that, I submit to the House that it only follows that the committee should have further time in which to consider this case, in which to have the voters called and in which to get at the real, honest vote of these precincts.

The House has passed upon a question exactly like this in another case, to which I wish now to call attention. In the Forty-second Congress, in a contested-election case from the State of Florida, a precisely similar question was raised; that was the case of Niblack *vs.* Walls. One of the returns in that case was impeached by the evidence, on the ground that it had not been transmitted through the regular and legal channel to the secretary of state, but had been delivered to an unauthorized person, who had broken the seal, who had carried the return and delivered it to the contestant, one of the parties then before the House asking for the seat. This return was delivered by the contestant in that case to the secretary of state. The Committee of Elections decided, and the House decided, that a return that came before it in this irregular way, having been in the hands of unauthorized persons, having been delivered by one of the parties to the contest, having been in a position to be tampered with and changed, was so far impeached that it was necessary to corroborate it, that it was necessary to prove by some evidence *aliunde* that it had not been tampered with, that it was the genuine return. But the contestant in that case, a democrat, had failed to support the return by any evidence *aliunde*.

If that return had been rejected the republican claimant of that seat would have retained it, and the democratic contestant, who received in that county a majority of something like 160 votes, would have been excluded from the seat. But the House, although holding that the return was impeached so that it did not prove itself to be genuine, was not willing to say that therefore the vote of that entire precinct should be rejected. And it made an order that the hearing of that case should be continued, that the time for taking testimony should be extended, and that the parties to the contest should be allowed to take proof and show whether that was a genuine return, and as to what was the honest and true vote of that precinct.

Now I think that is precisely what the House ought to do in this case. I submit that no man can read the evidence in this case and have any moral doubt that Mr. Morey was elected by a large majority. Although the proof may in some respects be thought by some to be irregular and not of the very best that can be produced, yet I apprehend there is no man on this floor who will rise in his place and say to the House that he has any doubt that Mr. Morey received a large majority in the fifth ward of Concordia Parish, that he has any doubt that Mr. Morey received a large majority in each of the three wards of Carroll Parish which have been rejected by the majority of the committee in their report.

Now the precedent to which I have called the attention of the House, made by the republicans of this House in favor of one of their political opponents, is that in such a case the opportunity for further proof should be given, if the House is not satisfied with the proof that we have.

Without debating the case further, I desire, if the gentleman having charge of the case will permit, to have the House vote upon a resolution which I propose to offer as a substitute for both the majority and the minority report.

The Clerk read as follows:

Resolved, That the report of the Committee of Elections in the case of Spencer *vs.* Morey, fifth district of Louisiana, be recommitted to said committee; that the poll of Concordia Parish be counted; that the time for taking testimony in said case be extended sixty days from the 10th day of June, 1876; and that within said extended time additional testimony may be taken upon the question, What was the true vote of the first, second, and third polls of Carroll Parish? said testimony to be taken in accordance with the statutes regulating the taking of testimony in contested-election cases, except that the contestant shall take testimony during the first twenty days; the contestee during the next twenty-five days, and the contestant during the last five days in rebuttal only; this arrangement of time to be subject to such changes as may be mutually agreed on by the parties to the contest.

Mr. BEEBE. Is it the purpose of the gentleman to press this substitute at the present time?

Mr. MCCRARY. No, sir; I do not desire to do so until gentlemen are ready to have a vote. I would like to have the proposition pending to be voted on when we reach the final question.

The SPEAKER *pro tempore*, (Mr. SPRINGER.) It will be considered as pending.

Mr. MOREY. I ask the gentleman from Iowa [Mr. MCCRARY] to yield to me the balance of his time.

Mr. MCCRARY. I will do so.

The SPEAKER *pro tempore*. The gentleman from Iowa has thirty minutes remaining.

Mr. MOREY. Then I shall be entitled to one hour and a half.

The SPEAKER *pro tempore*. Yes, sir.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of their clerks, announced that the Senate had passed a bill of the following title; in which the concurrence of the House was requested:

A bill (S. No. 728) for the relief of Martha J. Coston.

The message further announced that on Thursday the 1st day of June, 1876, at one o'clock p. m., the Senate will deliver its judgment in open Senate on the question of jurisdiction raised by the pleadings in the trial of William W. Belknap, upon articles of impeachment exhibited against him by the House of Representatives, at which time the managers of the House are notified to attend.

ELECTION CONTEST—SPENCER *vs.* MOREY.

The House resumed the consideration of the contested-election case of Spencer *vs.* Morey.

Mr. MOREY. Mr. Speaker, in discussing this case I shall do what other gentlemen promised to do and did not, that is, to confine myself to the record and endeavor to deal with the facts and with the legal and equitable features of the case.

It will be remembered that there was what has gone into history as the "Wheeler adjustment" of the questions growing out of the election in 1874 in Louisiana, in which the action of the State returning board was to some extent revised. In no case was any change made or asked for in either of the fourteen parishes in my district, so that this case comes before this House entitled to a fair consideration on its merits as developed in the record.

The vote of each party in the district is admitted by both parties to this contest, except at one poll in one parish and the entire vote of another parish. We will first consider the one poll, namely, the fifth poll of Concordia Parish.

Contestant charges as follows:

I claim that the said returning board unlawfully canvassed and counted the returns from the fifth poll or ward of Concordia Parish, and that the supervisor unlawfully returned the votes of said poll, thereby giving you wrongfully a majority of 450 more in said parish than you were legally entitled to, for the following reasons, to wit: The election laws of Louisiana require that the ballot-boxes shall be opened at the polling-place as soon as the voting is over, in presence of the public, and the votes counted publicly, and returns made within twenty-four hours after the closing of the polls. At said fifth poll the commissioners of election refused to open and count the votes at the poll; but, on the contrary, they took the ballot-box late at night and carried it away to Vidalia, a distance of fifteen miles, and went into a private apartment and counted the votes out of the presence of the public, and made no returns thereof for two days after the election; *all of which constitutes presumptive evidence of fraud and wrong.*

Mark you, there is no charge of fraud!

Now, there are two points in this specification:

First, that the votes were counted elsewhere than at the polls; and

Second, (which was a necessary result of the first,) that the returns were not made within the time prescribed by law.

The testimony is so brief that I will ask the Clerk to read *all* of the testimony taken in regard to this poll by both parties.

The Clerk read as follows:

JOHN F. DAMERON, sworn for both parties, says:

At the general election held on 2d November, 1874, I was at the Vaucluse poll, fifth ward, Concordia Parish, and acting at said poll as a commissioner of election. Robert H. Columbus and Thomas E. D. Jefferson were the other two commissioners at said poll, and William C. Yeager United States supervisor at that poll. When the polls were closed on that day, between six and seven o'clock p. m., the box was locked, I took the key in my possession, giving the box to Robert H. Columbus. We started for Vidalia, the parish seat of Concordia, distant about sixteen miles. Upon reaching the store of T. C. Witherspoon, on the road to Vidalia, the suggestion was made that I should take the box and ride in a buggy from there to Vidalia, which suggestion I acceded to, and came on to Vidalia in company with Irvine in his buggy, one of the other commissioners riding in front and one in rear of the buggy on horseback. Coming on without any interruption, we reached Vidalia between eleven and twelve o'clock that night, and proceeded to the office of Burnett Hitchcock, tax-collector, up-stairs in the court-house at Vidalia. We then and there opened the box and proceeded to the counting of the votes up to half past two o'clock a. m. of the 3d November. When we closed the box, I locked it and gave the key to Robert H. Columbus, taking the box with me in company with William C. Yeager, United States supervisor, to the hotel in Vidalia. Putting the box under my bed in the room of the hotel, we went to sleep and slept till about seven and a half or eight o'clock in the morning. We then got up to breakfast, I taking the box with me to the table. After finishing breakfast, we went to the court house, to Mr. Hitchcock's room again. Opening the box, we proceeded again to count the votes. After thus counting some time in Mr. Hitchcock's room, we closed the box and moved down-stairs into the court-room, where we proceeded until the count was completed. The reason we did not go to the court-room at first was that on arriving at Vidalia we found the court-room occupied by the commissioners of the Vidalia ward or precinct. We completed our returns on the night of the 3d November, between ten and eleven o'clock, and made our returns to the supervisor of the parish on the next day, 4th November, between twelve m. and one o'clock p. m. In counting the votes the tally-lists were kept by different persons, part of the time by Mr. Connell, part of the time by Mr. Joyce, and part of the time by Mr. Nutt. The tally-sheets were kept under the direction and supervision of the commissioners. There were in said box and returned by said commissioners 441 votes for Frank Morey for member of Congress for fifth district and 37 votes for William B. Spencer for member of Congress for fifth district of Louisiana.

During the night of 2d November, when we were counting the votes in Mr. Hitchcock's room, there were present, besides the commissioners, several persons, among whom was a candidate for police juror and a candidate for magistrate of the fifth ward. Mr. Hitchcock's office was considered to be a public office, and any person during the time we were counting was privileged to come in. It was not a public office except for purposes of tax-collecting; and Mr. Ault, the deputy collector, gave us permission to use it. When I went to my meals during the time of counting, I left the box in the court-room in charge of Mr. Columbus, one of the commissioners, and took the key myself; and when he went to his meals, he took the key and left me in charge of the box. The other commissioners did not take their meals at the same house with me, they being colored men. I am neither a democrat nor a republican, but am an old-line whig. The other two commissioners were republicans. I was not considered to be a republican. The labor of counting the votes was very considerable, as it was a general election and quite a number of canditates voted for. I only heard two candidates make objections to our mode and manner of counting. No objection by anybody else was made to me. The votes cast at this fifth-ward box were counted and returned by the supervisor, as between all the candidates at said election. I don't think the tally-lists were very regularly kept, as we had no regular tally-keepers and had to pick them up as we could get them. I believe the tally-lists were kept as correctly as they could have been kept under the circumstances.

I omitted in commencing my statement to mention the circumstances under which the box was removed from the polling-place and the vote not there counted. When the polls closed, the other two commissioners refused to open and count the votes at the polls, they saying that the box ought to be taken to Vidalia and the votes counted there. Not having the book of instructions for holding the elections, I acquiesced in their wishes. I will further state that the reason why we suspended the counting of the votes on the night of 2d November was that the commissioners were tired and very much exhausted by the labors of the day and the long ride that night. I voted at said election for Moncure for treasurer, Spencer for Congress, and some republicans for other offices. Said election was free and fair.

JNO. F. DAMERON.

WILLIAM C. YEAGER, sworn for plaintiff, says:

I was United States supervisor on 2d November, 1874, at fifth-ward box in Concordia Parish. I have carefully read the testimony of John F. Dameron, this day taken and hereinbefore written, and I fully confirm the same, as containing a true and correct statement of the facts relative to the matters stated therein. As United States supervisor aforesaid I made a report setting forth in substance the same facts to F. A. Woolfley, United States supervisor for the State of Louisiana, immediately after said election.

W. C. YEAGER.

THOMAS E. D. JEFFERSON, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in this cause, and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth ward poll, Concordia Parish, on 2d November, 1874, with the following qualification and exception, to wit: I made no objection to opening and counting the votes at the polls, but stated I had served as a commissioner of election before, and always took the boxes to Vidalia to count them; and we had no instruction book to guide us, and I did not know what else to do, believing that to be the law. I had left the instruction book at home, having forgotten to take it with me. The election on that day was free and fair.

THOS. E. D. JEFFERSON.

ROBERT H. COLUMBUS, sworn for defendant, says:

I have carefully examined the testimony of John F. Dameron, taken this day in this cause, and hereinbefore written, and I fully confirm his statement of the facts relative to the election at fifth ward poll of Concordia on 2d November, 1874, with the following exception: I made no objection to the opening and counting of the votes at the polls. Said election was free and fair.

R. H. COLUMBUS.

Mr. MOREY. Now, what was the law in force at the prior election, which is referred to by the witness Jefferson? I quote:

At the conclusion of the election, at each poll, the boxes containing the ballots shall be securely locked and sealed, and taken immediately by the commissioners of election to the parish seat, where they shall be counted out by the said commissioners, in the presence of the supervisors of registration and election of the parish.

Now, this is what was done at this poll, under the idea that the old law was in force. Now, here is a violation of a provision of law through a mistake honestly made. There is no charge of fraud and no evidence of it, and the rule is that the contestant shall be confined to the specific charge that he makes.

Now, there is every word of evidence that is in this record touching this poll, and I would ask what warrant my colleague has for saying that the poll-lists were kept by "any lounging loafer that came along?" It is by this kind of loose statement and by going outside of the record entirely that the attempt is being made to prejudice my claim in this contest. Now, my colleague used this language referring to the commissioners at this poll:

They distinctly state that the returns were calculated from these tally-sheets kept by Tom, Dick, and Harry, or any idler or loafer who came into the room during the count. This was the basis on which they made their returns; and when put to the test they declare that "they do not know whether these tally-lists were correctly kept or not; that they were kept as well as they could be under the circumstances."

Now, these words are put in quotation marks by my colleague, who held his speech three days for revision, and I submit that an argument containing errors of this kind in a case of this kind is worthy of no consideration. This is only a sample; I will have occasion to refer more than once to this "revised" speech, as well as to another of the same sort. Now, my colleague says again:

When votes are called off at the polls, somebody keeps the tally. But the tally-sheets are no evidence of the election whatever, and no part of the returns. They are a mere series of straight marks and names, which may be multiplied and prolonged indefinitely.

In this my colleague states the law correctly; but the gentleman from Missouri, [Mr. DE BOLT,] who also printed a revised speech, says:

The returns are made from the tally-sheets; in fact the tally-sheets are the returns themselves, with the affidavits of the commissioners attached.

Now, where did the gentleman get that law? Not from the laws of Louisiana nor from this record; and this gentleman is a member of the committee and signed the majority report. He said in debate that I had been in this case from the beginning and did not know anything about it. We shall see about that. I propose to show the House that he knows so little about it that his name to that report is not worth the weight of a feather. In this revised speech of his there are twenty statements made by him that are not borne out by the record.

Now we will consider the law.

Was this a violation of a mandatory or a directory provision of the law? Let us see.

Much stress has been laid on the first section of the election law, which is as follows:

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened*, That all elections for State, parish, and judicial officers, members of the General Assembly, and for members of Congress, shall be held on the first Monday in November; and said election shall be styled the general elections. They shall be held in the manner and form and subject to the regulations hereinafter prescribed, and no other.

These concluding words "and no other" have been treated by the majority as having the same significance as "negative words" referred to by Cooley, the presence of which is conclusive of the mandatory character of the provision. But do they mean the same thing? Not at all.

Cushing on Legislative Assemblies says, referring to the inspectors or commissioners of election:

Where the law is merely directory, no neglect or mistake, or even improper conduct or irregularity on their part, will be fatal, *though frequently made punishable by law*, if in other respects there has been a substantial and good election.

Provisions of law, which are introduced only as affirmative propositions, are commonly, unless essential in their character, merely directory; but if *accompanied also by negative words*, or their equivalent, they are, of course, without regard to their character, always peremptory.

202. In the application of this principle much embarrassment will be prevented by keeping in view these two considerations: 1. That it is the language, rather than the nature of a statutory provision, which makes it imperative or directory. 2. That whether a neglect of the requisitions of a directory statute will be fatal or not to the proceedings does not depend so much upon the nature of the neglect *as upon its influence in producing the result of the election*. Irregularities in the proceedings of returning officers, though not sufficient of themselves to authorize a presumption of fraud or corruption, are nevertheless always looked upon as strong corroborative circumstances.

203. The following cases are selected from a much greater number as examples of irregularities in the conduct of returning officers, in the observance of the requisitions of statutes, and which have been held to be merely directory statutes, and which have been considered as insufficient to invalidate elections, namely: Where the ballot-box was not locked as required by law, but was only tied with tape, and was also placed in the custody of a person not authorized to have charge of it; where instead of 'a box locked or otherwise secured,' a gourd 'carefully stopped and tied up in a handkerchief' was used; where there was an omission to give the notices required by law to two inconsiderable places within an election district; *where the returning officers did not meet for the purpose of making their return until after the time appointed by law*; where the poll clerks appointed by the sheriff were not sworn until after the election, or *were not sworn at all*; where the number of votes being required by law to be set down in writing was set down in figures; where the return of votes was unsealed instead of being sealed up as required by law; *where the votes were returned after the time prescribed by law*; where the opening of the meeting was delayed for two hours beyond the time fixed; where the officers presiding at an election, in the belief that illegal votes had been received, stopped the balloting and commenced anew; where the warrant calling the meeting for an election did not specify the time when the poll would be opened; where the poll was not kept open each day the number of hours required by law. *In all these cases, there being a substantial and good election, notwithstanding the irregularities complained of, the proceedings were not invalidated.*

Now, the provision of law for counting the votes at the place where cast is not accompanied by negative words, and therefore is not mandatory or essential. It may be a sufficiently positive provision to subject the commissioners to punishment, but *is not essential to the validity of the election*. The authorities are very full on this point. Now, if this generic provision is held to be mandatory, it proves too much. For instance, the law says that no person shall carry fire-arms within one mile of the polls. Suppose they do. Do you mean to tell me that that would avoid the election? The law says that no whisky shall be sold about the polls nor given away. Suppose each man is offered a drink by his neighbor. The law provides that the commissioners shall count the ballots and declare the result. Suppose at the conclusion of the voting that they are struck by lightning and killed. Do you mean to tell me that the voters at that poll are to be deprived of their right to have their votes counted? No, sir; these are mere directory provisions. But we are not left in the fog at all in this matter. The rule is that the decisions of the State courts on State laws shall govern. The supreme court has decided definitely that these provisions are directory merely.

My colleague from the second district [Mr. ELLIS] has seen fit to indulge in some reflections on the *personnel* of the supreme court; but as that is not in the record of this case I do not propose to follow him. But I desire to say this: that the opinion of the supreme court merely re-affirms the well-settled jurisprudence of our State on this question, and refers to the decisions on the same points reported in the ninth, tenth, and thirteenth annuals. The court was democratic in those days.

In the ninth annual the decision was rendered by Judge Voorhies. In the tenth annual the decision was rendered by Judge Merrick. In the thirteenth annual the decision was rendered by Judge Spofford. What has the gentleman to say of the *personnel* of those courts? Are they not Chevalier Bayards? The gentleman should scorn to descend to a partisan appeal like the one he made in his speech in the discussion of a case of this kind.

The gentleman quoted from Cooley. Let me give him a little of Cooley's authority on this point:

Errors of judgment are inevitable, but fraud, intimidation, and violence the law can and should protect against. (Cooley's Limitations, page 621.) The same author says: "When an election is thus rendered irregular, whether the irregularity shall avoid it or not must depend generally upon the effect the irregularity may

have had in obstructing the complete expression of the popular will, or the production of satisfactory evidence thereof. Election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish, and, except where they specifically provide that a thing shall be done in the manner indicated, and not otherwise, their provisions, designed merely for the information and guidance of the officers, must be regarded as directory only, and the election will not be defeated by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences, from which the result was to be declared," (618,) and it was said in People *vs.* Cook, 14 Barbour, 257, and 8 New York, 67, "that any irregularity in conducting an election, which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and *has not been occasioned by the agency of a party seeking to derive a benefit from it*, should be overlooked in a proceeding to try the right to an office depending on such election. This rule is an eminently proper one, and it furnishes a very satisfactory test as to what is essential and what is not in election laws. And when a party contests an election on the ground of these or any similar irregularities, he ought to aver and be able to show that the result was affected by them." (Cooley's Constitutional Limitations, page 619; 13 Annual, 175.)

The same principle is mentioned in the Ohio State report for 1866, a report made by a committee of which the distinguished member from Ohio [Mr. WALLING] was a member.

McCrary, in his Election Law, says:

If the statute expressly declares any particular act to be essential to the validity of the election, or that its omission should render the election void, all the courts whose duty it is to enforce said statutes must so hold, whether the particular act in question goes to the merits or affects the result of the election or not. But if, as in most cases, the statute simply provides that acts or things shall be done within a particular time, or in a particular way, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not affect the actual results of the election. * * * Those provisions which affect the time and place of holding elections and the legal qualifications of the electors are generally of the substance of the election, while those touching the record and the returns of the votes received are directory. The principle is that irregularities which do not tend to affect the results are not to defeat the will of the majority. The will of the majority is to be recognized even when irregularly expressed. (McCrary, 126-127.)

The same author says:

It is mainly with reference to these two results that the rules for conducting elections are prescribed by legislative power. To hold that these rules are mandatory is to subordinate the substance to the form, the end to the means. (Page 200.)

Further on the same author says:

Bear in mind that irregularities are generally to be disregarded, unless the statute expressly declares that they shall be fatal to the election, or unless they are such in themselves as to change or render doubtful the result. (Page 200.)

In the case of David Bard, Hall and Clark, 116, the committee held—

That even where the law required that the returns should be made on the 15th day of November, and the commissioners of election did not make the return until the 1st of May, then this irregularity would not defeat the election.

In the case of Biddle and Richard *vs.* Wing, C. & H., 506, the committee said:

The governing principle in all cases is to clearly ascertain the will of the voters. (State *vs.* Sleirs, Brightly's Contested Cases, page 303.)

When the people, in the exercise of their constitutional rights, have gone through the process of an election according to the prescribed rules of law, they ought not to be deprived of the advantage accruing therefrom but for the most substantial reasons. Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes have been cast ought to vacate the election.

Votes fairly and honestly given ought not to be set aside for any mistake or omission of the returning officers. (Colden *vs.* Sharpe, Clerk & H., page 369.)

Again, this House, in the case of Draper *vs.* Johnson, C. & H., 703, decided that—

The law requiring votes to be returned within a limited time is directory only, and if they are not returned by that time the election is not vitiated. They may be received afterward.

Again, in the case of Mallory *vs.* Menall, C. & H., 328, where the presiding officer of the election, whose duty it was by law to return the votes sealed up, returned them unsealed, they were, in the absence of any evidence of fraud, allowed to be received. Also, that "votes fairly given to a party may be counted in his favor, though they have never been returned to the proper authorities." To the same effect, see Brightly's Election Cases, page 571.

McCrary, section 305, says:

If the voice of the electors can be made to appear from the returns with reasonable clearness and certainty, then the election shall stand.

The burden of proof is upon the contestant that non-compliance in the particular above mentioned affected the actual merits of the election. This he has failed to do, and, guided by the principles of law governing election cases, the official returns on page 130, record, exhibit 25, must be presumed to be honest and correct until the contrary is made to appear.

The burden of proof is always upon the contestant or the party attacking the official return or certificate. The presumption is that the officers of the law having charge have discharged their duty faithfully. (McCrary, 306.)

What does this Committee of Elections say in the case of Cox *vs.* Strait, recently decided in favor of the sitting member?

Your committee regard the conduct of the judges of election in this place in leaving the ballot-box for the space of an hour unsealed and unguarded as highly reprehensible. It is of the highest importance that the ballot-box should be guarded and protected in the most careful manner; that all the provisions of law made for the security of the ballot should be strictly obeyed. There should not be the least opportunity for tampering with the ballots. It is certainly a serious question whether such an irregularity as this ought not to vitiate the election; but your committee under all the circumstances have not felt compelled to reject this entire poll, there being no *evidence that the ballot-box was actually tampered with*, but, on the contrary, there is some negative testimony showing that it was not tampered with. Your committee would, were there any facts tending to show that the ballot-box had been tampered with, have decided to reject the returns from this poll. The adjournment for dinner has frequently been decided not to be sufficient to vitiate an election. The law of the State of Minnesota provides that no election returns shall be refused where there has been a substantial compliance with the law.

And in regard to the returns from another town in the same district the committee say:

The returns should have been conveyed to the county auditor by one of the judges of the election, sealed, but were conveyed by the witness, an unauthorized person, and were unsealed. This is a grave irregularity, but the evidence is that he delivered the returns to the county auditor just as he received them from the town canvassers, and this testimony is not impeached. The committee do not, therefore, reject the returns from this town.

Unless this rule is followed my colleagues, Mr. GIBSON and Mr. ELLIS, have no right to seats on this floor.

The democratic counsel before the returning board in New Orleans filed a brief claiming that no poll should be rejected on account of any informality unless accompanied with charges and proof of fraud. This city voted a democratic majority of 15,000. Two of the three commissioners of election at each poll were democrats, appointed by the city council, who were all democrats. What was the reply of the returning board, and what was their action in the premises?

It is a part of this record, and I will ask the Clerk to read it.

The Clerk read as follows:

When the returning officers entered on the discharge of their duties they first took up the parish of Orleans, in which there were one hundred and eighteen polling-places. There being the returns for candidates for a municipal government, two sheriffs, and a great number of minor offices to be canvassed, it was deemed important that the elected candidates should be inducted into office as soon as possible. Immediately on entering into the canvass of the votes in the parish of Orleans it was discovered that the election had been exceedingly loosely conducted. In not probably a dozen polling-places in the city had all the formalities required by law been complied with. In but a very few cases had the list of voters been kept, or, if kept, returned to the board, and many of those returned had not been signed or sworn to. In many cases the statement of votes showing who had been voted for were not kept, or, if kept, not returned to the board, and in many cases the tally-sheets were not kept, and, if kept, not returned to the board, and in some cases nothing but the unsigned and unsworn to tally-sheets were all that had been returned to the board. Under such circumstances, if the board should decide that a compliance with all the forms of law would be required to enable them to canvass and compile the votes, it was evident there had been no legal election in the parish of Orleans. The board then decided that if any of the formalities required by law had been complied with, even only a tally-sheet unsigned or sworn to was returned to it by the supervisors of registration, they would, in the absence of any proof of fraud, intimidation, or other illegal practice, canvass and compile the vote of such polling-place. Under this ruling of the board the canvass and compilation of the vote of the entire State proceeded.

* * * * * * *

It was found on examining the returns made to the board by the supervisors of registration from the different parishes, that the same omission to comply with the forms of law existed that had been found in the parish of Orleans, and the board applied the same rule.

Mr. MOREY. Now, Mr. Speaker, if the board had decided in the case of New Orleans as my colleague and the committee would have us decide in this case, then neither he nor our colleague, General GIBSON, would have been entitled to seats here, nor would there be held to have been a legal election in the State of Louisiana.

Now some stress has been laid on the fact that the tally-sheets, although kept under the direction and supervision of the commissioners, were kept by unauthorized persons.

The law makes no provisions for clerks. It does not prohibit their employment by the commissioners, and it is the universal practice from one end of the State to the other to employ the expert penmen at each poll to assist in keeping tally. Four or five tallies are kept, and in case of a disagreement the votes are recounted.

But in this case we are not left in doubt, for contestant makes no charge of fraud, and the committee must confine themselves to his specifications. There is no doubt, however, for all three commissioners, as well as contestant's witness, swear as follows:

There were in said box and returned by said commissioners 441 votes for Frank Morey for member of Congress for fifth district and 37 votes for William B. Spencer for member of Congress for fifth district of Louisiana.

Now, by what right, law, or precedent does this committee go outside of the specifications of the contestant to find reasons to reject this poll? There may be some excuse from the fact that they are all new members of that committee and are not familiar with the practice; but the practice is and all the precedents are as I have stated.

The votes in this box were taken without question, and decided the election for the sheriff and other officers in this parish.

We therefore conclude that the return, which is as follows, should be counted:

EXHIBIT 25.—*Statement of votes at poll No. 5, parish of Concordia.*

Statement of votes cast at poll No. 5, of election precinct No. 5, of the parish of Concordia, for members of Congress, State and parish officers, at the general election November 2, 1874, in accordance with law.

Names of persons voted for.	For office of—	Number of votes.
* * *	* *	*
Frank Morey	Congress, fifth district	440
F. Morey	Congress, fifth district	1
W. B. Spencer	Congress, fifth district	36
Wm. Spencer	Congress, fifth district	1
* * *	* *	*
A. B. Boner	Congress, fifth	3

Number of ballots in box, 498. Number of ballots rejected, none.

STATE OF LOUISIANA, *Parish of Concordia:*

Personally appeared before me, the undersigned authority, John F. Dameron, R. H. Columbus, and T. E. D. Jefferson, duly appointed and qualified commissioners of election of poll No. 5, election precinct of the parish of Concordia, for the general election held November 2, 1874, who, being duly sworn, depose and say that they received the ballots cast at the said poll on the day above mentioned; that they have made a true and lawful count of said ballots, and that the foregoing is a true and correct statement of the votes cast at said poll on said day.

Sworn and subscribed to before me this 4th day of November, A. D. 1874.

JNO. A. WASHINGTON,
Supervisor of Registration.

JNO. F. DAMERON,
THOS. E. D. JEFFERSON,
R. H. COLUMBUS,
Commissioners of Election, Poll No. 5, Parish of ——.

An examination of the oath of the commissioners will, in the absence of any charge or proof of fraud, remove all doubt. Spencer arrived at this ward with a majority of 1,396 votes; deduct my majority of 404 votes at this poll, and it leaves Spencer a majority of 992 votes with which he enters Carroll Parish.

CARROLL PARISH.

We next consider the election held in the parish of Carroll. What is the charge of contestant as to this parish? That his vote in this parish, added to his majority in the other thirteen parishes, would give him a majority of the votes in the district? No; not at all. He claims that there was no valid election in this parish. In a case taken up from this parish the supreme court decided that there had been a valid election in this parish. If you take the view which my colleague urges and decide that there was no election, then, inasmuch as there were 2,263 votes cast in this parish and twenty-five hundred and thirty registered voters, enough to decide the election in the district, there is but one alternative under the law and the practice, and that is to send the election back to the people. If, however, we take the other view, which is what the majority report really amounts to at last, that there is not sufficient testimony to clearly determine exactly how many votes each party received, and that the testimony develops the fact that positive evidence on this point can be had by calling the voters themselves, which neither party has done, then the only alternative is to remand the parties back for this evidence.

In Biddle and Richard *vs.* Wing, Clark & Hall, page 504, the rule is stated as follows:

Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes were given ought to vacate an election, especially if by such decision the people must, on account of their distant and dispersed situation, necessarily go unrepresented for a long period of time.

My colleague, [Mr. ELLIS,] in answer to my question, took the ground that the evidence of the parties who made a return proved to have been lost as to the contents of the paper was tertiary in its character, and that the evidence of the voters themselves would have been primary. I do not subscribe to that view of the law, and I know that his view does not prevail in the decisions made by the various committees on contested elections in Congress.

The testimony of all the witnesses shows that an election was held, and that a count of the votes cast was made; the evidence is conclusive that returns were made up at the polls and signed by the commissioners at every poll except one, where one commissioner did not sign them. The evidence of several of the commissioners is that one copy of these returns was made to the clerk of the court.

E. M. Spann, the democratic commissioner at poll 1, who is not only not impeached, but is one of the leading democrats in that part of the parish, and whose affidavit was taken by the counsel for the democratic party to lay before the returning board to impeach the altered returns, and whose affidavit was unimpeached, testified as follows:

Question. State your name, residence, occupation, and where you were on the day of the election held in Carroll Parish, on the 2d day of November, 1874.

Answer. My name is E. M. Spann; reside in the first ward, Carroll Parish; am a planter; and was a democratic commissioner of election at poll No. 1 in Carroll Parish.

Q. Were you there all day?

A. I was.

Q. Did you assist in making up the returns at the close of said election?

A. I assisted in calling off the votes. T. B. Rhodes, another commissioner, kept one of the tallies, and some other parties present kept other tallies; finding upon footing them up the tallies did not all agree, we counted the votes all over again, and the tallies then kept did agree. The returns were then written up; there were either two or three copies; and the other commissioners and myself then signed them in the presence of each other.

Q. (The document A produced by R. K. Anderson being produced and exhibited to the witness.) Is this document one of the original returns made out at poll No. 1 and signed by you and the other commissioners, and does it give the true result of the election held at poll No. 1?

(This question is objected to by contestant.)

A. It is one of the original returns that was made up and signed by the commissioners, and it gives the true result of the election at said poll.

Q. After the returns were made out what was done with them and the other papers pertaining to the election at that poll, and with the ballot-box containing the ballots cast at that poll?

A. David Jackson, another commissioner, and myself took them to Providence, the parish site, and deposited them in the office of the clerk of the court, all except the returns, one copy of which was left with the clerk of the court and another given to the supervisor of registration of the parish.

One of the witnesses of contestant, it is true, states that there had been no returns, except one, on file in the clerk's office since November, but he is contradicted on this point by the commissioners from poll 3 and poll 4. But as the minority report shows another of contestant's witnesses (Mr. Lackey) contradicts his witness, Galbraith, the minority report says:

By an examination of Mr. Lackey's evidence, (contestant's witness,) it will be observed that he testifies as follows:

"Question. Were the returns which you signed correctly made up from the returns of commissioners of election?

"Answer. Yes.

"Q. Did you discharge the duties of your office honestly and fairly according to the best of your ability?

"A. I did."

Showing conclusively that the commissioners from the various polls must have filed with supervisors and the clerk of the court their returns, for it will be observed that Mr. Lackey swears that he discharged his duties "honestly and fairly," showing inferentially that the clerk of the district court must have certified to the return made up by him, as he says, "correctly from the returns of the commissioners of election for Carroll Parish." The law above quoted distinctly defines the duty of the clerk to be to certify to the correctness of the returns, which are to be consolidated by the supervisors of registration The legal presumption is that the clerk did his duty. Lackey could not have discharged his duty properly in this connection unless the clerk certified to the correctness of the returns, and the clerk could not have certified to the returns unless he had said returns on deposit in his office. In the same section of the law is found the following:

"He shall forward a copy of any statement as to violence or disturbance, bribery or corruption, or other offenses specified in section 26 of this act, if any there be, together with all memoranda and tally-lists used in making the count and statement of the votes."

There is no evidence produced by contestant that any statement of fraud or irregularity of any kind was made by any commissioner of election in his returns to the supervisor of registration, or that said supervisor of registration made any such return of fraud or irregularity to the said returning board. It will be observed that the last clause of said section 26 reads as follows:

"His copy of said statement shall be so annexed to his returns of election by paste, wax, or some adhesive substance that the same can be kept together, and the other copy the supervisor of registration shall deliver to the clerk of the court of his parish for the use of the district attorney."

This, be it remembered, is the witness of contestant, and there can be no doubt that the returns were made to the clerk's office according to law.

Another witness swears:

Question. Has or not a term of the district court been held in this parish since the election in November last?

Answer. There was a session commencing on the first Monday in December last, I think.

Now under the laws of Louisiana the ballots and returns are not required to be kept longer than the next term of court after the election. An investigation had been had in regard to this election by the grand jury of Carroll Parish during the session of the district court in December, 1874, and this is their finding. (See exhibit D, record:)

ROOMS OF GRAND JURY,
Thursday, December 10, *A. D.* 1874.

To Hon. Wade H. Hough, judge of the thirteenth district court of Louisiana, holding sessions in and for the parish of Carroll:

Your grand jurors, impaneled for the present term of your honorable court, beg leave to submit the following report:

* * * * * * *

Quite a number of irregularities are reported in the conduct of the recent election in this parish, but upon investigations we do not find them to be of such a character as require the action of the grand jury.

A. C. RHOTEN, *Foreman.*

It is shown by the evidence of contestant's witness Montgomery that at least four of this grand jury were among the leading citizens of the parish, three of them were democrats, and the foreman a leading citizen and large planter. Now, what crimes against the election laws had this grand jury cognizance of? I will read two sections of the law:

SEC. 45. *Be it further enacted, &c.*, That any civil officer or other person who shall assume or pretend to act in any capacity as a commissioner or other officer of election to receive or count votes, to receive returns or ballot-boxes, or to do any other act toward the holding or conducting elections or the making returns thereof in violation of or contrary to the provisions of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not to exceed three years nor less than one year, and by a fine not exceeding $300 nor less than $100.

SEC. 57. *Be it further enacted, &c.*, That any person, not authorized by this law to receive or count the ballots at any election, who shall, during or after any election, and before the votes have been counted, disturb, displace, conceal, destroy, handle, or touch any ballot after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than $100, or by imprisonment for not less than six months, or both, at the discretion of the court.

No violation of these provisions of the law were reported from any quarter.

It is perfectly clear that the election itself and everything connected with it, including the making of the returns to the county clerk and to the county supervisor, was done as the law required, and the taking of the ballot-boxes and returns from the clerk's office, if it was done, was done after they had been deposited there. This I believe was done, though the evidence is silent as to who did it and when it was done.

This proceeding, however, did not destroy the election. It had no connection with the election, and destroyed nothing but *some of the evidences of the election.* This proceeding was not in my interest, but to the contrary the contestant and the committee concede that I had no knowledge of nor connection with it, and by the well-established rule such wrong-doing, by whomsoever done, must not work to my injury nor in any manner prejudice me. Now, stress is laid on the statement that this wrong-doing was committed by my partisans. In the first place there is no evidence to show who did it. To quote from the majority report, "the proof is silent on that point." Now,

is it proposed to go outside of the record, that even the majority report says is silent on this point, and assume that somebody did it, because the contestant charged it? Why did he not prove it? Why did he not *attempt* to prove it? Neither of the factions in that parish were my partisans in the ordinary application of the term. The all-absorbing fight was for the State senatorship, and there were democrats and republicans on both sides of the contest. There were 2,365 votes polled, of which about 1,900 were colored and 400 white, and the whole current of testimony is that I received the votes of all the republicans on both sides, besides a large number of the democratic votes.

Now, in order that there may be no confusion in the minds of members, it must be kept in mind that the law provides that there shall be three commissioners of election, who shall be taken from different political parties, and who shall be of good standing in their respective parties. These three commissioners hold the election, count the votes, and make two sets or copies of the returns. One set, with the ballots in the boxes and tally-sheets, is to be taken to the county clerk's office, and the other set is returned to a county officer termed the supervisor of registration and election, whose duty it is to make a consolidated return from the returns received by him from the different polls, and to send this consolidated return, together with the returns from the different polls, to the State board of returning officers. Now, this county supervisor was a colored man, named Lackey. He had by law two clerks. One was J. S. Milliken, the other was W. W. Benham. Now, who was Lackey? The contestant charged in his notice that he was "the mere tool of George C. Benham," the white candidate for the State senate who ran against Gla, the colored candidate. I admit the charge; I agree that he was the tool of George C. Benham, just as the contestant charged, and I think I will show it by the contestant's own witnesses as well as by mine, and make the presumption that he was the man that altered these returns reasonably clear. The contestant, for reasons best known to himself, made this man his witness afterward and relies largely on his testimony. The contestant in his brief charges the forgery on W. W. Benham, the clerk of the supervisor, and the committee in their report adopt this view, notwithstanding there is *not one word* of evidence of that fact in the record. The contestant did not attempt to show it nor did he attempt to impeach the evidence or the character of W. W. Benham. His evidence is unimpeached and uncontradicted save in one particular, where he swears that all of the commissioners signed the returns from poll 2, while Montgomery, the democratic commissioner, swears that he did not sign the returns, though he swears "he signed all the papers that he thought the law required." That was a matter in regard to which either party might have been mistaken, and Montgomery does not contradict another word of Benham's testimony, nor does anybody else.

I was, I confess, astonished to read in the speech of the gentleman from Tennessee [Mr. HOUSE] this statement:

> It is clearly shown, as I think, by the proof that he was the man who committed the forgery.

This statement also appears in the remarks of my colleague [Mr. ELLIS] and of the gentleman from Missouri, [Mr. DE BOLT.] Where, I ask, is the evidence on which this statement is based?

Mr. HOUSE. I will tell the gentleman, if he will allow me.

Mr. MOREY. Certainly.

Mr. HOUSE. The evidence in the case is that the supervisor of the county says that the returns which were found in the hands of the State board were not put there by his authority or with his consent. A receipt was produced from W. W. Benham, and he admits that he carried the returns to the State board. He does not deny nor is he asked to deny that he altered those returns, although the circumstances cast upon him the strongest suspicion of having done so.

Mr. MOREY. Now, if the House will give me its attention for two or three minutes I will dispose of that part of the case, or I am willing to relinquish my seat as a member of this House. The gentleman admits that there is no evidence but what he has just stated, that W. W. Benham was a mere messenger of Supervisor Lackey. Is that correct?

Mr. HOUSE. I did not distinctly hear the gentleman. I would be glad to have him repeat his proposition.

Mr. MOREY. Do you not admit that there is no evidence of record except that Benham was the messenger between the county supervisor and the returning board, and that he put the returns before that board?

Mr. HOUSE. No, sir; I do not admit that he was the messenger of the supervisor at all. It is shown that he carried some returns; and the forgery rests between him and the State attorney, it being conceded that the papers were forgeries.

Mr. MOREY. Now, if you will listen, I will show you that you do not know anything about this record. I say this with due respect to the gentleman and without intending of course to impugn his motives. I intend, however, to show that this committee do not know anything about this record.

Now, in your report you say that the evidence is clear and conclusive that W. W. Benham was the author of this forgery. That is the statement of your report.

It is not in this record. It was not charged in the contestant's notice. It *is* charged, however, in the contestant's brief, because it was important to break the witness down, as he was a commissioner of election and my witness. W. W. Benham was the clerk of the supervisor and acted as his messenger in taking the returns to New Orleans; and not only was there no charge that he forged the returns, but affidavits were introduced by contestant to prove that the brother of this witness, George C. Benham, the candidate for State senator, altered the returns, and that matter was alluded to by my colleague [Mr. ELLIS] in these words:

> The *brother of Benham* was detected some time after the election in a house on Jackson street, three miles from the State-house, with the lists and returns before him, which he was manipulating.
>
> But I will say in justice to myself that, whether in or out of the record, what I stated was true, because I was one among those who heard of G. C. Benham's operations and was consulted as to the best means of detecting and punishing him for his fraud upon the returns.

Mr. HOUSE. The gentleman alludes to George C. Benham being seen at a house in New Orleans figuring on those returns or figuring on some papers.

Mr. MOREY. Yes, sir.

Mr. HOUSE. Was that before or after W. W. Benham made this return to the State board? If it was before, then he carried to the State board returns which his brother had forged; and, if it was after W. W. Benham carried the returns to the State board, how did George C. Benham get hold of them? Will the gentleman explain that?

Mr. MOREY. I will. As I said before, there is no word of evidence on the subject as to who committed this forgery.

Mr. HOUSE. Will the gentleman allow me a moment? He has accused the committee of knowing nothing about the record. Now I have put a question to him which he fails to answer. The report states that the proof shows that W. W. Benham altered these returns. Now the gentleman undertakes to throw the responsibility on the brother of W. W. Benham, who, he says, was figuring on some returns in New Orleans. He figured on those returns before W. W. Benham took them to the State board. That fact is not disputed, that W. W. Benham put them before the State board—some returns. Then it necessarily follows that he either put the returns before the State board that his brother had figured on or that his brother got the returns from the State board after he had forged them. How did he get them? That is the point. Answer that.

Mr. MOREY. In answer to that I will simply say this: It has been well said that you can assume anything; you can assume a man into the penitentiary; but I wish to say my view of the manner in which a contested-election case is to be investigated is that it is to be investigated upon what is in the record. There is not a line or word to show who committed that forgery. It was the business of my contestant to show, not for me, who committed any forgery. Why did he not do it?

Now, if the gentleman from Tennessee will listen to me a few minutes perhaps I can throw a little light on that matter. He says I shifted it to George Benham. I do not shift it to anybody. I simply say there is no evidence that Benham did it. The contestant in his notice says this about the supervisor: that the supervisor himself was the mere tool of George C. Benham, not W. W. Benham. George C. Benham was a candidate for the State senate. Another of the contestant's witnesses swears that he asked for the removal of Mr. Lackey, the county supervisor, because he thought he was controlled by George C. Benham.

Now, sir, there is not a line nor a word beyond that to show who altered the returns, and I do not propose to have it saddled on W. W. Benham by a mere statement of any gentleman or any number of gentlemen unsupported by a line of testimony. Now, if the committee please, perhaps I can throw a little light on this matter. Let us see.

Contestant in his notice says:

> The supervisor of registration and election in said parish was the mere tool of George C. Benham, * * * the said Benham being himself a republican candidate for State senator in the district of which Carroll is part.

J. E. Burton, who was a witness for contestant, swears (page 69, record) as follows in answer to my question:

> Question. Did you or not recommend the removal of R. M. Lackey as supervisor of registration of this parish on account of unfitness?
>
> Answer. I recommended his removal because I thought he was controlled by George C. Benham.

Now what does this fellow, this "tool of George C. Benham," testify when contestant makes him his witness and puts him on the stand?

> Q. Were or not the election returns of the election held 2d November, 1874, for Carroll Parish, which were put before and promulgated by the State returning board made out and signed by you?
>
> A. They were not made out and signed by me, or by my authority.
>
> Cross-examined by contestee, FRANK MOREY:
>
> Q. When did you first inform anybody of this fact?
>
> A. This is the first time that I have spoken about it.
>
> Q. Did you not tell any one that you could swear to this before this morning?
>
> A. No.
>
> Q. Then you have kept this fact to yourself until this morning?
>
> A. Yes.
>
> Q. How do you know that the returns put before the returning board were not signed by you?
>
> A. Because there were more votes on the returns before the returning board as promulgated than there were on the returns I signed.
>
> * * * * * * *
>
> Q. Did you ever see the signatures to the returns before the returning board?
>
> A. No.

Now, is not this a fine witness? He, a county officer, knew of this fraud and kept his lips closed for just six months, till the contestant found means to unlock them. Now what credit can be given to such a witness as that? A term of court was held in December. He did not report it to the grand jury nor to the district attorney.

But his perjury is not left to presumption merely. His testimony is directly contradicted by Colonel Leonard, (page 55, record,) the district attorney of that judicial district.

J. EDWARDS LEONARD, sworn for contestee, Frank Morey, testifies as follows:

Question. What is your name, residence, and occupation, and where were you on the 2d day of November last, the day of the election?

Answer. J. Edwards Leonard; Carroll Parish; lawyer, and district attorney for thirteenth judicial district of Louisiana. I was in Providence, Louisiana, on the day of the election.

Q. Has Mr. Lackey, the supervisor of registration of this parish, and yourself ever had any conversation in regard to the vote cast in this parish at the last election or in regard to the returns made thereof? And, if so, please state what it was.

(Contestant objects to this question.)

A. Shortly after the official returns for Carroll Parish were published in the New Orleans papers, Mr. R. M. Lackey was in my office, and I inquired of him whether the returns as published were correct and such as he made. I inquired particularly in regard to the vote for State senator. Mr. Lackey told me that the returns, as he made them, gave Benham twenty-two hundred and odd votes and Gla two hundred and odd; that Benham's majority in the parish was about two thousand; that he so returned.

Q. Did you vote at the election 2d of November last; and, if so, where, and about what hour of the day did you vote?

A. I voted at poll No. 2, parish of Carroll, late in the afternoon.

Q. Do you know of or did you hear of any complaints made on that day against the fairness of the election held at that poll?

A. I heard no complaints until a number of days after the election, when Nicholas Burton came to me to bring a suit for him, the record of which was offered by contestant.

Now, as this contest is on its merits, and as we do not rely on the returns at all, all this evidence is of no special importance, except to show the error which the majority have fallen into, of ascribing the forgery to W. W. Benham.

Now, this consolidated return was opened by the State board in New Orleans and was found to be altered and the accompanying poll or precinct returns were found to be forgeries.

The democratic counsel asked for the rejection of the vote of the entire parish. The board denied this, but called on the democratic counsel for affidavits showing the alterations and showing the true vote. Affidavits were produced from the democratic commissioners of the parish, and the returns, corrected by their evidence, so far as any candidate who was affected by the alterations was concerned, were canvassed by the board, the corrected returns electing Gla as senator instead of George C. Benham, who was declared elected by the altered returns. No other candidate was materially affected by the alterations. Whether they should have canvassed these returns at all or not is of no consequence in this proceeding, as this case is on its merits and does not depend on the action of this board.

But I will here remark that the election law, full as it is of provisions, has not provided for such a case as that of the alteration of the returns after they have left the polls. Section 3 of the election law says:

Be it further enacted, &c., That in such canvass and compilation the returning officers shall observe the following order: They shall compile first the statements from all polls or voting-places at which there shall have been a fair, free, and peaceable registration and election. Whenever from any poll or voting place there shall be received the statement of any supervisor of registration or commissioner of election, in form as required by section 26 of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented or tended to prevent a fair, free, and peaceable vote of all qualified electors entitled to vote at such poll or voting-place, such returning officers shall not canvass, count, or compile the statement of votes from such poll or voting place until the statements from all other polls or voting-places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences at any such poll or voting-place; and if from the evidence of such statement they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did not materially interfere with the purity and freedom of the election at such poll or voting-place, or did not prevent a sufficient number of qualified voters thereat from registering or voting to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting-place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If after such examination the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences did materially interfere with the purity and freedom of the election at such poll or voting-place, or did prevent a sufficient number of the qualified electors thereat from registering and voting to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting-place, but shall exclude it from their returns: *Provided*, That any person interested in said election by reason of being a candidate for office shall be allowed a hearing before said returning officers upon making application within the time allowed for the forwarding of the returns of said election.

Now, by analogy, the board inferred it to be their duty to send for persons and ascertain the true vote. This they did, and so far as the vote for member of Congress was concerned, in the language of the law, "it did not materially change the result of the election." There was no allegation of *fraud at the polls* before the board, hence the case did not come within the provisions of section 3 of the election law. I repeat, there is no provision of the law to meet the case, and if the board had by their action allowed Lackey, the supervisor, or whoever it may be that committed these forgeries, to disfranchise twenty-three hundred voters, their action would be indefensible. It is said they did so in another case; but I ask, were they not denounced from one end of the State to the other for so doing? So far as this case is concerned, if they acted properly, it matters not what they did in another parish which is not in this congressional district.

This was the decision of the returning board in the Carroll Parish case.

Much evidence, in the shape of affidavits, was filed in the case by the parties in interest.

A careful examination of the evidence on both sides satisfied us that the election was fair, free, and peaceable, and that on the day of election there was nothing unusual that affected the voters at any of the polls.

It is true there was some such evidence as that alluded to by Mr. Arroyo at poll No. 2, where it is charged that Benham, one of the candidates for the senate, intimidated voters, and caused them thereby to vote for him. It is proved that Benham did procure colored voters to change their ballots, but there is no such evidence as will justify the conclusion that he exercised any violence or threats to induce them to do so.

At poll No. 1 it is charged that the ballot-box was made so inaccessible that ballots had to be put on the ends of canes to hand them up to the commissioners. This evidence is not sustained by the commissioners; even Mr. Spann, the democratic commissioner at this box, does not corroborate this statement; but even if it were so, as commissioners of both political parties presided at this poll, and there is no proof that the ballots actually voted were not put in the box, it cannot invalidate the election.

The whole evidence satisfies us that up to and on the day of election there was no intimidation or other unlawful act that should invalidate the election at any poll in this parish, but that the election was as fair, free, and peaceable as usual, and that the voters very generally exercised their right to vote. There were 2,530 votes registered, and 2,263 voted. In fact, it is not attempted to be proved that any one was prevented from voting from any unlawful cause.

It is clear that all was fair, free, and peaceable up to the close of the election in this parish. If anything transpired to deprive the voters of this parish from having their votes properly returned and compiled, it was after the election; and under the law it is the duty of this board, and it has the power, to inquire into any such fraud, and, if found to exist, to ascertain the facts and make the proper correction and compilation. This the board proceeded to do. In the absence of intimidation or other acts that would improperly influence the election on or before the day of election, the law authorizes us to take evidence and even send for persons and papers where corrupt influences have been used to offset the election. Fraudulent changing the commissioners' returns comes under this head. Now, in canvassing the returns under this authority, it is the duty of the board to ascertain the true state of the vote, and to so compile it; not to reject it altogether, as Mr. Arroyo contends in his protest. If the returns should be found to have been changed, they are to be corrected so as to show the true state of the case, and not to be altogether rejected.

The main contest in this case was between Mr. Benham and Mr. Gla, both republican candidates for the senate, and both claiming to be regularly nominated. There was also a democratic candidate for the senate, Mr. Brigham.

There is no evidence that the return from poll 5 had been, in any particular, changed.

There is no evidence there was any changing of the returns of the commissioners from poll 2, except as to Benham and Gla.

The evidence shows that the returns of the commissioners of election from polls 1, 3, and 4, had been changed as to the candidates for treasurer, Congress, and senate, and the real number of votes received by each candidate are detailed in the evidence; but the change in the number of votes for treasurer and Congress is too small to offset the result of the election for either of these offices.

* * * * * * *

We predicate this altogether on the testimony from democratic sources.

The evidence does not satisfy us that the commissioners' returns are forgeries, but that they have been changed in the above particulars.

It has been our purpose in this investigation to give the voters in Carroll Parish the real benefit of their votes, honestly, and without fraud or intimidation cast at the election.

Our colleague, Mr. Arroyo, has, in his protest in this case, departed from the equitable and just rule that ought to govern on such cases, in insisting on throwing out the entire vote of this parish, thereby depriving the voters of their inestimable privilege when they are in no manner at fault, the effect of which would be the counting in a number of his party friends, and deprives him of that high position he has assumed throughout of being altogether impartial.

J. MADISON WELLS,
President Returning Board.

Now, this decision was in reply to the protest of Mr. Arroyo, a democratic member of the returning board, who took the ground that the whole vote of Carroll Parish should be rejected. This protest was introduced by both parties as evidence. It is a copy of an official record, and sworn to as such by Mr. Arroyo. (See page 14 of record.)

I will read so much of it as relates to the alteration of the returns from Carroll Parish:

The undersigned, a member of the returning board, protests against the decision of the board in canvassing and compiling the returns of the parish of Carroll, for the following reasons, to wit: Because, according to said report and tally-sheets made by the commissioners of election at the different polls of said parish, the following parties appear to have received the following vote, namely: At poll 1, Antoine Dubuclet, candidate for State treasurer, received 647 votes; J. C. Moncure 21; Frank Morey, for Congress, received 645 votes, and W. B. Spencer 28; for State senator, George C. Benham received 638 votes, and J. A. Gla 196, J. H. Brigham 7; while E. M. Spann, democratic commissioner of election at said poll, swears that A. Dubuclet received 580 votes, J. C. Moncure 21, F. Morey 569, W. B. Spencer 33, George C. Benham 394, J. A. Gla 196, J. H. Brigham 7; and that any other return purporting to have been made by him (Spann) is false, and his signature thereto is a forgery. At poll 2, for State treasurer, A. Dubuclet received 717 votes, J. C. Moncure 53; for Congress, F. Morey received 719 votes, W. B. Spencer 49; for State senator, George C. Benham received 702 votes, J. A. Gla 65, and J. H. Brigham 3; while T. T. Montgomery, the democratic commissioner of election at said poll, swears that George C. Benham received 427, J. A. Gla 282, and J. H. Brigham 3; and that any other return purporting to be made by him (Montgomery) is false, and the signature thereof is a forgery.

At poll 3, for State treasurer, A. Dubuclet received 558 votes, J. C. Moncure 3; for Congress, F. Morey received 554 votes, and W. B. Spencer 7; for senator, George C. Benham received 501, J. A. Gla 60, and J. H. Brigham 1; while R. M. Bagley, democratic commissioner of election at said poll, swears that Antoine Dubuclet received 514 votes, J. C. Moncure 3 votes; Frank Morey for Congress received 510 votes, W. B. Spencer 7 votes, George C. Benham 350 votes, J. A. Gla 164, and J. H. Brigham 1 vote. Being present in the returning board when the returns were canvassed, he, the said Bagley, pronounced the return false, his signature thereto a forgery, and the tally-sheets accompanying the same as spurious

and false; for the tally-sheet that was kept by the commissioners and adopted by them was the one which he, the said Bagley, wrote, and that was in red ink, whereas the one before the returning board is in black ink.

At poll 4, Antoine Dubuclet received 189 votes, J. C. Moncure 52; for Congress, Frank Morey 167 votes, W. B. Spencer 74; for senator, George C. Benham 156 votes, J. A. Gla 23, J. H. Brigham 60; while J. S. Milliken, the democratic commissioner of election at that poll, swears that at that poll A. Dubuclet received 155 votes, J. C. Moncure 65, F. Morey 156, W. B. Spencer 64, George C. Benham 111, J. A. Gla 56, and J. H. Brigham 60; and that any other return purporting to have been signed by him (Milliken) is false and his signature a forgery.

At poll 5, for State treasurer, A. Dubuclet received 91 votes, J. C. Moncure 106; for Congress, F. Morey received 96 votes, W. B. Spencer 108; for State senate, George C. Benham 72, J. A. Gla 121, and J. H. Brigham 23; while by the testimony of T. P. McCandles, democratic commissioner at said poll, A. Dubuclet received 91 votes, J. C. Moncure 106, F. Morey 96, W. B. Spencer 108, G. C. Benham 41, J. A. Gla 129, and J. H. Brigham 33; and said McCandles swears that any returns purporting to be signed by him, showing a different result, is false and his signature is a forgery.

* * * * * * *

Now, Mr. Speaker, every one of the affidavits upon which that protest is based is in evidence except one of the two affidavits made by Bagley, to wit, the one in which he states the vote. I applied for a copy to the secretary of state, who informed me that he could not find it among the papers; that several papers had been lost or stolen, and I was fortunate in finding as many as I had.

We will examine the testimony, however, to determine whether or not this affidavit was made.

Mr. Bagley, the democratic commissioner at poll 3, was sent for by contestant, who informed me that he was going to call him to testify. Bagley came to Providence, and after consultation with contestant left town. I then subpœnaed him, and, as the record shows, he was an unwilling witnes. He testifies as follows, however, (page 40 of record:)

Question. On the return which you swore to as being the correct statement of the votes cast at poll No. 3, how many votes were cast for William B. Spencer for Congress and Frank Morey for Congress?

(This question is objected on grounds previously stated to other questions by contestant.)

Answer. I do not remember either now well enough to swear to them.

Q. Did you or not make affidavit, which affidavit was before the returning board, in which you stated the exact number of votes cast for W. B. Spencer and for Frank Morey for Congress, and which affidavit stated that this was the vote stated in the returns which you signed and swore to as being the correct statement of the votes cast for Morey and for Spencer, respectively, at poll No. 3?

(This question objected to by contestant.)

A. I know I made an affidavit before the returning board, and think, though I am not positive, that I stated therein the vote for Morey and Spencer. My statement in that affidavit, whatever it was, was correct.

Q. If in that affidavit you swore that William B. Spencer received 7 votes and Frank Morey 510, was or not that the correct statement of the votes cast for those persons?

(Contestant objects to this question.)

A. It was.

Mr. Zacharie, the chairman of the democratic counsel before the returning board, and a witness for the contestant, testifies as follows concerning these affidavits. (See page 16 of record:)

The affidavits from the three polls were signed by Mr. Montgomery at one poll, Mr. Bagley at another, and the third party's name I have forgotten—Spann, I think it was—who assisted at the election either as commissioners of election or as clerks, and who swore that such and such results had been the issue of the election held at their polls, and that the returns were turned in showing a different result. Mr. Bagley made a subsequent affidavit, in which he alleged that the tally-sheet purporting to exhibit the correct return from that poll was a forgery in two respects: First, that the signature which purported to be his signature was not his signature; and, secondly, that the true, original tally-sheet had been made out in red ink, whereas the one exhibited before the board was made out in black ink.

In the examination of Arroyo, the democratic member of the returning board and witness for contestant, counsel for contestant asked him, (page 13 of record:)

Question. Well now, Mr. Arroyo, I will ask you whether or not, in making the canvass of that parish, the returning board did not recognize it as a fact that the returns of the first, second, and third wards were forgeries? (Here in this address by Mr. Wells, president of the board, in the Republican of the 25th December, 1874, he says that the returns from that parish were shown to have been changed in the cases of Carroll, Saint Helena, and Saint James, where it was charged and proved that they had been changed after they came into the hands of the supervisors.) They admit that it was proved that these returns were changed; for instance, Spann, Montgomery, and Bagley proved that they were forgeries of the official returns?

Answer. Yes, sir.

Q. The board did so recognize these returns as forgeries?

A. That is, there were affidavits read before the board *by these three gentlemen stating the actual number of votes cast in their respective polls*, and if there was any other statement it was false, and their signatures to such statement forgeries.

And on cross-examination by me Arroyo testifies:

Cross-examination by Mr. MOREY:

Question. Mr. Arroyo, did you make an official protest to the action of the board in regard to the Carroll Parish contest?

Answer. I did, sir.

Q. Will you be kind enough to look at the Picayune of the 19th December, 1874, and read what is published there in its columns as the protest of Mr. Arroyo; will you be kind enough to look at that and let me know whether that is a copy of your protest?

A. Though it is not signed by me, it is evidently my protest, for I recognize all the points that I made in that. I have kept a copy of it. (After further inspection.) It is my protest, sir.

Q. The various affidavits referred to in that were before the board?

A. Yes, sir; I took the data from them. The Picayune hereto annexed, and marked exhibit J, contains a copy of my protest. (See appendix.)

Q. Mr. Arroyo, did not Governor Wells, on behalf of the other members of the board, submit a reply to your protest?

A. Yes, sir.

Now take that testimony of those three witnesses together, and they are not impeached—two of them are contestant's witnesses and the other his partisan friend—and does it now show clearly that Bagley made the affidavit and stated my vote to be 510 and Spencer's 7 at poll 3. Now I contend that the corrected returns should be counted; and if so counted, my case is made out. A case precisely in point decided by this House (see 20 Bartlett, page 172) is the case of Delano *vs.* Morgan, where the committee say:

But in proving the frauds, the parties have proved the number of votes and for whom they were cast. * * * The committee have accepted the corrected tally.

Now, if you take these returns as corrected by the testimony of these democratic commissioners of election who were called by the democratic counsel to impeach the correctness of the returns, and what do we find as the result?

Spencer enters the contested territory with a majority of	1,396
From this deduct Morey's majority in poll 5, Concordia Parish	404
It leaves Spencer's majority when he enters Carroll Parish	992
Corrected returns of Carroll Parish, as sworn to by the democratic commissioners, give Morey a majority at poll 1 of	536
And at poll 3 of	503
And at poll 4 of	93
Morey's majority at poll 2, as corrected by the evidence of W. W. Benham, Dickey, and Lanier, is	611
Total	1,743
From this deduct Spencer's majority at poll 5 of	12
Leaves Morey's majority in the parish of Carroll	1,731
From this deduct Spencer's majority when he entered Carroll Parish	992
Leaves Morey a majority in the district of	739

Now, if we should reject the total vote of poll No. 1, in which Morey's majority was 536, and which is the only poll seriously attacked by contestant for irregularity and fraud, and it leaves Morey a majority of 203 votes in the district. There is no attempt to establish fraud at the other polls in the parish. Now, in the face of all this testimony of the result, as well as of the testimony of various witnesses, it is seriously claimed that the vote of this parish should be rejected because I failed, in addition to the testimony I took, to take the testimony of about 2,000 voters as to whom they voted for for Congress.

Admit that the consolidated returns were forgeries, that the ballots are not to be found, what then does that destroy; the election, or only some of the evidences of it? It is in evidence that the election was held, votes counted, and returns thereof made out. It is in evidence that diligent search has been made and the returns and ballots cannot be found. Is not the next best evidence the evidence of those who made those returns? Certainly it is; but my colleague says this is not testimony *aliunde*. He is mistaken on that point. The fact that these parties made the returns does not prevent them from establishing their contents. On the contrary, their evidence is the next best to the returns themselves. If the House thinks the evidence is not sufficient to clearly establish the vote, and the evidence having disclosed the fact that the voters were not called, it may remand the case for the evidence of the voters themselves; but there is no precedent for the rejection of this vote and the disfranchisement of a whole parish of 2,300 voters in the absence of any proof of fraud. In view of the testimony in this record such a proceeding would be totally unjustifiable.

Before taking up each poll in detail, I wish to say that the whole current of testimony is that Morey was voted for by both factions in Carroll Parish. This is the evidence of the witnesses called by both parties. For instance, J. E. Burton, (page 31, record,) witness for Spencer, says:

Cross-examined by contestee:

Question. Please state whether or not there were two factions of the republican party in Carroll Parish.

Answer. There were.

Q. Did or did not both factions generally support and vote for the constitutional amendments, for Dubuchet for treasurer, and for Frank Morey for Congress, from this district?

(Objected to by contestant.)

A. They did.

Q. Were you well acquainted with the sentiment politically of the republicans throughout the parish, and were you or not one of the leaders of one wing of the republican party in this parish?

A. I was well acquainted and was one of the leaders, as stated.

Q. Did you, either before or since the election, hear or know of any republicans who supported or voted for William B. Spencer for member of Congress at the election in November last?

(Objected to by contestant.)

A. I know of but two; have heard of no others.

Q. Was not the suit of Burton *et al. vs.* Charles Hicks *et al.* a suit between republicans growing out of a split in the party in Carroll Parish?

(Objected to by contestant.)

A. According to my belief there were democrats on both sides of this suit; but the majority of the litigants were republicans. All the parties to the suit were nominees of one or the other wing of the republican party; but both of these wings supported Morey.

Judge C. E. Moss, (page 35 of record,) witness for Morey, says:

Question. Can you tell about how many votes had been cast at poll No. 1 for Morey and Spencer, candidates for Congress, up to the time when you left?

(Contestant objects, on same grounds as last above stated, to this question.)

Answer. Nearly all the votes were for Morey. Mr. Morey was supported by both factions of the republican party at that box, and there were but four democrats in that part of the parish and voting at that box. I did not know of or hear of any republicans voting for Spencer or against Morey at that box. Morey's name was on tickets of both wings of the republican party.

F. R. Barthelemy, (page 36, record,) witness for contestee, says as to the vote at poll 1:

I was sworn in by the commissioners as clerk, and I assisted them in tallying the votes cast at said poll.

Question. Did you keep any memoranda of the votes cast at said poll for member of Congress and other officers? And, if so, state what it was.

(Objected to by contestant on grounds as heretofore stated.)

Answer. I did. Mr. Spencer received 33 votes; Mr. Morey, 569. I made this memoranda from the result of the tally-sheets, and it corresponded with that made by the commissioners of election.

Q. Did you see the commissioners sign the returns of said election at that poll?

A. I did. They were signed by E. W. Spann, T. B. Rhodes, David Jackson, who were the commissioners of election, E. M. Spann being the democratic commissioner. They were also signed by Emanuel Moyer, who claimed to be deputy United States supervisor.

Nicholas Burton, (page 56, record,) witness for contestant, Spencer, says on cross-examination:

Question. Whose name for member of Congress was on the regular tickets of both wings of the republican party at that poll?

Answer. The name of Frank Morey was printed on the regular ticket of both wings; but on a good many of these tickets William B. Spencer's name in print on a slip was pasted over the name of Frank Morey.

Q. Do you know, of your own knowledge, that any of these tickets with Spencer's name pasted on them were voted at poll No. 1? And, if so, state how many and by whom they were cast.

(Question objected to by contestant.)

A. I know that some of them were voted; I do not know the number, but can state some of the names who voted them, to wit: J. G. Lynch, who says he was never a democrat, but was an old-line whig before the war, and who now calls himself a conservative; three of the Bernds, who are conservative; the two Meyers, Jacob Stein, all of whom are classed as conservative. These were all I can name, but I know of some others whose names I do not recollect. The conservatives voted the "pasted ticket."

Colonel P. Jones Yorke, (page 48, record,) witness for contestant, says of poll 3:

Question. State what you know of the manner in which the election at said poll was held and conducted.

Answer. Was at said poll nearly all day. The election was quiet and orderly, and the people voted promptly. It was as quiet and as fair an election as I ever saw. It was generally conceded that the election was free and fair by members of both parties. I remained all night and till the counting of the votes was finished next day, and until the tallies were made up and the ballot-box sealed.

Q. Do you recollect what vote was cast at that box for the candidates for Congress? If so, state what it was.

(Contestant objects to this question, as heretofore.)

A. I do not recollect the exact number, but there was between five and six hundred cast at that poll. They were nearly all cast for Morey, both factions of the republican party voting for Morey. Spencer received only the votes of a part of the democrats who voted at that box.

Now in that election there were several constitutional amendments voted for or against by the voters. Their adoption was made a part of the republican platform, (they were "limiting the debt of the State" and "limiting the rate of taxation.") The democratic platform declared against these amendments, and outside of the city of New Orleans the republicans generally voted for and the democrats against these amendments. Now in Carroll Parish the vote on these several amendments was 2,228 for and 194 against them. The registration of Carroll Parish shows that there are 2,086 colored and 444 white voters. The vote for State treasurer shows that the republican candidate received 1,955 votes and the democratic candidate 248. By the returns as corrected by the evidence, as well as by the affidavits of the democratic commissioners before the returning board, Morey received 1,942 and Spencer 261 votes. In 1872, two years previous, the vote was in the same proportion. This is all in the record, and it is also in the record that "Morey received about the same vote as Dubuclet, (republican candidate for State treasurer,) and that Spencer received about the same vote as Moncure, (democratic candidate for State treasurer.) These facts raise a very strong presumption in favor of my claim that I received the very large majority of the votes cast in Carroll Parish.

We will now pass on to the positive testimony as to the election at the three principal polls in this parish.

POLL NO. 1.

The irregularity that maintained at poll No. 1 consisted in allowing some of the voters to vote on sticks, and the fact that the box was in a window 5 feet 10 inches high, not 7 or 8 as my colleague [Mr. ELLIS] says, without any warrant for the assertion in the record, and which is clearly explained in the minority report, and which only constitute violations of directory provisions of the law.

We give the testimony of T. B. Rhodes, one of the commissioners so far as it relates to these points, which is corroborated by the other two commissioners of election at that poll:

Question. Were you a commissioner of election at poll No. 1, Carroll Parish, at the election 2d November, 1874?

Answer. I was.

Q. Were you present at said poll during the entire day of the election?

A. I was.

Q. Did you see any fraud or ill-practices at the election held at that poll?

A. I did not.

Q. Did you hear of any at the time?

A. I did not.

* * * * * * *

Q. Was any one compelled at that poll to pass his ballot up to the commissioner on a stick?

A. No one was.

Q. Could not every elector have voted with his hand from the ground?

A. All could have done so.

* * * * * * *

Q. Was there any democrat present during the election at that poll?

A. There was; Mr. Spann, a commissioner, was present.

Q. Did he take exception to anything that was done in the conduct of the election?

A. He did not.

Q. Please state how the ballot-box at that poll happened to be placed at a window.

A. We commenced voting at the door of the building in the morning, and nailed strips across the door to keep the crowd out. The crowd became so noisy and so eager to vote that in pressing against the strips they broke them off. Some one then proposed that the box be removed to the window. It was then placed on a table by the window, so that the top of the box was above the window-sill.

Q. Was there any objection on the part of the democratic commissioner or any party present to placing the box at the window?

A. There was no objection, but it was suggested by some one that each voter had a right to place his ballot in the box with his own hand. So we caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come in the room and do so; and accordingly many did do so.

Q. Could the ballot-box at the window be seen by the voters outside?

A. It could be seen by the voters all the time from the outside.

Q. How high was the window from the ground?

A. I measured it, and my recollection is that it was between 5 feet 8 inches and 5 feet 10 inches from the ground.

As to the result, he swears:

Q. Do you remember how many votes were cast at that poll for W. B. Spencer for Congress and how many for Frank Morey? If so, state the number.

(Contestant objects to this question.)

A. Thirty-three votes for Spencer and 569 for Morey.

Q. The document produced by R. K. Anderson, and purporting to be one of the original returns from poll No. 1, is here produced. Is your signature to this document genuine?

A. It is. I made out the returns and signed them in the presence of the other commissioners, and they signed it in my presence, and the statement of the votes therein given is a correct statement of the cast at that poll.

Dr. D. S. Vinson, witness for the contestant, testifies:

Question. Did you vote on that occasion, and why not?

Answer. I did not vote, though I could have done so; there was nothing preventing me, except I did not want to wait. There was no trouble that I saw about the poll. Everything was peaceable and quiet.

* * * * * * *

Q. How long were you present at the poll?

A. Between half an hour and one hour.

Cross-examined by contestee:

Q. How do you rank yourself politically?

A. I am a democrat, dyed in the wool.

Q. How long have you resided in this parish?

A. Twenty-five years.

Q. Are you not generally recognized in the community as a good, substantial citizen?

A. So far as I know. I have heard nothing to the contrary.

Q. How many voters did you see voting on sticks?

A. While I was there I did not see more than two or three. If I had been going to vote, I think I would have voted that way myself, as I could have done so more quickly than to have waited to have got closer to the window.

* * * * * * *

Q. Are you acquainted with E. M. Spann and T. B. Rhodes, who were commissioners of election on that day? And, if so, state what their standing is in the community.

A. They are looked upon as good citizens.

Q. Are they or not men who would be believed to be truthful in making any statement which they might make under oath?

A. I should think they were. They are very correct men. I have never heard anything to the contrary.

Now, besides these mere irregularities which do not vitiate the election, the evidence of Nicholas Burton is introduced to show that one of the commissioners changed the ballot of a voter and put in a different one. How and when does that testimony get into the record?

Right here I wish to call the attention of this House to the manner of procedure of contestant in taking his testimony.

It will be recollected that contestant charged in reference to poll No. 1 that "many of the ballots so handed up were torn up or defaced or not deposited in the ballot-box."

Now, in his evidence-in-chief he made no attempt to prove this, and he examined but three witnesses. And who were they?

First. F. J. Galbraith the deputy clerk, who swore that there were no returns, ballots, or ballot-boxes, &c., in his office.

Second. J. Ed. Burton, who swore that he had asked for the removal of R. M. Lackey "because he (Lackey) was controlled by George C. Benham." The contestant in his notice charged that "Lackey was the mere tool of George C. Benham."

Third. Now who do you suppose? This very man R. M. Lackey himself!

Now, while Galbraith swears that no returns have been on file in his office, Lackey swears that he made a consolidated return of the votes cast; and by law this has to be certified to by the clerk as being correct, and this duty would have to be performed by Galbraith, "who was in entire control of the office," as he swears, and who must have verified the consolidated return by the returns on file in his office.

Now, not an iota of evidence-in-chief was produced showing any irregularity at poll No. 1; but when I had called twenty witnesses, including the commissioners of election and others of both parties and exhausted my right to examine further, then, under cover of *rebuttal*, the contestant introduced this defeated and sore candidate, Nicholas Burton, to tell about this change of a ballot. I objected to his testimony on the ground that it was not rebuttal evidence; and not content to overrule my objection, for which action there is not a

precedent under similar circumstances in the history of contested-election cases in Congress, this majority report says:

Jackson is not recalled, nor did contestee offer to recall him to deny this statement.

That is to say, I did not attempt to violate the statutes. How under the law could I take a word of testimony after the contestant had taken his testimony in rebuttal? And yet the majority report leaves the impression that I had the power to do this and failed to exercise it. There is fairness for you!

Mr. Speaker, in allowing the evidence of contestant taken in this way to come into the record at all, this committee have attempted to overturn the well-settled theory of the law as well as the practice thereunder. The statute gives the contestant forty days to take testimony to sustain his charges. It gives me forty to establish my denial and prove any counter-charges. Contestant then has ten days to rebut my testimony. Now, do you mean to tell me that the contestant can decline to examine all witnesses on the subject of the charges that he has made till I have examined all my witnesses and exhausted my right of examination, and then under the color of rebuttal introduce what was really his evidence-in-chief? And this is the way this testimony of the contestant gets into this record. Does this House propose to indorse such an outrage as that?

Now, passing from that to consider the testimony itself, what do we find? In the language of the minority report:

Contestee had no opportunity to disprove the statements Burton makes. He (Burton) was the candidate for sheriff, and was defeated; and he had contested this same election and had been defeated after the same had been carried to the supreme court of the State. His evidence shows him to be a strong partisan. Taylor, in his excellent work on evidence, in regard to partisan witnesses, says: "They being zealous partisans, their belief becomes synonymous with faith as defined by the apostle, and it too often is but the substance of things hoped for, the evidence of things not seen;" and, to adopt the language of Lord Campbell, "partisan witnesses come with such bias in their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence."

Now I propose to state frankly to the House the course that I pursued when I found that contestant did not intend to introduce his testimony till my time was exhausted, and then bring it in under the color of rebuttal. I knew that my contestant sat in this investigation with a spurious certificate of election in his pocket on which he confidently expected to be seated by this House in December last. I was aware of the fact that this House was democratic with a large majority of new members, many of whom no doubt would be put on the Committee of Elections, with the practice and precedents of which they would be unfamiliar. I felt that it behooved me not to stand on technicalities and not attempt to show merely that the votes cast and counted proved my election, but to also prove affirmatively that the election was fair and that any irregularities that occurred were not vital.

The constitution of this Committee of Elections, which has not on it a single member that has seen previous service thereon, as well as this extraordinary report, show that I was not too cautious in my methods. I felt that I had nothing to fear from the facts, and I therefore took full testimony as to the manner of holding the election, and fortunately for me the evidence of Burton is shown to be false as clearly as it was possible to show it under the novel circumstance of being compelled to anticipate his evidence. The report of the committee would carry the impression that the evidence of Burton is uncontradicted. On the contrary, it is most positively disproved. Now, here is the testimony of this witness Burton:

Question. Did you see any one of the commissioners change ballots handed to him to be put in the box and put in a different ticket, and who was that commissioner?

(Objected to by contestee on the ground, first, that contestant made no attempt or failed to produce any evidence-in-chief on this point; and, second, that this question or the answer thereto is not and cannot be in rebuttal of any evidence produced for contestee.)

Answer. I did see a commissioner at said poll do so, and that commissioner was David Jackson.

On the cross-examination, reserving all of my objections, I asked him:

Q. Were you not inside of the room a greater part of the day?

A. I was.

Q. How many ballots do you know were exchanged by David Jackson for others?

A. I could swear to only one which I saw him change, but there was another lying on the floor in the same position, but I do not know that this one was changed.

There is all the evidence in this record touching the change of ballots. Now, what do the majority in their report say of this evidence?

Burton, the ex-sheriff of Carroll Parish, swears that he detected David Jackson, the commissioner who received the ballots from the voters on the day of election, changing the votes handed him by the electors for others which he put into the box instead of the ballots of the voters. He says he charged him with it and complained to him of its unfairness. * * * On cross-examination, Burton says he could not swear to more than one ticket which he saw Jackson change, but there was another on the floor in the same position, but he does not know that this one was changed. Jackson is not recalled, nor did contestee offer to recall him to deny this statement.

The report of the committee carries the impression that the evidence of Burton is uncontradicted, while the fact is that it is most positively contradicted.

Galbraith, the contestant's witness, swears, when cross-examined by me:

Question. Were you present during the entire day at the election held at ward No. 1, held on 2d November?

Answer. I was.

Q. Did you pay strict attention to the manner in which the election was conducted as to its fairness or unfairness?

A. I did, and thought it a fair election.

Q. Did you hear any charges of unfairness made by either party during the day?

A. I did not.

Re-examined by contestant:

Q. Were you or were you not inside of the room most of the day where the commissioners were, and therefore not in a position to know what was going on outside?

A. I think I was in and out of the room about equally during the day.

E. M. Spann, the democratic commissioner at this poll, swears:

Question. Do you know Nicholas Burton?

Answer. I do.

Q. State whether or not he was present in the room with the commissioners frequently during the day of election, watching how it was conducted, and whether or not he made any complaint of unfairness to the commissioners or other persons, so far as you know or heard.

A. He was present the greater part of the day in the commissioners' room, and seemed to be watching the voting very closely. I do not recollect of hearing him make any complaints while the voting was going on. He complained of being defrauded of a few votes between the first and second counts.

E. Meyer was the United States supervisor for that poll under the congressional election law, appointed on the part of the democrats. He swears:

I assisted in making out a list of the votes cast. The tally-list was closed and signed about seven o'clock Tuesday evening. * * * I left two of the tally-sheets with the commissioners, and I kept one. * * * I was present from the time of my arrival until closing of the polls; was at the box all the time, except about half an hour at two different times. I watched the progress of the election closely.

Had there been any fraud or malpractice in depositing the ballots in the box, I would have seen it. There was no fraud nor malpractice in the voting, so far as I know of. I did not see Mr. Jackson put in any wrong ballot, except that one voter handed up on a stick two tickets with his registration paper, which dropped on the floor, and Jackson put in only one of the two; one of the tickets was a red and one was a white one; and he put in the red ticket.

There is where the ticket came from that Burton saw on the floor, no doubt. Under our law the commissioners are to be selected from the different political parties, and they are to be of good standing in their respective parties. At this poll one was a republican, one a democrat, and one a liberal. Rhodes, the liberal, testifies:

Question. Have you had any conversation since the election of 2d November, 1874, with Nicholas Burton, regarding the fairness of the election held on that day at poll No. 1? If so, please state it.

Answer. The first conversation I had with him was the day after the election—the day we signed the returns. Burton was claiming to be United States commissioner at the poll. He said he thought we, the commissioners, acted fair in the matter. I wrote or dictated a certificate on the tally-roll that Mr. Meyer, the other United States commissioner, kept. The certificate stated, in substance, that the election was perfectly fair, and that the tally-sheet exhibited the true result of the election at that poll. Mr. Meyer and Mr. Burton both signed the certificate. I had a conversation with Nicholas Burton again about a week after the election. He had just received the news of the election of Gla as State senator. Gla was a candidate on the same ticket as Burton. They were both colored men and nominees of the same wing of the republican party. He said that he was satisfied that his wing of the party was overwhelmingly defeated in the parish, but was satisfied, as Gla was elected senator from this district. He further said that the commissioners at poll No. 1 should have given him thirteen more ballots than they did, for the last count gave him that many less than the first count did. He expressed his dissatisfaction in no other respect.

While David Jackson, the republican commissioner of election at that poll, who is sought to be impeached by Burton, swears:

Question. Did you have a good opportunity to see and to know how the election was conducted at that poll? And if so, state what you know of it.

Answer. I had a good opportunity. The election was conducted peaceably and as fairly as an election could be; I heard no charges of unfairness made by anybody; every voter had a chance to vote as he saw fit. Mr. Spann, the democratic commissioner, kept the list of votes; Mr. Rhodes, the republican commissioner, kept the tally-list; and I took the votes as they were handed in by the voters and put them in the ballot-box. The various candidates and others had access to our room in which we received the votes, so that they could see that the election was conducted fairly. There was no dissatisfaction expressed by any one as to the manner in which the election was conducted.

Q. Did the voters generally hand you their ballots?

A. They did

Q. Was or not there a large crowd about the voting-place at certain portions of the day, who were anxious to vote without much delay?

A. There was.

Q. Did or not a portion of this crowd try to vote ahead of others, out of their "turn," as it was called? And, if so, state how it was done.

A. A good many would crowd up to the window where the box was, and try to vote one before the other. Some of them had short sticks with the ends split, to which they stuck their ballots and handed them up to the commissioner ahead of others who were nearer the ballot-box.

Q. Did not you take all the votes that were so handed by the voters and put them in the ballot-box?

A. The voters handed up the registration papers with their votes. I handed the registration paper to Mr. Rhodes, the other commissioner, who indorsed it. I then put the ballot in the box.

And again:

The election was carried on fairer than I ever saw it before. Mr. Burton, the candidate for sheriff, was present during the entire day; he was in the room all the time. I heard no complaint made by him whatever. He was there when we commenced counting the votes until we closed, and signed one of the tally-lists and afterward erased his name.

Now, what becomes of the majority report on that subject? The minority report, referring to this testimony, very properly says:

Is it not strange that, with a democratic supervisor in the room, observing all that was done at that poll, and with a democratic commissioner, Mr. Spann, assisting in receiving the votes, with candidates on different political tickets in the room, this man Burton is the only person in that room who observed any misconduct on the part of Jackson, and that no one but Burton should have known of or heard the altercation which Burton says took place between him and Commissioner Jackson? If this evidence were true, certainly such a conversation as Burton speaks of could not have taken place without having been overheard by the other commis-

sioners or by some one who was in the room. Very little weight will be given to the evidence of Burton when it is understood that the evidence of Rhodes and Spann shows that the charges made by Burton were an afterthought, not occurring to him until some days after the election had been holden.

The majority report further on says:

It is true the other two commissioners and some of the by-standers swear that the election was fair and free from fraud; but none of them are asked and none of them speak of or deny the specific facts testified to by * * * Burton, except Spann says he does not recollect hearing Burton make any charge of unfairness while the voting was in progress, but that Burton complained of being defrauded of a few votes while the counting was going on.

Now, in view of the evidence I have read, does it now show gross carelessness in the investigation of this case by the committee?

Now I will take up another portion of this very interesting report. The majority say:

Furthermore, in reference to this man Jackson, it is incredible that all the returns and ballot-boxes from the entire parish of Carroll could have disappeared without his knowledge or connivance. We cannot suppose that all the commissioners in the entire parish failed, in total disregard of the law, to carry the twenty-five ballot-boxes and returns to the office of the clerk. He was the clerk. He fails to state in his testimony anything whatever about the ballot-boxes or returns from the different wards which the law required to be deposited in his office.

Now, if the writer of that report were the attorney of Spencer instead of a judge, he could not have made a more ingenious argument in behalf of his client. Where he says twenty-five ballot-boxes, I presume he meant to say five, for there were but five, one for each poll.

Mr. HOUSE. That mistake occurred in this way, and I have corrected it in the proof. It was page 25 of the report. The paging was close to the writing.

Mr. MOREY. That is what I supposed, and for that reason I have called attention to it. There were only five ballot-boxes there.

The report says:

He was the clerk. He fails to state in his testimony anything whatever about the ballot-boxes or returns from the different wards, which the law required to be deposited in his office.

If the majority knew what was in the record, I venture to say they never would have written that report. Why did not the contestant ask Jackson something about these boxes? If you will turn to the testimony of Galbraith, the first witness called by the contestant, you will find an answer to that question:

T. J. GALBRAITH, sworn on behalf of the contestant, William B. Spencer, testified as follows:

Question. Where do you reside; what is your occupation; and how long have you been so occupied?

Answer. I reside in Lake Providence, Carroll Parish, Louisiana. I am deputy clerk of the district court, and have been since May, 1873.

Q. Have you not been the principal deputy, and as such had entire control of the office during your said occupancy?

A. I have, since the 26th day of July, 1873.

This election, bear in mind, took place in November, 1874, and this testimony was given in April, 1875. Jackson, the clerk, had but little more to do with his office than I had, except to divide the fees of his office with his deputy at the end of every month. Galbraith, as he states, "had entire control of the office."

GREENBACKS.

Two ignorant colored men are brought in to testify in the same way that Nicholas Burton was produced, not to prove the charges of the contestant, giving me the opportunity that the law intends that I should have had to rebut the charge, but they are brought in *as witnesses in rebuttal*—of what, I pray you? They tell a story about seeing David Jackson passing greenbacks out of the window; they did not get any; they do not know a man who did. One of these intelligent specimens says:

The bills I saw were large enough to be one-dollar bills, or five-dollar bills.

Not large enough to be a ten-dollar bill, I suppose? Is it not a little singular that nobody could be found that received any of this money? That out of the five hundred and sixty-nine voters at that poll nobody else could be found that saw or even heard of this thing? Where was Nicholas Burton, the defeated candidate, who was watching Jackson so closely, as he testifies? He saw no greenbacks. I will adopt the charitable supposition that these men mistook the tickets of one of the factions, which, it is in testimony, was "a kind of a curtain-colored ticket," for greenbacks.

The majority report is again in error in stating that this evidence is not contradicted except by David Jackson himself. I will again refresh their memories. T. B. Rhodes, one of the commissioners at this poll, testifies as follows, (page 46, record:)

Question. Do you know a colored voter named Cæsar Johnson, and did you hear that he reported that greenbacks were handed out at the window at poll No. 1? And if so, state what you know of him and of the story, and of the facts in the case.

Answer. I know him and heard him give his evidence to the effect stated before the district court. I know nothing of him personally, but I do know that his statement that David Jackson, one of the commissioners, rolled up greenbacks in the registration papers and handed them back to the voters is untrue; because the tickets or ballots, together with the registration papers, were handed up to David Jackson, who took the ballot and handed the registration papers to me, which I indorsed "voted." Jackson then put the ballot in the box and I handed the registration paper to Mr. Mayer, who was acting as democratic United States supervisor, and who handed it out to the voter. I never heard this report from any other source, and I don't believe it was possible to be true without my having some knowledge of it—

while David Jackson (page 39) denies emphatically the statement of Johnson and Lane. His evidence upon the subject is as follows:

Question. Was there or not any money handed back by yourself or any other person with the registration papers?

Answer. There was not.

Q. Did or not you hear of any such report or charge being made during the day of election by any member of either political party?

A. I did not. I would most likely have heard any such report had it been made.

The minority report very properly says:

We cannot believe that this evidence needs any serious consideration, as it will be regarded as not only extraordinary, but remarkable, that, at a public election, with crowds surrounding the place, and in full view of the voters, greenbacks should be handed out by the commissioner with the registration papers, after the voters had deposited their ballots, and that no person at that election should have been able to have detected the fact or observed this conduct except these two colored witnesses. To our mind it is extraordinary that, out of all that crowd of five hundred-odd persons, with the candidates at the polls, watching the commissioners, not a single person other than Cæsar Johnson and Noah Lane could be found to testify to such misconduct. The evidence of Johnson and Lane is of such a character, taken as a whole, that, in our opinion, it would be discredited in any court of justice; and, taken in connection with the circumstances surrounding the case, I cannot believe this committee is willing to say that it is worthy of serious consideration. It will be observed these men do not testify that they received any greenbacks themselves, but that they saw them given to others; but what is most remarkable, they cannot designate any person who received them, and no person is produced who did receive any greenbacks.

Is it not remarkable that, out of eleven witnesses called in reference to this poll, comprising the United States supervisor of election, the commissioners of the polls, and candidates upon the opposition ticket, only two witnesses could be found who knew anything in regard to this extraordinary conduct of Jackson? We dismiss this subject from further discussion, believing it too preposterous for further comment.

In regard to the position of the box and the voting on sticks, I will merely quote the decision of the supreme court of our State on that subject, in which they refer to former opinions, which theirs is merely confirmatory of, and pass on, incorporating, however, into my remarks the testimony on this subject, which is conclusive of the position that I take, that contestant lost nothing by these irregularities. The supreme court said:

The voting on sticks, and at a high window where the voter had to reach up to hand his ballot to the commissioner, was certainly novel; but the excuse for this is given in the evidence cited, and the evidence leaves no doubt that the ballots were fairly deposited in the ballot-box; that no fraud was perpetrated at the election. The fact that the ballot-box could not be seen by those voters who stood near the window cannot be a cause to annul the election. In the case of Augustin *vs.* Eggleston, 12 Annual, 356, the court held that "the mere position of the ballot-box, without any resultant injury, does not void an election, and, as it has been often decided in this State, that the failure to comply with the directory clauses of the election law will not annul the election. The courts cannot affix to the omission a consequence which the Legislature has not affixed." (9 Annual, page 537; 10 Annual, page 732; Act of 1873, page 18.)

I think it is clear that this poll must be counted. The vote was, for Morey 569, Spencer 33; Morey's majority 536; which, taken from Spencer's majority of 992, would leave Spencer a majority of 456.

POSITION OF THE BALLOT-BOX.

All the evidence regarding the removal of the box from the door to the window is given by T. B. Rhodes, and is as follows:

Question. Please state how the ballot-box at that poll happened to be placed at a window.

Answer. We commenced voting at the door of the building in the morning, and nailed strips across the door to keep the crowd out. The crowd became so noisy and so eager to vote that in pressing against the strips they broke them off. Some one then proposed that the box be removed to the window. It was then placed on a table by the window, so that the top of the box was above the window-sill.

Q. Was there any objection on the part of the democratic commissioner or any party present to placing the box at the window?

A. There was no objection, but it was suggested by some one that each voter had a right to place his ballot in the box with his own hand. So we caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come in the room and do so; and accordingly many did do so.

Q. Could the ballot-box at the window be seen by the voters outside?

A. It could be seen by the voters all the time from the outside.

The height of this window from the ground, as testified to by various witnesses, is as follows:

Nicholas Burton, contestant's witness, page 57 of record, swears:

Question. You said the window was about six feet from the ground. Are you positive that it was more than five feet ten inches?

Answer. I measured it, and made it a little over six feet; about one inch and a half over it.

D. S. Vinson, contestant's witness, page 65:

The voting while I was at the poll was done by handing the tickets or the ballots through the window. From my observation, without having measured it, the window was between six and seven feet from the ground where the voters stood. The window had slats across it, up and down, about three inches apart.

A. Cunningham, contestant's witness, page 63:

The votes were received by the commissioners at a window about six or seven feet from the ground.

Noah Lane, contestant's witness, page 65:

Question. Did you vote and see others at said poll; and, if so, where and how did they vote?

Answer. I voted there and saw others vote. The door of the house was closed against us, and we voted at a window which was so high that I had to lift another man up to vote.

Cæsar Johnson, contestant's witness, page 67:

Q. State where and how the voters voted at said poll while you were there, and how it was managed.

A. I voted at the window, and all others who voted with me at the same time did the same. I voted by the assistance of Noah Lane, who caught me under my arm, and assisted me up so I could reach the window.

This same witness, on cross-examination, testifies:

Q. Are you a short man?

A. I am about 5 feet 2½ inches.

Q. When Lane helped you to put up your ballot, did he lift you off the ground, or did he stretch you up by assisting you by one arm?

A. He assisted me by lifting one arm, I at the same time helping myself up against the side of the House.

While T. B. Rhodes, witness of contestee, page 43, testifies:

Q. How high was the window from the ground?
A. I measured it, and my recollection is that it was between 5 feet 8 inches and 5 feet 10 inches from the ground.

The minority report very correctly states:

This is all the evidence adduced in regard to height of the window. It was urged by contestant in his argument and brief that this window was so high that it was impossible for the voters to hand in their votes. Taking the evidence altogether, it shows that the window was not so high but that all persons desirous of handing in their votes could have done so, and did so hand them in. Certainly the fact of the ballot-box being placed at the window rather than at the door, after the guards had been broken down, goes to show that it was placed there in the interest of fairness and good order, and in order that the commissioners would not be interrupted while the voting was going on. This evidence does not tend to prove that any voter was deprived of his right to vote by the box being taken from the door and placed at the window, or that the actual result of the election at this poll was affected by such change. The evidence both of contestant and contestee establishes the fact beyond contradiction that during the whole election the candidates upon the different political tickets, as well as the sworn United States supervisors of both political parties, were admitted to the room where the ballot-boxes were kept, and were where they could observe and scrutinize the acts of the commissioners. T. B. Rhodes, one of the commissioners at the said poll, testifies that no objection was made by the democratic commissioner or any party present to the placing of the box at the window. If the facts were such as to have caused any suspicion that the moving of the box from the door to the window would have worked injustice, the democratic commissioner or some of the candidates would have objected. We are satisfied that the objection made against the box for this reason is an afterthought of a defeated candidate, and is technical. Some one suggested that each voter had a right to place his ballot in the box with his own hand, and thereupon the commissioners caused it to be proclaimed that any one who wished to place his ballot in the ballot-box himself could come into the room and do so, and accordingly many did so. This witness also says that the ballot-box at the window could be seen by voters outside all the time the voting was going on. There is no contradiction of Rhodes in the particular that this proclamation was made except by Burton, who says many did come into the room and vote, thereby confirming Rhodes's testimony that this announcement was made; but one party came in to vote, and it was objected to, but they allowed him to vote. He does not swear that any other person attempted or requested to enter the room to deposit his own vote, nor is there any testimony to prove this fact. Burton says, however, that he did not hear any such proclamation. Certainly this is no evidence to contradict the positive statement of Rhodes that said proclamation was made. It is merely negative evidence.

TESTIMONY RELATING TO VOTING ON STICKS.

The evidence produced by contestant on this subject in regard to this method of voting is as follows:

Nicholas Burton, page 56 of record, testifies:

Question. State what you know as to the manner in which said election was held at that poll; how the voting was done, and where.
Answer. In the morning of the election day the ballot-box was at the door of the house. It was kept there about two or three hours; then they took it and carried it to a window about six feet above the ground, and closed the door of the house. The window had wooden bars across it up and down. After the box was moved to the window, about three-fourths of the votes polled were handed up on sticks from the ground. The others voted by reaching up with their hands. Those voting at the window could not, a man of them, see what was done with their tickets. At first the box was placed about two feet from the window-sill on a table, but the voters on the outside ran their sticks so far as to annoy the commissioners, and they then moved the box about four feet from the window. This moving of the box back rendered it still more difficult for the voter to see what became of the ballot.

Upon cross-examination, page 57, he testifies:

Cross-examined by contestee:

Q. You stated that those who did not vote on sticks reached up their own ballots. Could not all of the voters have done the same had they chosen to do so, and waited for their opportunity?
A. I think they could if they had waited and taken their turn, provided they were men of ordinary height.

D. S. Vinson, contestant's witness, testifies, page 63:

Question. Did you vote on that occasion, and why not?
Answer. I did not vote, though I could have done so; there was nothing preventing me, except I did not want to wait. There was no trouble that I saw about the poll; everything was peaceable and quiet.
Q. How long were you present at the poll?
A. Between half an hour and one hour.

Upon cross-examination, page 63, he says:

Question. How many voters did you see voting on sticks?
Answer. While I was there I did not see more than two or three. If I had been going to vote, I think I would have voted that way myself, as I could have done so more quickly than to have waited to have got closer to the window.

Noah Lane, another of contestant's witnesses, page 65, testifies:

Question. What time of day was it when you went to the polls?
Answer. I went to the polls about twelve o'clock and staid until night.
Q. Were you near where the voting was going on while you were there?
A. Yes; I was out in front of the window most of the time.
Q. Did you see any voting on sticks?
A. I did not see or notice any.
Q. How far were you standing from the window?
A. Probably ten or twenty yards, as near as I can come at it.
Q. Then all the voters that you noticed voted with their hands, did they?
A. Yes, sir.
Q. Who took their tickets?
A. David Jackson took their tickets in.
Q. How many people do you think voted while you were there?
A. I can't tell; there were a good many of them; they kept voting until night.

The witnesses called by contestee, in regard to this matter, testify as follows: Charles E. Moss, pages 43–44, record, says:

Judge CHARLES E. MOSS recalled for contestee, Frank Morey:

Question. State what you know of the matter of voting on sticks at poll No. 1.
Answer. This voting was done at a negro cabin. There was a large crowd around the window, and some voters who could not approach the window, in order that they might vote earlier, placed their ballots on sticks and passed them up to the commissioner. There were perhaps 60 or 70 votes cast in this way.

David Jackson, page 39, testifies:

Question. Did the voters generally hand you their ballots?
Answer. They did.
Q. Was or not there a large crowd about the voting-place at certain portions of the day, who were anxious to vote without much delay?
A. There was.
Q. Did or not a portion of this crowd try to vote ahead of others, out of their "turn," as it is called? And, if so, state how it was done.
A. A good many would crowd up to the window, where the box was, and try to vote one before the other. Some of them had short sticks, with the ends split, to which they stuck their ballots and handed up to the commissioners, ahead of others who were nearer to the ballot-box.

T. B. Rhodes, one of the election commissioners, page 43, testifies:

Question. Was any one compelled at that poll to pass his ballot up to the commissioner on a stick?
Answer. No one was.
Q. Could not every elector have voted with his hand from the ground?
A. All could have done so.
Q. Was any one permitted to vote at that poll who did not present the proper registration papers?
A. Not that I know of.
Q. Was there any democrat present during the election at that poll?
A. There was; Mr. Spann, a commissioner, was present.
Q. Did he take exception to anything that was done in the conduct of the election?
A. He did not.

This concludes all the evidence that has been introduced on this subject. This does not establish the fact that any of the mandatory provisions of the law were violated.

The minority report again says:

Taking all the evidence introduced by contestant, and even excluding all the evidence offered by contestee upon this subject, it disproves the assertion made by contestant in his argument, that "only the tall ones, by getting close up, could reach their tickets up into the window;" but establishes the fact, beyond controversy, that all of the electors who desired could, and nearly all did, vote by handing their votes to the commissioners, out of their own hands, and that the voting by placing their votes upon sticks did not arise from any necessity owing to the position of the ballot-box, but because some few voters were unwilling to wait their turn in line. Nor is there any evidence tending to show that the placing the bars upon the window had a tendency in any manner to obstruct the voting, or that the contestant was injured by any of the irregularities, or that any of the irregularities affected the result, or prevented the free and full expression of the electors at this poll; "but, on the contrary, taking all the evidence together, it proves positively and distinctly that not a single voter was prevented from voting. And the voting on sticks certainly, as shown from the evidence, did not tend to render the poll fraudulent or uncertain. In regard to this matter we cannot express ourselves better than by adopting the language of the supreme court of Louisiana in reference to this identical election, as to these identical irregularities at this poll, which is as follows: "That it is evident from the foregoing evidence the irregularities shown did not in any manner affect the result of the election."
* * *

We now pass to the consideration of poll No. 2.

At poll 2 contestant made a charge of intimidation of voters, but took no evidence in support of it; the evidence of the commissioners of both parties and five other witnesses was that the election was conducted perfectly fair at this poll. W. W. Benham, who was one of the commissioners, produced the poll-list, which was undisputed and which showed that there were 713 votes cast, of which 49 or 50 were for Spencer, 4 were blank, and the balance (663) were for Morey. Captain Dickey, who kept one of the tally-sheets, swears that Spencer's vote was 49 and Morey's 664 or 665; that he had taken a memorandum of it but had lost it. Lamer, who also kept tally part of the time and who was present at the time the count was completed, swears that according to his best recollection Spencer's vote was 48, 49, or 50, and Morey the balance, and that something over 700 votes were polled. Montgomery, the democratic commissioner, swore that he did not sign the returns but he did sign the poll-list, and that he signed all the papers that he thought the law required him to sign. Benham swears that all three commissioners signed the returns. One or the other was mistaken, but there is no other discrepancy. Montgomery swore that he could not remember the result of the vote as to the Member of Congress. Now, there was not a particle of evidence taken to impeach either of the three witnesses who testified to the vote at this poll, and it must therefore be counted.

The committee's report says that "the evidence shows that the returns from this poll were not signed at all." The evidence shows that all of the commissioners signed the returns; but this is contradicted, though only so far as one of the commissioners is concerned.

Montgomery, the democratic commissioner, swears:

Question. Did you sign the returns from that poll?
Answer. I signed only the list of names of persons who voted; did not sign the tally-sheets or returns.
Q. Did you sign all the papers that you considered necessary in connection with the election.
A. I did not think at the time it was necessary to sign other papers, and the other commissioners said they thought so too.

I will incorporate the testimony bearing upon the character of the election at this poll and pass on to

POLL NO. 3.

W. W. Benham, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the 2d day of November last, the day of the last election.
Answer. W. W. Benham; Carroll Parish; planter; was at poll No. 2 in said parish on the day of the last election.
Q. Were you one of the commissioners of election at poll No. 2?
A. I was.
Q. Were you present as commissioner of election at said poll all day, and did you assist in tallying the votes cast at that poll, and in making up the returns thereof?
A. I was present during the entire day; never left the poll from morning until

night. I assisted in counting the vote by examining and calling off every ticket the ballot-box contained. The ballots, as I called them off, were tallied by several persons under the supervision of the commissioners, who relieved each other from time to time. There were three tally-sheets kept. The returns were made up from the result of the tally-sheets.

Q. During the day of the election what was your own particular duty?

A. My duty was to receive the registration papers from the voters, compare them with the poll-book, and indorse "voted" on the registration papers, and sign my name as commissioner of election to the registration papers.

Q. Do you recollect how many votes were cast at that poll; and have you any memoranda, such as tally-lists, or lists of voters, or anything of that kind pertaining to the election at said poll?

(Contestant objects to this question.)

A. Seven hundred and thirteen, as is shown by the list of votes kept by one of the commissioners of election. I have a list of the names of those who voted at that poll on that day.

Q. By whom was that list kept or made?

(Contestant objects to this question.)

A. Mr. Joseph Leddy kept the list until about three or four o'clock in the afternoon, and was then relieved by Thomas F. Montgomery, the democratic commissioner. When the polls opened in the morning there were but two of the commissioners present. In that case the law made it the duty of the two commissioners to appoint a third, which we did, appointing Mr. Joseph Leddy, at the suggestion of the by-standers, in the place of Mr. Thomas F. Montgomery, who was absent. Mr. Leddy served as commissioner until the arrival of Mr. T. F. Montgomery, in the afternoon, by whom he was relieved.

Q. Will you please produce the list of voters of which you speak?

(Document produced, certified copy of which is marked "Exhibit C," and attached hereto. See appendix, testimony in Carroll.)

(Contestant objects to the introduction of this document in evidence.)

A. This is the document.

Q. Who wrote and who signed the jurat attached to this document?

A. I wrote the jurat myself, following the form prescribed by law. It was signed by myself, T. F. Montgomery, and S. S. Murray, and the oath administered by F. T. Austin, justice of the peace, second ward. It was done at the polls immediately after closing the ballot-box, and before proceeding to count the votes.

Q. Did the number of tickets counted out of the ballot-box at the conclusion of the election correspond with the number of persons voted, as shown by this list?

A. It did, exactly.

Q. Were or not the ballots counted out of the ballot-boxes at the polls where they were cast, and the tally-sheets made up therefrom in the presence of such voters as chose to attend, and did not several voters so attend?

A. They were counted at the polls where they were cast without removing the ballot-box. The tally-sheets were made up in the presence of ten or fifteen voters, representing the democratic party and both wings of the republican party. Mr. Blount, the democratic United States supervisor of election, stood over the ballot-box with me, and saw by the tickets as I held them in my hand that they were called just as they were printed or written.

Q. Of the votes cast at poll No. 2, state, if you know, how many were cast for W. B. Spencer and how many for Frank Morey, respectively, for Congress.

(Contestant objects to this question on the grounds heretofore stated.)

A. Upon summing up the tally-sheets on congressional vote, there was found to be 3 or 4 votes less on the congressional vote than the number of votes shown by the list. The vote for Spencer was either 49 or 50, and the balance of the vote, less the 3 or 4 who did not vote for Congress, was the vote received by Frank Morey—660 or 661.

Q. In voting at that election, were or not all the candidates voted for on one ticket or ballot?

A. The names were all on one ticket.

Q. Then when you state that there were three or four less votes for candidates for Congress than for other candidates, do you mean that the names of the candidates for Congress were erased from the three or four tickets?

A. I do.

Q. Was or not the result of the vote given to the United States supervisor, or other person present, or publicly announced, as soon as the result was ascertained?

A. A memorandum of the vote was taken from the tally-sheets by Mr. Lanier and Captain W. B. Dickey. The congressional vote for the entire parish was given by me to Mr. Blount, United States supervisor of election, from the tally-sheets, after they were received from different polls.

Q. Do you mean after they were received by the supervisor of registration of the parish?

A. I do. They were in my possession as clerk of the said supervisor of registration.

Q. Do you recollect the number of votes that were cast in the parish for members of Congress, as shown by the returns from the different polls, as made to the supervisor of registration for the parish, and which were in his possession or in yours as clerk of the supervisor of registration? And, if so, state what the vote was.

(Contestant objects to this question on the ground as heretofore stated.)

A. I have forgotten the exact number of votes cast in the parish as shown by the returns in the possession of the supervisor of registration, but am of the impression that the entire vote was something over two thousand. And of that vote Mr. Spencer received something over two hundred, and Mr. Morey the balance.

Q. Are you not certain that the total vote cast for members of Congress was over two thousand?

(Objected to by contestant.)

A. I know that it was more than two thousand, but cannot recollect the exact figure.

Q. Who was the supervisor of registration for this parish?

A. Robert L. Lackey.

Q. Is or not he rather an illiterate colored man?

A. He is a colored man who reads and writes.

Q. Was the business of his office transacted by himself or his clerks?

A. Mr. Lackey was present to oversee the business of his office, which was done mainly by his clerks.

Q. Was there or not a consolidated return or statement of votes cast in the entire parish made up and signed by the said supervisor?

A. There was a statement made up and signed by him in my presence.

Q. From what data was this statement made up?

A. It was made up from the several reports of commissioners of election at the different polls.

Q. State, if you know, what was done with this consolidated statement.

A. It was delivered to the clerk of the returning board in New Orleans and his receipt taken for the same. This is the receipt.

This is a copy:

NEW ORLEANS, *November* 17, 1874.

Received of supervisor one package, said to contain tally-sheets, statements, and votes, according to law, for the parish of Carroll.

CHAS. S. ABELL,
Assistant Secretary.

Q. What was the character of the election held at poll No. 2 so far as peace, order, and fairness was concerned?

A. Everything was quiet the entire day. The democratic commissioners expressed themselves as being perfectly satisfied with the fairness of the count and the election generally. Heard no complaints as to the fairness of the election from anybody.

* * * * * * *

Re-examined by contestee:

Q. In stating that the returns from poll No. 2 were signed by the three commissioners, do you or not mean the returns proper or the statement of votes, or the list of voters who voted?

A. I meant the returns. The list of the persons voting would hardly be considered a part of the returns necessary to be put before the returning board.

Q. Was not T. B. Rhodes, who was a commissioner at poll No. 1, considered a democrat?

A. Two years ago he was connected with the democratic party; don't know whether he held out faithful or not; am of the impression that he was more of a democrat than a republican.

Testimony of W. B. Dickey.

W. B. DICKEY, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were on the day of the election on 2d of November last.

Answer. William B. Dickey, Carroll Parish; my last occupation was deputy collector of United States internal revenue; was at poll No. 2, Carroll Parish, on 2d day of November last, the day of election.

Q. How long were you at that poll on that day and immediately afterward?

A. Was there all day until the poll closed. At the closing of the poll I retired, and returned to the poll between twelve and one o'clock that night, when they were still engaged in counting the votes, where I remained until the counting was completed. When I came in between twelve and one o'clock that night, I took the place of Thomas F. Montgomery, democratic commissioner at that poll, in keeping one of the tally-sheets, and remained until the count was finished.

Q. Was or not the election held at the poll peaceable, quiet, and fair?

A. It was, and was so generally admitted by all parties.

Q. Did you or not learn the result of the vote cast at that poll when the count was completed? And, if so, state what it was, if you recollect.

(Contestant objects to the question.)

A. I think the entire number of votes cast at said poll was 719. The vote for senator was 282 for Gla and 427 for Benham. There were 49 for Spencer for member of Congress and for Morey six hundred and sixty-four or five for Congress. I do not recollect the vote cast for State treasurer, but that Moncure got about the same vote as Spencer did and Dubuclet about the same vote as Morey did.

Cross-examined by contestant:

* * * * * *

Q. You state that you were not present during all the time that the votes were being counted and tallied; do you know of your own knowledge the truth of the statement of the votes given by you?

A. I only know that the three tally-sheets kept agreed at the end of the counting. I do not know of my own knowledge that these tally-sheets were correctly kept during the whole time of counting, and I was not present all the while. I know that mine was correctly kept from the time that I commenced keeping it.

Q. Are you positive about the congressional vote, and have you never stated it differently?

A. I am positive about the congressional vote, and do not recollect of ever having stated it differently.

Re-examined by contestee:

Q. Did you take any memoranda of any part of the result of the election at poll No. 2; and if so, does the statement that you have made with regard to the vote for member of Congress agree with the memorandum that you took at the closing of the count?

(This question objected to by contestant.)

A. I did take a memorandum of the votes so far as the candidates for senator, members of Congress, and House of Representatives, and the memoranda so far as Congress is concerned agreed with my testimony on that point. I have lost all my memoranda except that of senator, or misplaced them,

Testimony of M. A. Sweet.

MARION A. SWEET, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were during the election held in this parish on the 2d of November, 1874.

Answer. My name is Marion A. Sweet; residence at Providence, ward No. 2, Carroll Parish; recorder for said parish; at poll No. 2 the greater portion of the day.

Q. Was the election at said poll fairly conducted?

A. It was.

Q. Did you hear any complaints made by any party on the day of the election at said poll?

A. I did not.

Q. Did general good feeling seem to prevail at the poll?

A. It did; everything seemed to be harmonious.

Q. Were you present at the tallying of the votes at that poll?

A. Only part of the time.

Q. Was the tally fairly kept while you were there?

A. It was.

Q. Did several parties keep tally?

A. They did.

Q. Were these tallies compared?

A. They were while I was tallying.

Q. Are you quite sure that, by means of this comparison, the tallies were correctly kept while you were present?

A. I am.

Testimony of B. H. Lanier.

B. H. LANIER, sworn for contestee, Frank Morey, testifies as follows:

Question. State your name, residence, and occupation, and where you were at the election in Carroll Parish on the 2d of November last.

Answer. Benjamin H. Lanier; residence, Carroll Parish, Louisiana; was until March last editor of the Lake Republican, a newspaper published in Providence, Carroll Parish; am now tax-collector of said parish; was at poll No. 2, Carroll Parish.

Q. State what you know of the character of the election held on that day at that poll.

A. I was at and around the polls the entire day. The election was peaceable, quiet, and generally regarded as very fair. I remained at the polls until after the votes were counted, and assisted in keeping the tally-sheet.

Q. State, if you know, what the total vote was that was cast at that poll, and state the vote that was cast for the candidates for Congress, if you know.

(Contestant objects to this question, as heretofore.)

A. According to the best of my recollection, the entire vote for congressional candidates was something over 700. I think Spencer received 48, 49, or 50 votes, and Morey the balance of the total vote.

Q. Do you recollect whether or not the actual vote for the different candidates

for State treasurer, Congress, and State senate was or not published in one of the newspapers published at Providence, or an extra of the same; and, if so, in what paper, and was or not that publication a correct statement of the vote cast at poll No. 2 for the different candidates mentioned therein?

(Contestant objects to this question, as heretofore.)

A. True Republican, newspaper published at Providence, published a statement of the votes cast for the senatorial candidates, which I regarded as correct. This was published in an "extra."

Q. State whether or not this vote so published did not correspond with the vote announced at conclusion of the counting at poll No. 2.

(Contestant objects to this question, as heretofore.)

A. The statement published in the True Republican did correspond with the actual count made by the commissioners at poll No. 2.

Cross-examined:

Q. Did you keep a tally during the whole time and continuously while that vote was being counted?

A. I did not. I think it took about twenty-four hours to count the vote, and it would have been impossible almost for a man to have tallied continuously for that time.

Q. Do you know of your own knowledge what the vote and result at that poll was?

A. In my direct examination I gave the result of that vote to the best of my knowledge and belief.

Re-examined by contestee:

Q. Were or not several tallies kept by different parties present, and, if so, were or not they kept under the direction or supervision of commissioners at that poll?

A. There were three tally-sheets kept under the direct supervision of the commissioners at poll No. 2. One of these tallies I assisted in keeping. Those who kept each tally relieved each other from time to time in the labor.

Testimony of J. E. Leonard.

J. Edwards Leonard, sworn for contestee, Frank Morey, testifies as follows:

Question. What is your name, residence, and occupation, and where were you on the 2d day of November last, the day of the election?

Answer. J. Edwards Leonard; Carroll Parish; lawyer, and district attorney for thirteenth judicial district of Louisiana. I was in Providence, Louisiana, on the day of the election.

* * * * * * *

Q. Did you vote at the election 2d of November last; and, if so, where and about what hour of the day did you vote?

A. I voted at poll No. 2, parish of Carroll, late in the afternoon.

Q. Do you know of or did you hear of any complaints made on that day against the fairness of the election held at that poll?

A. I heard no complaints until a number of days after the election, when Nicholas Burton came to me to bring a suit for him, the record of which was offered by contestant.

At this poll No. 2 Morey received 660 and Spencer 49, making Morey's majority 611.

From this deduct Spencer's majority, with which he left poll 1, of 456, and it gives Morey a majority of 155.

POLL 3.

We have referred to the evidence of Bagley, given in this case, and also to that given by him before the returning board. In addition to that Colonel P. Jones Yorke swears:

Question. State your name, residence, and occupation, and where you were on the 2d of November last at the election.

Answer. P. Jones Yorke; third ward, Carroll Parish; poll No. 3.

Q. State what you know of the manner in which the election at said poll was held and conducted.

A. Was at said poll nearly all day. The election was quiet and orderly, and the people voted promptly. It was as quiet and as fair an election as I ever saw. It was generally conceded that the election was free and fair by members of both parties. I remained all night and till the counting of the votes was finished next day, and until the tallies were made up and the ballot-box sealed.

Q. Do you recollect what vote was cast at that box for the candidates for Congress? If so, state what it was.

(Contestant objects to this question, as heretofore.)

A. I do not recollect the exact number, but there was between five and six hundred cast at that poll. They were nearly all cast for Morey, both factions of the republican party voting for Morey. Spencer received only the votes of a part of the democrats who voted at that box.

R. K. Anderson, one of the commissioners, swears that his recollection is that there were 550 votes cast and was positive that Spencer got but 7 and Morey the balance. We, however, accept the lowest number that is given me in the testimony, and that is what Bagley made affidavit to, to wit: For Morey 510, for Spencer 7; leaving a majority for Morey of 503; to which add Morey's majority on leaving poll 2, 155, and it gives me a majority of 658.

POLL 4.

Now this poll the majority agree may be counted, though there are no returns nor ballots to show what the vote was. I have, however, conclusively proved that an election was held and returns made, and I prove by the commissioners what that vote was. At this poll it is admitted that Morey received 167, Spencer received 74; majority for Morey 93; which, added to Morey's majority on leaving poll 3, 658, gives me a majority of 751.

POLL 5.

It is admitted that Spencer received 108 votes, Morey received 96; Spencer's majority, 12. Deducting this from Morey's majority on leaving poll 4, 751; Spencer's majority at poll 5, 12; leaves Morey's majority in the district, 739, on the strength of which I ask this House to adjudge that I be entitled to my seat on this floor as the duly-elected Representative from the fifth congressional district of Louisiana.

When Mr. MOREY had spoken an hour and a half the Speaker *pro tempore* notified him that his time had expired.

Mr. MOREY. I should like to go on for half an hour further.

The SPEAKER *pro tempore*. The gentleman has already spoken an hour and a half.

Mr. MOREY. If I cannot get half an hour I will take fifteen minutes.

Mr. BEEBE. How long does the gentleman desire?

Mr. MOREY. I should like to have half an hour.

Mr. MCCRARY. I move that the gentleman have his time extended for half an hour.

There was no objection, and it was ordered accordingly.

Mr. MOREY then concluded his speech.

Mr. HOUSE. I now demand the previous question.

Mr. NASH. I hope the gentleman will withdraw the demand for the previous question and allow me to occupy the floor for ten minutes.

Mr. BEEBE. I understand the arrangement with the gentleman from Tennessee [Mr. HOUSE] to be that after he calls the previous question I shall then have the time to which he is entitled to close the discussion, inasmuch as I participated in the report of the Subcommittee on Elections.

Mr. MOREY. I wish to make a remark. I had intended to yield to my colleague [Mr. NASH] to make a few remarks. I now ask that his remarks may be printed in the RECORD.

Mr. HOUSE. There is no objection to that.

There was no objection, and it was ordered accordingly.

Mr. NASH. I do not desire leave to print.

Mr. HOUSE. I now demand the previous question.

The previous question was seconded and the main question ordered.

Mr. HOUSE. I now yield the hour to which I am entitled under the rules to close the debate to the gentleman from New York, [Mr. BEEBE.]

Mr. BEEBE. Mr. Speaker, in view of the manner in which the Committee of Elections has been criticised for its course in the investigation and determination of this case, I earnestly hope, for the brief period of one hour, there may be at least partial attention given while I attempt to defend the action of the committee.

While the committee did not desire to have the interest of the gentleman from Louisiana, the sitting member, prejudiced in the least particle by anything outside of this record, it does desire that the whole matter may receive the candid attention of the House. We do not complain that the gentleman who is the contestee in this case saw fit on this occasion to rise in his place to a question of privilege. If he felt that anything transpiring outside of the case prejudiced him, it was a privilege which no one would more cheerfully accord to him than would the members of the majority of the committee, who have united in the report, with reference to which we ask your action. The report of the committee, the gentleman himself will concede, was made—at least the conclusion was reached—long before anything had transpired which he could regard as in the leastwise prejudicing him before the committee or the House. If, by the matter he alluded to, he has been injured, I commend to him the couplet of Cowper:

> Assailed by slander or the tongue of strife,
> Your amplest answer is a blameless life.

If he has that defense, let no one seek to deprive him of it. If he has it not, let him settle it with his own constituents.

Now, Mr. Speaker, this case comes to us in just this shape: The election district is composed of fourteen parishes. There is no question, there is none raised by the gentlemen themselves, as to the result in any other than the fifth precinct of Concordia Parish, and the first, second, and third of Carroll Parish. There was a question originally, perhaps, as to the fourth and fifth precincts of Carroll Parish. Very little evidence seems to have been taken with reference to them, and no stress was laid by either party before the committee upon questions arising with reference to those precincts—the fourth and fifth of the parish of Carroll.

The fifth precinct, then, of Concordia Parish being first in order, let us briefly give it our attention. There is no question raised as to the fairness of the election in that precinct. There is no question raised which in anywise assails the position which the sitting member may well assume, that the election was fair, honest, impartial, and legal in all respects in that precinct. But there is a question as to what the result of that election was.

The very able gentleman from Iowa, [Mr. MCCRARY,] whose work upon the American law of elections has been taken as the guide for this committee in most if not all of the questions arising before it, entertained the House this morning with an argument which was addressed to the proposition that this election should be sent back to the congressional district with instructions to take more testimony. This case as presented to the committee, and as presented in its report, shows beyond all question that it is impossible to reach more fully than has been done the true result of the election in that district. I have said, sir, that with reference to this precinct in Concordia Parish there is no impeachment of the conduct of the election. But, sir, the men who were vested by the statutes of Louisiana with the authority to canvass and declare the result in that precinct failed most signally to comply with the requirements of the law. Gentlemen plead ignorance in defense of the commissioners, or at least in mitigation of their conduct. I desire this House to bear in mind that this law under which this election was held was passed two years before the election. It was approved November 20, 1872. The election was held November 2, 1874. And yet these men knew nothing of their duty. The proof as to this precinct is agreed upon by the

parties to this contest. Dameron was called, and his testimony is accepted for both the contestant and the contestee; and Dameron is not materially controverted except in a single respect. He says that "objection was raised by the other commissioners to canvassing the vote at the precinct" where it was polled. The other commissioners say they made no objection. One of them in explanation says that when he was a commissioner two years before the law required that the canvass should be made at the parish site. Conceding this, conceding that there was this amazing ignorance on the part of the commissioners, the only excuse offered is that one of them forgot to bring the statute and the book of instructions with him. May we not pause here and ask why he did not send for it? Or, after having ridden sixteen miles at night, may we not ask why, when they reached the parish site and found no other commissioners were there from other precincts of the parish except the commissioners who took the votes, at the parish site precinct—why did they not return to the precinct where the vote was polled, and there, as the law required, canvass it in the presence of those who were most interested in it and best advised as to its result?

But, sir, this is not all. The gentleman from Iowa [Mr. MCCRARY] seems to regard the only point of attack on this precinct to be that the commissioners carried the election returns or the ballots sixteen miles. This is not all. There is great care taken to show that the key was in the possession of one commissioner while the box was in the possession of the other during the greater portion of the time. But it does transpire that at one time the key and the box were both in the possession of the same party. Well, sir, this throws suspicion upon the canvass. But this is not all. Four hundred and ninety-eight votes were polled at that precinct. It took these eminently honest but most astoundingly ignorant commissioners over twenty-four hours to count 498 votes! Who believes this?

Mr. MOREY. Will the gentleman allow me a moment?

Mr. BEEBE. Certainly, but I desire the gentleman will not take up too much time, because I have got to hurry through what I have to say in the limited time at my disposal.

Mr. MOREY. There were twenty or thirty candidates voted for and the commissioners had to tally votes for every one of them. And that is true not only of that poll, but at every poll in my district it took twenty-four, thirty-six, or forty-eight hours to canvass the votes.

Mr. BEEBE. I do not desire to argue that point with the gentleman. The law of Louisiana provides that every candidate shall be voted for upon a single ticket, and the canvass finished and the returns made in twenty-four hours after the close of the polls. The gentleman says it took from twenty-four to forty-eight hours to count the votes. At Vidalia, the parish site, the commissioners had concluded their count, and these commissioners from the fifth precinct moved from the tax-collector's office down into the main room of the court-house "because the Vidalia commissioners had concluded" The Vidalia commissioners did their work in the day-time. These gentlemen did not conclude until between ten and eleven o'clock at night on the day after the election.

Mr. MOREY. They did not commence until after they had ridden sixteen miles.

Mr. BEEBE. I can have a great deal of patience; indeed, I have a great deal of sympathy for the gentleman. But, sir, the law of Louisiana is one of the most stringent in its provisions of any law enacted by any State in this Union. It requires not only that the commissioners shall keep the tally-list, shall do all acts in and about and concerning the holding and making returns of election, but it says they shall be punished with fine and imprisonment if they do not. It says that any man who fails to discharge this duty shall be punished by fine and imprisonment. There has been a grand jury held, it is said, and no one has been indicted. Take the record and compare the transaction of that grand jury with the requirements of the law, and then see if there is any other or more charitable pretext or plea upon which these grand jurors could themselves escape than that which is fashionable in that vicinity—gross ignorance.

But a majority of the committee excluded this poll for the reason that the commissioners of election rode sixteen miles and went into a distant precinct and canvassed the votes. True, it was in presence of two of the candidates; but both of them objected to the unlawful action taken. The evidence shows that the tally-list had been made out by parties who were not sworn, and the returns had been made up from these unsworn tally-lists. For these reasons, and because the votes were manipulated for over twenty-four hours under pretense of canvassing them, the committee say that this return is unworthy of credence at the hands of any intelligent body or tribunal, and they cast it out. They did not disfranchise a voter in that precinct. The contestee, who will hardly plead ignorance, had the same line of evidence which every gentleman has in all similar cases; he had the registration-list and the poll-list, and could have called the electors of the precinct, and they could have stated how they voted. The committee have not asked the House to disfranchise a single elector of the gentleman's district or of the State of Louisiana.

Passing now to the parish of Carroll, perhaps I ought to say something in advance concerning the condition of things in reference to the entire parish. The contestee has quoted largely from the evidence in relation to the parish presented to the State returning board. If we believe that the testimony of the parties who testified before that board was credible, still it was *ex parte* and could not be entertained by the committee. The House cannot investigate an election case or any other question involving the rights of members upon evidence of that character. Passing now to the evidence produced in the parish of Carroll, what was the course pursued by the contestant? He went to the clerk's office where the law required that the evidence of the election should be deposited and made every attempt which the law required and which the rules of evidence allowed to ascertain if any election had been held, and, if so, what the result was. He could not find a particle of evidence that any election had been held in the parish of Carroll. He then turned the case over to the contestee. He said: "I rest my case." What then devolved on the contestee? It was his duty, it was the privilege of any of the electors of the State who desired to produce whatever evidence there was to show that an election had really been held and what the result thereof had been. To do this the voters themselves were competent witnesses.

Spencer having shown that there was no legal record evidence of any votes having been cast in Carroll Parish either for himself or the contestee, rested. The sitting member then went into evidence to show that there had been an election, and he undertook to show that the election was fair, impartial, and in all respects in conformity with the provisions of law governing elections in that State. But he did more; he introduced testimony to prove that no money had been paid to voters. I ask the House to bear this in mind; for Morey first went into this matter himself, and even tried to impeach Cæsar Johnson, and for what? For a statement which had not been introduced by Spencer, and never could have been introduced by him, and which never would have been considered by the committee but for contestee's own course. He asked the election commissioner, the witness Jackson, whether he had paid money to voters, and whether Cæsar Johnson was a credible witness, and Jackson said he was not. And then when Spencer came in in rebuttal he met that proposition, and showed that Cæsar Johnson was known to two of the first citizens of the parish, Mr. Cunningham and Mr. Purdy, who had been a merchant there for many years, whether Cæsar Johnson was credible or not, and they both said that he was a man who had a good reputation for truth and veracity, and yet contestee characterizes him as an "ignorant darkey."

Sir, in this matter I am struck by the ingratitude of Mr. Spencer, and perhaps if his qualification to sit in this House had been under discussion I might have been disposed to pause long before I admitted him to a seat. I know of but one instance in all the range of my reading of history of similar ingratitude, and I send it to the Clerk's desk, with the request that he will read it to show the extent to which ingratitude may sometimes go.

The Clerk read as follows:

After J. T. had concluded his opening speech Washington rose to open for the defense. The speech was a remarkable specimen of forensic eloquence. It had all the charms of Counselor Phillips's most ornate efforts, lacking only the ideas. Great was the sensation when Washington turned upon the prosecutor. "Gentlemen of the jury," said the orator, "this prosecutor is one of the vilest ingrates that ever lived since the time of Judas Iscariot; for, gentlemen, did you not hear from the witnesses that when this prosecutor was in the very extremity of his peril my client, moved by the tenderest emotions of pity and compassion, shouted out, 'Run! run! you d——d rascal, run!' It is true, (lowering his voice and smiling,) gentlemen, he said you d——d rascal, but the honorable court will instruct you that that was merely *descriptio personæ*." The effect was prodigious.

Now, sir, that is the only parallel I know to the ingratitude of Mr. Spencer, who, after the minority have admitted his rebutting testimony, has the hardihood to want it considered. The majority of the committee laid great stress on the proposition that Spencer produced this evidence in rebuttal. It is shown to be proper rebutting testimony; but it is said that it ought not to have much weight because it was not introduced in the first instance as testimony-in-chief.

Mr. MOREY. The gentleman does not mean to say that I admit that testimony?

Mr. BEEBE. I say the minority of the committee admit the testimony. I am aware that while the gentleman does not stand with the majority of the committee, he does not stand with the minority either. I am aware that while his counsel do not stand with the returning board, they do not stand with the gentleman himself or with the minority of the committee as to either reasons or results. His vote is, as Dundreary would say, one of "those things that no fellah can find out." The gentleman claims 713 majority; his counsel carry it up to 725; the minority of the committee give him some 600 and odd, showing how clear his case is, and how definitely established his majority must be.

Now as to the first poll in the parish of Carroll. After it had been shown that the grossest frauds had been perpetrated by men who had possession of the returns, the admitted returns which one Anderson had carried in his pocket for six months, and which he swears he received from Jackson, were certified to after they were received in evidence—I ask the minority of the committee to remember this point—after they were received in evidence they were attested by the deputy clerk, but he himself swears that they never were in his possession up to the time of his giving his testimony.

Mr. MOREY. The gentleman is mistaken; the original was certified by Galbraith, and he certifies to the correctness of the copy.

Mr. BEEBE. There is no certificate by Galbraith in evidence except the certificate given in the record in this case, which is the certificate to the returns introduced by Anderson. Anderson carried these returns in his pocket for six months; but that matters not,

because this agreeable majority admitted the return. There is no parallel in any election record connected with the history of this House where a committee has exercised as great liberality as has the majority in this very instance, where returns carried for six months in the pocket of a person not entitled to their possession are nevertheless accepted as *prima facie* proof of the result at poll 1.

Having admitted the returns, the contestant attacks them; and how? He shows that in the first instance they opened the election at that precinct at a door with a bar nailed across, and that the crowd became so unruly and disorderly that they broke down the door. Then the commissioners moved the box into the house and placed it at a window over six feet from the ground.

Now the election law of Louisiana requires that the ballot-box should be in the plain and open view of the electors; that every elector shall have the privilege of seeing his ballot deposited in the box. Nay, more, it goes further; it says that every elector shall have the privilege of placing his ballot in the box with his own hand. These commissioners, disregarding these provisions of the law, placed the box at the window six feet and over from the ground, where it could not be seen by voters, as the witnesses swear. It is true some of them say that it could be seen; the testimony I concede is conflicting; but the weight of the testimony is that the ballot-box could not be seen.

After a while these eminently intelligent electors, so overwhelmingly impressed with the dignity of the sovereignty of American citizenship, resorted to the novel expedient of spliting sticks and placing their ballots in the sticks and poking them at the commissioners at a venture through slats three inches apart, nailed up and down the window. Under such a novel system of voting how could the commissioners distinguish who was at the other end of the sticks? How could they meet their oaths, which required that they should take the ballot from the hand of the elector and let him see it deposited in the box, or else give the elector the privilege of depositing the ballot in the box with his own hand?

One of these commissioners who is most inculpated swears that they caused proclamation to be made that everybody who desired to do so could come into the room and deposit his ballot in the box. This statement is contradicted by the sheriff of the county and other persons. The sheriff of the county swears that the door was shut and barred, and that an officer was stationed at the door. He swears that he got three friends into the room by the grace of the officer at the door; that Jackson, who is a clerk, who had these returns in his care, was also a commissioner of election; and that Jackson said that no more voters should be admitted into the room. The sheriff said to Jackson, "Let these men vote and I will bring no more in." Cunningham went in and they made objection to his voting, and he said that if he did not vote there he would have to go away without voting, for he could not vote in the rabble outside. Jackson said, and some of the testimony goes to show that he said it with an oath, that that was the last man who should vote in the house, and the other commissioners assented by their silence.

This is the manner of the election held at this precinct: this is the character of the election which these gentlemen of the minority and the sitting member ask shall offset the election in your district, Mr. Speaker, and in mine. What avails it that we obey the solemn requirements of the law? What avails it that our constituents, conscious of the great dignity wherewith they are invested, strictly comply with the provisions of the law when they seek to express their will through the silent but potent medium of the ballot, if these men in Louisiana and elsewhere can hold a riot of this kind and christen it an election?

The committee disregarded this farce; they would have been unworthy of seats in this body, they would have been unmindful of their obligation to this Government as officers of it, and utterly unfit to exercise the franchise itself, if they had admitted any returns or result made up from any such miserable farce as this. But this is not all.

Mr. WELLS, of Mississippi. Will the gentleman allow me to interrupt him?

Mr. BEEBE. I have but an hour's time altogether.

Mr. WELLS, of Mississippi. My point is this: Is it not true that the democratic United States supervisor and all the candidates for office——

Mr. BEEBE. I have no patience with this puddling about a democrat or a republican. I have lived long enough to know that there are vile and corrupt men in every party. I ask no questions as to their political associations or professions. Among the twelve apostles one proved base and corrupt. Can it be presumed then that the democratic party does not embrace within its numbers men who are corrupt, men who are as vile as were those who served as commissioners of election in this parish?

But sir, to proceed. It is in evidence that this man Jackson was caught by the sheriff of the county taking a ballot from an elector and substituting another for it and placing it in the box. Will the gentleman from Iowa, [Mr. McCRARY,] with his historic reputation, undertake to defend such proceedings as these? Will he send us back, after the sitting member has had the notice which the statutes of the Federal Government give him—will he send us back to verify an election presided over by such corrupt miscreants as the record shows these commissioners to have been? It was a farce; nay, it was a crime against the elective franchise. There is but one resort of safety, and that lies in the stern rebuke of this House at this time and at all times when any such proceeding is presented and the solemnity of its sanction asked.

But this is not all. It is charged that one of the commissioners who manipulated these returns, at least who had them in his control, was caught passing money out from the room in which the ballot-box was stationed. Ah, says the sitting member, could you attach any credence to this statement? Why not? It is solemn testimony before the committee. The merchant Purdy and Andrew Cunningham swear that the man who swears to this is as truthful and credible a man as lives in that parish. Why not believe the statement? Noah Lane, who is not assailed or impeached, also swears that he saw it. Andrew Cunningham swears that on election day he heard one man halloo to another that the commissioner Jackson was paying out "greenbacks."

Yet we are told it is but an idle story, that we are not to believe it. Now, if we were not called upon to believe other things equally as vile and criminal of this man Jackson, we might stagger somewhat at this; but he is shown to be capable of almost anything. The committee rejected the vote of this precinct. Let him who dares, advised of this record, stand up and assail the action of the majority of the committee in this regard as iniquitous or unwarranted.

I pass now to the second precinct of this parish, and what are we met with here? No returns at all are adduced. Montgomery swears that he never signed any return. One of the commissioners swears that he did sign a return. Why was not the other commissioner sworn? Why was not the justice sworn before whom the verification was taken? Neither of them was produced, neither of them was called upon to testify.

The commissioners were W. W. Benham, Thomas F. Montgomery, and Samuel L. Murray. Montgomery swears that he did not sign the return, and Cunningham testifies that Montgomery told him within a short time after the election that he would not sign any return. Why did they not produce the other commissioner, Murray? It would have benefited the case of the minority if they had produced Murray to swear that he and Benham signed the return. But Murray was not produced, nor was the justice before whom they were claimed to have been sworn forthcoming.

But, as to the conduct of the election, it is shown that at this precinct there was as great disregard of the requirements of the law as at the other. The poll-lists, as the gentleman from Tennessee [Mr. HOUSE] says, were kept by Tom, Dick, and Harry, by parties who were "picked up" and who were not sworn. The commissioners made up the returns from tally-lists not sworn to. The law of Louisiana provides that the commissioners shall be sworn, that the poll-lists shall be made up by the commissioners, which makes them evidence, or at least competent proof from which the commissioners can make up the returns, and then the returns are to be sworn to.

But there is a great parade made that there is a poll-list introduced. Those familiar with the law of elections know that this House has frequently held that poll-lists are not records to establish anything. They are not evidence. I think it was the distinguished gentleman from Mississippi [Mr. LAMAR] who held—at least it was upon a case arising while he was on the committee—that poll-lists are not evidence. They are items going to make up evidence. And when introduced they of themselves prove nothing. In this case the supervisor of election of that parish swears that from that poll-list and from the names of those who voted he believed that Spencer received more votes than were allowed to him.

Pass now to the third precinct. In that precinct the gentleman says there was no evidence of fraud. He undertook to have this House believe that there was no such evidence, except in the one matter of the poll at the first precinct. Now, in the third precinct of this same parish one of the commissioners is brought forward by the sitting member himself; he is introduced to prove that this election was all serene and fair. What is his testimony?

The election in the third precinct was conducted very loosely—

This is a witness introduced by the sitting member—

I know that the law was not complied with in many instances. There were a great many charges of unfairness, which I, as commissioner, attempted to correct, but was overruled. Candidates for office were allowed to keep the tally-sheet. Parties were allowed to vote who were under age, and others who had not proper registration certificates. The ballots were not counted nor returns made up until thirty-six hours after the closing of the polls. The official count upon which the returns were made up was made at Providence thirty-six hours after the close of the election.

This is such an election as gentlemen of other districts are asked to allow to offset their own. This is such an election as it is asked shall counterbalance the voice of your constituents legally and solemnly expressed through the forms which have been provided by the statutes of your country. So long as I hold a position upon the Committee of Elections I never will accredit the result of an election so conducted. I disfranchise no one. I merely give notice by my action, and you, if you assent to the proposition laid down by the majority of the committee, give notice that you will require the electors in this and every other district to abide by the provisions of the statutes which have been enacted for the government of all of us alike.

But in the argument for the sitting member the scene is shifted. The case is begged, begged by the gentleman from Iowa himself. He

wants us to send this case back—for what? For more testimony. On what ground? O, the doctrine of probabilities is invoked. I had supposed that "probabilities" were only an authority in governing the weather department; but if they are to be solemnly invoked in connection with election results I ask gentlemen of this House to compare the returns in the parish of Carroll, where this dispute arises, with those in the parish of Tensas, a small remove below. The latter parish is upon the river, where the gentleman tells us he has such great popularity; there he is all-powerful; he goes forth "conquering and to conquer," because he had a record with reference to the levees of the Mississippi River. Now, what is the result in that regard? Will he stand or fall by the levees? If I overwhelm him with a deluge from his levee stronghold bearing directly upon his case, will he submit with grace?

Gentlemen, the parish of Tensas in 1872 gave 2,109 republican majority. The negro vote in the parish of Tensas was 3,166, against 353 whites in 1874. Yet the majority of 2,109 scored in 1872 was changed in 1874 to a democratic majority of 754. Where are your levee stays now? Where is this all-sufficient record which bears up the contestee in this emergency? Ah, he would float upon the waters of the Mississippi into this House; but, sir, the levees give way in the parish directly below the contested ground of Carroll, and in Tensas, where the negro registration is 3,109 against 353 whites, we find that a majority in his favor two years ago of 2,109 is changed, admittedly and concededly changed, to a majority of 754 for Spencer in this election.

But proceeding further with the doctrine of probabilities, I will take the parishes of the district and run them over very hurriedly. Caldwell Parish in 1872 gave a republican majority of 117; in 1874 a democratic majority of 139. Then take Carroll Parish, and I ask gentlemen to bear this in mind, to give it their attention on the score of probabilities; I ask gentlemen who have been whispering around the House that probably Mr. Morey was elected to give this some little attention. In the presence of my Creator I will say that if I was morally certain—if I had what gentlemen call "moral evidence," satisfying me that Mr. Morey was elected by a majority of the votes really cast at the election in that district, I never would have signed the report of the majority of this committee.

The parish of Carroll in 1872, with a negro registration of 2,073 against 572 whites, on a total vote of 1,834, gave only 1,070 majority for Morey. Tensas at the same election gave 2,100 republican majority. Both of these parishes lie upon the river. We have the evidence of witnesses that there was a disaffection in the republican vote in Carroll. We have men swearing that Mr. Spencer's name was pasted over Morey's and voted on the regular republican ticket in that parish; that he received also the conservative vote. Although Gla and Benham were quarreling there and in a grip which meant death to the one or the other, we are asked to believe that in 1874 Carroll Parish, on a total vote of 2,033, gave twice as large a majority for Mr. Morey as it did in 1872 upon a total vote of 2,199.

Apply the doctrine of probabilities, and answer me in candor, gentlemen, is there evidence inducing you to believe that Mr. Morey received this great majority? If he had, would not the evidence be forthcoming? Would not Murray have been produced; would not other witnesses have been called to sustain the infamous Jackson, the miserable Benham, and men of that character, who are contestee's main witnesses? In the parish of Claiborne Spencer's majority in 1874 was 712, against a democratic majority in the same parish two years before of only 415. The majority is almost double. In Catahoula Parish we find that in 1874, on a total vote of 1,576, the democratic majority was 96. That parish gave two years before a republican majority of 200.

One precinct of Concordia is contested. She gave a republican majority of 1,485 in 1872. She had then a total vote of 1,857. Now she has a total vote of 2,193.

Franklin Parish had a democratic majority of 405 against 267 two years before.

Jackson Parish had a democratic majority of 440 against a republican majority two years before of 164.

Lincoln Parish was not counted in 1872. It met the convenience of the gentlemen who are the ruling authority and supreme in that locality of our country to throw out Lincoln in 1872.

Mr. MOREY. There was no such parish.

Mr. BEEBE. The record does not say, and I do not know.

Mr. MOREY. It was a new parish created afterward.

Mr. BEEBE. All right; it answers well the purpose of its creation, it gives a democratic majority of 389. [Laughter.]

Madison Parish, with a total vote of 2,080, gave Morey a majority of 560 in 1874, when it gave a republican majority of 1,451 in 1872, the vote for Morey falling off more than one-half in two years.

Mr. MOREY. You are not reading my vote in 1872, but the republican majority.

Mr. BEEBE. I am reading from the record of the case, page 104, given by the authorities in Louisiana, who cannot lie. [Laughter.]

Mr. MOREY. It does not pretend to give my vote in 1872, and you are giving somebody else's vote.

Mr. BEEBE. Your vote is one of those mysterious things "which no fellow can find out." [Laughter.]

Morehouse Parish in 1874 gives a republican majority of 337 against a republican majority of nearly twice that amount in 1872.

Ouachita Parish gives a republican majority of 943 in 1874. Here is an increase for Morey, and I ask your attention to it, for it only gave a republican majority of 835 in 1872.

Mr. MOREY. That is the parish I live in, and keeps increasing every year I run.

Mr. BEEBE. It does? Let us see. Here is where our friend the contestee lives. Let us "hit him where he lives." Ouachita in 1872 gave a republican majority of 835 against 943 in 1874, being the only parish where Morey increased the republican majority. Here we are asked to contravene the scriptural saying: "A prophet is not without honor, save in his own country and in his own house."

In this Ouachita Parish—give me your attention my friends, for this is where he lives—this parish of Ouachita, on a registration of 2,645 in 1874, gave it is claimed 2,460 votes; while in 1872, on a registration of 3,281, it gave only 2,047 votes, about 400 more votes on 600 less registration than 1874. It does not make any difference whether they register or not, my friend is sure to have his vote increased. In other parishes we find where there were respectable republican majorities in 1872 Morey gets only 80 or 90 votes in all. For instance, Jackson gave 164 republican majority in 1872, in 1874 Morey got only 94 votes in the whole parish.

In Richland Parish, on a total vote of 1,174, Spencer gets 293 in 1874. In 1872 the democratic majority was 428. This is the only case where there is any falling off in the democratic vote.

Tensas—now give me your attention,—with a registration of 3,166 colored, (I will not follow the example of the contestee and say "darkies," because it is fashionable for democrats to respect these "men and brothers" and call them "colored gentlemen," and I must not follow the example of my friend from Louisiana, and undertake to cast a slur upon them; truth is as white from colored lips as coming from the lips of my friend who is the contestee,) Tensas, with a registration of 3,160 colored votes against 353 whites, gives Spencer 750 majority against a republican majority two years before of 2,109, making a change of 2,900 in that parish.

Union, which gave a republican majority of 29 in 1872, gave a democratic majority of 716 against Morey in 1874. Where, O, where is your doctrine of probabilities?

Tensas, according to the table on page 104 of the record, gave only 243 democratic votes to 2,622 republican; while it is conceded Spencer got 754 in the last election, which shows the colored troops fought nobly. [Laughter.] Where is your doctrine of probabilities?

Now, gentlemen, my sympathies are with the sitting member. He has held office for four years, but I will not continue him the brief period of his term; I will not vote to continue him to March 4, 1877, pleading for him ignorance; for four years he has held his seat in this House the intelligent peer of his brethren, and when he went to take his proofs in this contest he knew what the laws he helped to enact required. He knew that this House always shrank from disfranchising the votes of any one, and that by calling the voters he could have proven how they voted. But he knew also that if he could hold his seat up to this hour, and then ask this committee to go back with him to take other testimony, testimony which he did not adduce in chief, he could hold his seat on until the end of the term.

But, sir, Mr. Spencer and his constituents have some rights which we are bound to respect. On the record made his election is established, and if "probabilities" are to be considered, I have shown that they, too, indicate his election. In addition to suggestions already made under the head of probabilities, let me refer to a "probability" of a general character. In this election in 1874—I appeal to you gentlemen who have memories that will go back to that period—when you as republicans or as democrats sat around the places where the returns were being borne to you on the wings of the lightning on the night of the election and the day after, when you learned that Massachusetts even had swung loose from her miry lodgment in the "low grounds" of republicanism, and had gone democratic—when you learned that Butler had been borne by the tidal wave into a far off offing, from whence it is yet to be determined whether he can make his way safely to land again—when you learned that the election returns from California to Maine showed a great increase for the democratic party, did you not think it singular that Louisiana was joined to her idols? Did you not believe then and do you not believe now that motives had influenced her people, or that influences had been brought to bear upon them, which would not tally or comport with the dignity of the suffrage as exercised by intelligent freemen elsewhere? And in view of all that the "Wheeler committee" has since made plain, do you not believe that "moral certainties," as well as shadowy "probabilities," are all against the conclusions of the Louisiana returning board and in favor of the election of those who by that board were "counted out"—Spencer included?

Now, sir, the Election Committee can stand all the assaults which by innuendo or otherwise can be cast upon it. We have asked no questions as to the political status of the men conducting elections, or of the men contesting. There is an evidence of that, sir, in my eye which makes me proud when I reflect how I can overcome my prejudices. I can remember, sir, when I sincerely thought that I would spurn a seat in this body if it had to be held in common with "gentlemen of color." Yet the first vote called for from me when doing service upon this committee was to seat the member from Alabama, who had the vast array of four hundred thousand dollars' worth of Government bacon at his back; in the face even of evidence which showed that when the elections were held which returned him, public

notice was given that those who would come to precincts where colored votes were to be taken should have this Government bacon doled out. But because Mr. Bromberg did not prove his case we sent him back, and we confirmed Mr. HARALSON in the seat. I regret that the inevitable logic of consistency asserts itself against my race and color, but, sir, it is duty and it is with me irresistible, coming as it does under the admonition and the obligation of my official oath. It will hardly do for the minority to cast imputations of unfairness upon the majority of the committee because we do not agree with them. We have had unanimous reports on all occasions when they have been in favor of republicans. We have never had a unanimous report in favor of a democrat, and I do not believe we ever will have. So much for the ungenerous imputations cast upon the democratic members of the committee.

My venerable friend and colleague from the State of New York [Mr. TOWNSEND] on another occasion undertook to show how corrupt we of the majority of the committee were, and I wondered that he did not then adduce the Scripture, as is his wont, to prove us "castaways." This gentleman who "can quote Scripture for his purpose" has on every occasion when he has spoken in this House, on election cases, assailed the fairness of the majority. I ask him now to do his best, in some one instance at least, to put aside partisan prejudice and vindicate his reputation for fairness and his reputation as a lawyer, which stands so high in the State in which we both live, by showing that it is possible for him to see justice and right in favor of a democrat.

[Here the hammer fell.]

The SPEAKER *pro tempore*. Under the operation of the previous question the question is first on the substitute of the gentleman from Iowa, [Mr. MCCRARY,] which the Clerk will report.

The Clerk read as follows:

Resolved, That the report of the Committee of Elections, in the case of Spencer *vs.* Morey, fifth district of Louisiana, be recommitted to said committee; that the poll of Concordia Parish be counted; that the time for taking testimony in said case be extended sixty days from the 10th day of June, 1876; and that within said extended time, additional testimony may be taken upon the question, What was the true vote of the first, second, and third polls of Carroll Parish? said testimony to be taken in accordance with the statutes regulating the taking of testimony in contested-election cases, except that the contestant shall take testimony during the first twenty days, the contestee during the next twenty-five days, and the contestant during the last five days in rebuttal only; this arrangement of time to be subject to such change as may be mutually agreed on by the parties to the contest.

Mr. MCCRARY. I call for the yeas and nays on agreeing to my substitute for the report of the committee.

The yeas and nays were ordered.

Mr. HOLMAN. Before the vote is taken I ask that the resolutions reported respectively by the majority and minority of the committee be also read.

The Clerk read the majority resolutions, as follows:

Resolved, That Frank Morey was not elected and is not entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

Resolved, That William B. Spencer was elected and is entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

The resolutions reported by the minority of the committee were read, as follows:

Resolved, That William B. Spencer was not elected and is not entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

Resolved, That Frank Morey was elected and is entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

The SPEAKER *pro tempore*. The question is first on the substitute submitted by the gentleman from Iowa, [Mr. MCCRARY,] on which the yeas and nays have been ordered.

The question was taken; and there were—yeas 76, nays 101, not voting 112; as follows:

YEAS—Messrs. Adams, George A. Bagley, William H. Baker, Ballou, Banks Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Caswell, Chittenden, Crounse, Danford, Davy, Denison, Dobbins, Dunnell, Eames, Frost, Frye, Haralson, Benjamin W. Harris, Hathorn, Hays, Hendee, Henderson, Hoge, Hubbell, Hurlbut, Hyman, Joyce, Kelley, Ketchum, Kimball, Franklin Landers, Lawrence, Leavenworth, Lynch, Edmund W. M. Mackey, L. A. Mackey, Magoon, McCrary, McDill, McFarland, Miller, Nash, Norton, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Sobieski Ross, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, William E. Smith, Thornburgh, Martin I. Townsend, Washington Townsend, Wait, Alexander S. Wallace, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, and Woodworth—76.

NAYS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cox, Culberson, Cutler, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Finley, Forney, Franklin, Fuller, Glover, Gunter, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Goldsmith W. Hewitt, Hill, Hooker House, Hunton, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Levy, Lewis, Lord, Luttrell, Lynde, Maish, McMahon, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, O'Brien, Odell, Parsons, Payne, Poppleton, Powell, Randall, Rea, Riddle, Miles Ross, Savage, Scales, Schleicher, Singleton, Siemons, Southard, Stenger, Thompson, Turney, Robert B. Vance, Walsh, Erastus Wells, Whitthorne, James Williams, James D. Williams, Jeremiah N. Williams, Willis, and Yeates—101.

NOT VOTING—Messrs. John H. Baker, Bass, Bell, Blackburn, Blaine, Bliss, Samuel D. Burchard, Burleigh, Cabell, Campbell, Cason, Chapin, Conger, Cook, Cowan, Crapo, Darrall, Davis, Durand, Egbert, Ely, Evans, Faulkner, Fort, Foster, Freeman, Garfield, Gause, Gibson, Goode, Goodin, Hale, Hancock, Henry R. Harris, John T. Harris, Haymond, Abram S. Hewitt, Hoar, Holman, Hopkins, Hoskins, Hunter, Hurd, Kasson, Kehr, King, George M. Landers, Lane, Lapham, Le Moyne, MacDougall, Meade, Monroe, Morey, Morgan, Neal, New, Oliver, Phelps, John F. Philips, Piper, Purman, Rainey, Reagan, John Reilly, James B Reilly, Rice, John Robbins, William M. Robbins, Roberts, Robinson, Rusk, Sayler, Schumaker, Sheakley, Sparks, Springer, Strait, Stevenson, Stone, Stowell, Swann, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Tufts, Van Vorhes, John L. Vance, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, John W. Wallace, Walling, Ward, Warren, Wheeler, Whitehouse, Wigginton, Wike, Alpheus S. Williams, William B. Williams, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodburn, and Young—112.

So the substitute offered by Mr. MCCRARY was not agreed to.

During the roll-call,

Mr. HARTRIDGE said: I desire to state that my colleague, Mr. COOK, is detained from the House by sickness.

Mr. PHILIPS, of Missouri. I am paired upon this question with the gentleman from Ohio, [Mr. GARFIELD.] If he were present he would vote "ay" and I would vote "no."

Mr. JENKS. My colleague, Mr. HOPKINS, is necessarily away in Philadelphia, and some one voted when his name was called, as I understand; if it be so, that some one has voted in his name, it would be a fraud.

The SPEAKER *pro tempore*. The vote of Mr. HOPKINS will be withdrawn from the roll-call.

Mr. HUNTON. I am requested to say that my colleague, Mr. TUCKER, is paired with Mr. FOSTER; if my colleague were here he would vote "no" and Mr. FOSTER would vote "ay."

Mr. SCALES. I desire to announce that my colleague, Mr. WADDELL, is absent by leave of the House.

Mr. DURAND. Upon this question I am paired with my colleague, Mr. CONGER, who is absent by order of the House.

Mr. RICE. On this question I am paired with Mr. PURMAN; if he were here he would vote "ay" and I would vote "no."

Mr. THROCKMORTON. I desire to state that upon this question I am paired with the gentleman from Iowa, Mr. KASSON; if he were present he would vote "ay" and I would vote "no."

Mr. CANDLER. My colleague, Mr. HARRIS, is absent, by order of the House.

Mr. THROCKMORTON. I desire to say that my colleague, Mr. REAGAN, is at home sick.

Mr. WHITING. I desire to say that my colleague, Mr. FORT, is absent by leave of the House.

Mr. STOWELL. I am paired upon this question with my colleague, Mr. CABELL; if he were present he would vote "no" and I should vote "ay."

Mr. BAKER, of Indiana. I desire to say that I am paired with my colleague on the Committee of Elections, Mr. BLACKBURN; if he were present he would vote "no" and I would vote "ay." I desire further to say that my colleagues, Mr. EVANS and Mr. ROBINSON, are absent by leave of the House.

Mr. HUNTER. I am paired upon this question with Mr. GOODE; if he were present he would vote "no" and I would vote "ay."

Mr. HOSKINS. Upon this question I am paired with the gentleman from Virginia, Mr. WALKER; if he were present he would vote "no" and I should vote "ay."

Mr. PIPER. I am paired on this question with the gentleman from Nevada, Mr. WOODBURN; if here he would vote "ay" and I would vote "no."

Mr. OLIVER. I am paired with Mr. HOPKINS; if he were here I would vote "ay" and he, I think, would vote "no."

Mr. VAN VORHES. I am paired with Mr. VANCE, of Ohio, who is absent by order of the House; if he were here he would vote "no" and I would vote "ay."

Mr. WALDRON. I am paired upon this question with my colleague, Mr. A. S. WILLIAMS, who is absent by leave of the House; if he were present he would vote "no" and I should vote "ay."

Mr. MACDOUGALL. On this question I am paired with the gentleman from Virginia, Mr. TERRY; if he were here he would vote "no" and I should vote "ay."

Mr. YEATES. Upon this question I desire to say that my colleague, Mr. DAVIS, is paired with WILLIAM B. WILLIAMS, of Michigan, and my colleague, Mr. WADDELL, is paired with Mr. WILSON, of Iowa.

Mr. WILSON, of Iowa. I voted inadvertently and now withdraw my vote. I am paired upon this question with the gentleman from North Carolina, Mr. WADDELL; if he were here he would vote one way and I should vote the other. I suppose that statement will cover all the votes connected with the matter.

Mr. MOREY. I desire to state that my colleague, Mr. DARRALL, is paired upon this question on the merits of the case with Mr. HARRIS, of Georgia. I do not know whether Mr. HARRIS is here, but in case he has not announced the pair I desire to do it now.

The result of the vote was then announced as above recorded.

The question recurred upon the resolutions offered by the minority of the committee as a substitute for the resolutions of the majority.

Mr. BAKER, of Indiana. I desire in behalf of the minority of the Committee of Elections to withdraw the last of the two resolutions presented as a substitute for the report of the majority.

Mr. BEEBE. I rise to a question of order. I submit that debate is not in order, the previous question having been seconded and the main question ordered.

Mr. BAKER, of Indiana. I will simply say that the minority of the committee desire a separate vote upon each resolution.

Mr. BEEBE. I call the gentleman to order; no debate is in order.

The SPEAKER *pro tempore*. The previous question having been ordered by the House, nothing is in order but to proceed to vote.

Mr. McCRARY. But it is always in order to call for a division.

The SPEAKER *pro tempore*. Is there objection to the request of the gentleman from Indiana to withdraw the second resolution?

Mr. RANDALL and others objected.

Mr. BAKER, of Indiana. If there is any objection then I call for a separate vote on each resolution.

Mr. HOLMAN. I hope we shall be allowed to hear the proposition which my colleague [Mr. BAKER] desires to submit.

The SPEAKER *pro tempore*. The gentleman will state his request.

Mr. BAKER, of Indiana. The request I desire to make is simply to withdraw the last of the two resolutions submitted by the minority of the committee, so that a vote may be taken simply on the first, which declares that William B. Spencer was not elected and is not entitled to a seat in this House. If objection is made to the withdrawal, then I ask a division of the question, so that each of the resolutions reported by the minority may be voted on separately. I desire, however, a vote on the first only.

The SPEAKER *pro tempore*. Is there objection to withdrawing the last of the resolutions reported by the minority of the committee?

Mr. YEATES. I object.

Mr. BAKER, of Indiana. Then I demand a division of the question.

The SPEAKER *pro tempore*. The gentleman has the right to have the question divided. The first resolution will be read.

The Clerk read as follows:

Resolved, That William B. Spencer was not elected and is not entitled to a seat in this House from the fifth congressional district of the State of Louisiana.

Mr. BAKER, of Indiana. On this resolution I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 74, nays 99, not voting 116; as follows:

YEAS—Messrs. Adams, George A. Bagley, William H. Baker, Ballou, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Caswell, Chittenden, Crounse, Danford, Davy, Denison, Dobbins, Dunnell, Eames, Frost, Frye, Haralson, Benjamin W. Harris, Hathorn, Hays, Hendee, Henderson, Hoge, Hubbell, Hurlbut, Hyman, Joyce, Kelley, Ketchum, Kimball, Lawrence, Leavenworth, Lynch, Edmund W. M. Mackey, Magoon, McCrary, McDill, Miller, Monroe, Morgan, Nash, Neal, Norton, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Sobieski Ross, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Thornburgh, Martin I. Townsend, Washington Townsend, Tufts, Wait, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Willard, and Andrew Williams—74.

NAYS—Messrs. Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bland, Blount, Boone, Bradford, Bright, John Young Brown, Buckner, John H. Caldwell, William P. Caldwell, Candler, Cate, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cox, Culberson, Cutler, De Bolt, Dibrell, Douglas, Durham, Eden, Ellis, Felton, Finley, Forney, Franklin, Fuller, Glover, Andrew H. Hamilton, Robert Hamilton, Hardenbergh, Harrison, Hartridge, Hartzell, Hatcher, Hereford, Goldsmith W. Hewitt, Hill, Hooker, House, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Lamar, Franklin Landers, Le Moyne, Levy, Lewis, Lord, Luttrell, Maish, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, O'Brien, Odell, Parsons, Poppleton, Powell, Randall, Rea, Riddle, John Robbins, Miles Ross, Savage, Scales, Schleicher, Sheakley, Singleton, Slemons, Southard, Stenger, Thompson, Turney, Robert B. Vance, Walsh, Warren, Erastus Wells, Whitthorne, James Williams, James D. Williams, Jeremiah N. Williams, and Yeates—99.

NOT VOTING—Messrs. John H. Baker, Banks, Bass, Bell, Blackburn, Blaine, Bliss, Samuel D. Burchard, Burleigh, Cabell, Campbell, Cason, Caulfield, Chapin, Conger, Cook, Cowan, Crapo, Darrall, Davis, Durand, Egbert, Ely, Evans, Faulkner, Fort, Foster, Freeman, Garfield, Gause, Gibson, Goode, Goodin, Gunter, Hale, Hancock, Henry R. Harris, John T. Harris, Haymond, Henkle, Abram S. Hewitt, Hoar, Holman, Hopkins, Hoskins, Hunter, Kasson, Kehr, King, Knott, George M. Landers, Lane, Lapham, Lynde, L. A. Mackey, MacDougall, McFarland, McMahon, Meade, Morey, New, Oliver, Payne, Phelps, John F. Philips, Piper, Purman, Rainey, Reagan, John Reilly, James B. Reilly, Rice, William M. Robbins, Roberts, Robinson, Rusk, Sayler, Schumaker, William E. Smith, Sparks, Springer, Strait, Stevenson, Stone, Stowell, Swann, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Van Vorhes, John L. Vance, Waddell, Waldron, Charles C. B. Walker, Gilbert C. Walker, Walling, Ward, Wheeler, Whitehouse, Wigginton, Wike, Alpheus S. Williams, Charles G. Williams, William B. Williams, Willis, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodburn, Woodworth, and Young—116.

So the resolution was not agreed to.

During the roll-call the following announcements were made:

Mr. PHILIPS, of Missouri. On this question I am paired with the gentleman from Ohio, Mr. GARFIELD. If he were present he would vote in the affirmative, and I should vote in the negative.

Mr. DURAND. I am paired on this question with my colleague, Mr. CONGER, who is absent by order of the House.

Mr. THROCKMORTON. I am paired with the gentleman from Iowa, Mr. KASSON.

Mr. BAKER, of Indiana. On this question I am paired with my colleague on the committee, the gentleman from Kentucky, Mr. BLACKBURN. If he were present he would vote "no" and I should vote "ay." I desire further to say that my colleagues, Mr. EVANS and Mr. ROBINSON, are absent by leave of the House. If present I think they would vote "ay."

Mr. STOWELL. On this question I am paired with my colleague, Mr. CABELL. If he were present he would vote "no" and I should vote "ay."

Mr. HOSKINS. On this question I am paired with the gentleman from Virginia, Mr. WALKER, who, if present, would vote in the negative, while I should vote in the affirmative.

Mr. PAGE. My colleague, Mr. PIPER, is paired with the gentleman from Nevada, Mr. WOODBURN. My colleague, if present, would vote "no" and Mr. WOODBURN "ay."

Mr. OLIVER. I am paired with the gentleman from Pennsylvania, Mr. HOPKINS, who, if present, would vote "no," while I should "ay."

Mr. VAN VORHES. On this question I am paired with my colleague from Ohio, Mr. VANCE. If he were here he would vote "no" and I should vote "ay."

Mr. WILSON, of Iowa. I am paired with the gentleman from North Carolina, Mr. WADDELL.

Mr. MACDOUGALL. I am paired upon this question with the gentleman from Virginia, Mr. TERRY. If present he would vote "no" and I should vote "ay."

Mr. YEATES. I am requested by my colleague, Mr. DAVIS, to state that he is paired with the gentleman from Michigan, Mr. W. B. WILLIAMS. My colleague, if present, would vote "no."

Mr. RICE. On this question I am paired with the gentleman from Florida, Mr. PURMAN.

The result of the vote was announced as above stated.

The question then recurred on the second resolution reported by the minority of the committee; which was read, as follows:

Resolved, That Hon. Frank Morey was elected and is entitled to a seat in this House.

The resolution was not agreed to.

The question next recurred on the following resolutions reported from the Committee of Elections:

Resolved, That Frank Morey was not elected and is not entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

Resolved, That William B. Spencer was elected and is entitled to a seat in the House of Representatives of the Forty-fourth Congress from the fifth district of Louisiana.

The resolutions were adopted.

Mr. HOUSE moved to reconsider the vote by which the resolutions were adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

Mr. DURHAM. I move to take up the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, which was made the special order for this day.

Mr. PAGE. I move the House adjourn.

The SPEAKER *pro tempore*, (Mr. SPRINGER in the chair.) The first business in order is the unfinished business of Saturday.

Mr. BANNING. I believe, Mr. Speaker, I am entitled to the floor on the Army bill. The gentleman from Kentucky [Mr. DURHAM] has a matter of great importance which should be considered at an early day, and I think will take but a few minutes this evening.

Mr. PAGE. The gentleman from Ohio has not the right to yield the floor when I take the floor to move an adjournment. I insist on my motion to adjourn.

The SPEAKER *pro tempore*. The first business in order is the unfinished business of Saturday, on which the gentleman from Ohio [Mr. BANNING] is entitled to the floor.

Mr. PAGE. My motion is in order.

The SPEAKER *pro tempore*. The Chair has not recognized the gentleman from California to make the motion. The gentleman from Ohio has a right to yield the floor, which he has done, to the gentleman from Kentucky.

Mr. PAGE. I withdraw the motion to adjourn.

Mr. DURHAM. I move to proceed to the consideration of the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

The motion was agreed to.

PROTECTION OF AMERICAN CITIZENS.

The SPEAKER *pro tempore*, by unanimous consent, laid before the House a letter from the President of the United States, transmitting, in answer to a resolution of the House of the 22d instant, a report of the Secretary of State in reference to the protection of Americans at Constantinople and Smyrna; which was referred to the Committee on Foreign Affairs.

CHIEF OF ARTILLERY.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting a petition from the officers of the United States artillery, praying for the establishment of the office of a chief of artillery; which was referred to the Committee on Military Affairs.

ARMY PROMOTIONS.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House a letter from the Secretary of War, in response to House resolution of March 13, 1876, asking if officers of the Army have been promoted since the 22d day of June, 1874, as provided in section 1204 of the Revised Statutes; which was referred to the Committee on Military Affairs.

SIOUX INDIANS.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House a letter from the Secretary of the Interior, transmitting copy of a communication from the Commissioner of Indian Affairs,

relative to the removal of the Sioux Indians to the Indian Territory; which was referred to the Committee on Indian Affairs.

LEAVE OF ABSENCE.

Leave of absence, by unanimous consent, was granted in the following cases:

To Mr. FORT for ten days on account of important business.

To Mr. WILSHIRE for twenty days on account of sickness in his family.

To Mr. WAIT for ten days.

To Mr. SWANN, an extension of his present leave until next Saturday.

To Mr. HOPKINS until Friday next.

A. E. ADAMS.

On motion of Mr. WHITE, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of A. E. Adams, of Kentucky.

REVISED STATUTES.

The SPEAKER *pro tempore*. The gentleman from Kentucky is entitled to the floor on the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States.

Mr. DURHAM. The bill was recommitted with amendments, and I now report it back from the Committee on the Revision of the Laws.

I will not detain the House but a moment. This bill is the joint work of two committees on the revision of the laws, perfecting the statutes as they were on the 1st day of December, 1873. Out of a very large number of suggestions made from the State, Treasury, War, and other Departments, the two joint committees have agreed upon this bill perfecting the statutes as they were at that time so far as our attention had been called to it. It is simply to correct errors and to perfect the statutes. They have entered upon no new legislation. They have changed no statute, except as they found it on the 1st day of December, 1873. Unless some gentleman has some question to ask I shall demand the previous question.

The previous question was seconded and the main question ordered.

Mr. HOLMAN. The bill has not yet been read.

The SPEAKER *pro tempore*. It will be read if the gentleman desires it.

Mr. HOLMAN. The bill has not been brought prominently to the attention of the House until now. I suggest to the gentleman from Kentucky that inasmuch as a vote is called for on the bill it be postponed until after the reading of the Journal to-morrow morning.

Mr. DURHAM. I have no objection except that there is other business pressing, and we had better get through with it now.

Mr. HOLMAN. I am in the condition of very many gentlemen on the floor, not having read this bill. I discover not only it corrects errors but makes certain additions.

Mr. DURHAM. The gentleman is mistaken.

Mr. HOLMAN. What is the title of the bill?

The SPEAKER *pro tempore*. The Chair understands there is no new legislation in the bill.

Mr. PAGE. With the consent of the gentleman from Kentucky I will now renew my motion to adjourn, as this will come up as unfinished business to-morrow.

Mr. HOLMAN. I ask unanimous consent that, without the reading of this bill, the vote be taken on it immediately after the reading of the Journal to-morrow morning.

Mr. HURLBUT. The adjournment will do that.

Mr. HOLMAN. But the gentleman from Ohio [Mr. BANNING] does not want the House to adjourn upon this.

The SPEAKER *pro tempore*. The Chair will submit the proposition of the gentleman from Indiana that the reading of the bill be dispensed with, and that the vote be taken thereon to-morrow morning immediately after the reading of the Journal.

There was no objection, and it was so ordered.

REDUCTION OF THE ARMY.

Mr. BANNING. I believe I am entitled to the floor on the bill for the reduction of the Army, which now comes up as unfinished business. I call up that bill, but yield to my colleague, [Mr. MONROE.]

LOAN OF PIECES OF ARTILLERY.

Mr. MONROE, by unanimous consent, introduced a joint resolution (H. R. No. 119) authorizing the Secretary of War to loan to the authorities of Steubenville, Ohio, two pieces of artillery to be used in celebrating July 4, 1876; which was read a first and second time.

The joint resolution was read. It authorizes the Secretary of War to loan to the city of Steubenville, Ohio, from the most convenient Government arsenal, two pieces of artillery to be used by the authorities of said city in celebrating the Fourth of July, 1876; said artillery to be returned immediately after said celebration at the risk and expense of said city authorities.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

JOHN W. BRIDGELAND.

Mr. BANNING. I yield now to the gentleman from Tennessee, [Mr. CALDWELL.]

Mr. CALDWELL, of Tennessee. I ask unanimous consent to submit the following resolution for present consideration.

The Clerk read as follows:

Resolved, That the testimony taken by the Committee on Military Affairs, in an investigation in relation to Horace Boughton, be referred, so far as it relates to John W. Bridgeland, at present consul to Havre, France, to the Committee on Expenditures in the State Department, and that said last-named committee be authorized and instructed to send for persons and papers, and investigate fully the matters referred to in said testimony affecting the said Bridgeland and his fitness for the position of consul as aforesaid, and report to this House.

Mr. MACDOUGALL. I object.

DECORATION OF HALL OF REPRESENTATIVES.

Mr. PAGE. I move that the House adjourn, but yield for a moment to the gentleman from New York, [Mr. COX.]

Mr. COX. I simply wish to recall a very pleasing incident. The young ladies of the Franklin school of this city, thirteen in number, emblematic of the thirteen original States, honored the House by decorating it yesterday with flowers. I think the House might recognize an act of grace of that kind by voting them their thanks, and I move that thanks be tendered to the ladies of that school for decorating the House of Representatives.

The motion was unanimously agreed to.

ISSUE OF ARMS FOR GALVESTON ARTILLERY.

Mr. HANCOCK, by unanimous consent, introduced a joint resolution (H. R. No. 120) to authorize the Secretary of War to issue certain arms to the governor of Texas for the use of the Galveston Artillery; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

The motion of Mr. PAGE was agreed to; and accordingly (at five o'clock and twenty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following memorials, petitions, and other papers were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. BAGBY: Memorial of 716 citizens of Aurora and Sycamore Counties, Illinois, against the manufacture or sale of intoxicating liquors in the District of Columbia and Territories, to the Committee on Education and Labor.

Also, the petition of 127 citizens of Mercer County, Illinois, for the repeal of the resumption act of January 14, 1875, to the Committee on Banking and Currency.

By Mr. BRIGHT: The petition of the Cumberland Presbyterian church at Fayetteville, Tennessee, to be compensated for damages done their church building by United States soldiers during the late war, to the Committee on War Claims.

By Mr. CHITTENDEN: The petition of the National Board of Fire Underwriters, for the enlargement of the duties of the Signal Service, to the Committee on Commerce.

By Mr. DAVY: The petition of citizens of Rochester, New York, for the appointment of a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. GARFIELD: Memorial of Clement Messenger, to be paid $105 by reason of the loss by him by fire of United States notes of that amount, to the Committee of Claims.

By Mr. GOODIN: Petition of a delegation of Cherokee Indians, for an amendment of the pension laws extending the time for the final settlement of the pension claims of Indians, to the Committee on Invalid Pensions.

By Mr. HOLMAN: Papers relating to the claim of Sterling A. Martin, late a private Company I, Thirty-seventh Regiment of Indiana Volunteers, for services rendered by him to the military authorities of the United States at Nashville and Gallatin, Tennessee, in 1862 and 1863, to the Committee on War Claims.

By Mr. LANE: The petition of A. Goodnough and other citizens of Oregon, for relief against Chinese immigration, to the Committee on Commerce.

Also, the petition of James Barry and other citizens of Oregon, of similar import, to the same committee.

By Mr. LEAVENWORTH: Concurrent resolution of the Legislature of the State of New York, declaring that it is unwise, impolitic, and dangerous at this time of depressed trade and heavy financial burdens for Congress to grant aid in the construction of a railroad line from northeastern Texas to the Pacific Ocean, to the Committee on the Pacific Railroad.

By Mr. MACDOUGALL: The petition of citizens of Cayuga County, New York, for the erection of a court-house and post-office for the use of the United States at Auburn, New York, to the Committee on Public Buildings and Grounds.

By Mr. McFARLAND: The petition of Dr. John F. Rhaton, of Massy Creek, Tennessee, for a rehearing of his claim rejected by the southern claims commission, to the Committee on War Claims.

By Mr. PARSONS: The petition of Elijah Thurman, late a private Company E, Twenty-eighth Regiment Kentucky Infantry, that he be granted a pension to date from the time of his discharge from the United States Army, to the Committee on Invalid Pensions.

By Mr. REA: Remonstrance of the Saint Joseph (Missouri) Medical Association, against the passage of the bill granting a charter to the Surgical Institute of the District of Columbia, to the Committee for the District of Columbia.

By Mr. THORNBURGH: The petition of R. M. McClung, president Commercial Bank, Knoxville, Tennessee, for payment for a 7.30 note destroyed by fire while in the United States mails, to the Committee of Claims.