

CONGRESSIONAL RECORD.

PROCEEDINGS AND DEBATES OF THE FORTY-FOURTH CONGRESS.

SECOND SESSION.

IN SENATE.

MONDAY, December 4, 1876.

The first Monday of December being the day prescribed by the Constitution of the United States for the annual meeting of Congress, the second session of the Forty-fourth Congress commenced this day. The Senators assembled in the Senate Chamber at the Capitol, in the city of Washington.

SENATORS PRESENT.

The following Senators were present: From the State of—
Maine—Hannibal Hamlin.

New Hampshire—Aaron H. Cragin and Bainbridge Wadleigh.

Vermont—George F. Edmunds and Justin S. Morrill.

Massachusetts—George S. Boutwell and Henry L. Dawes.

Rhode Island—Henry B. Anthony and Ambrose E. Burnside.

Connecticut—William H. Barnum and William W. Eaton.

New York—Roscoe Conkling and Francis Kernan.

New Jersey—Frederick T. Frelinghuysen and Theodore F. Randolph.

Pennsylvania—Simon Cameron and William A. Wallace.

Delaware—Thomas F. Bayard.

Maryland—George R. Dennis and William Pinkney Whyte.

Virginia—Robert E. Withers.

North Carolina—Augustus S. Merrimon and Matt. W. Ransom.

South Carolina—John J. Patterson.

Georgia—Thomas M. Norwood.

Florida—Simon B. Conover and Charles W. Jones.

Alabama—George E. Spencer.

Mississippi—Blanche K. Bruce.

Louisiana—J. R. West.

Texas—Morgan C. Hamilton and Samuel B. Maxey.

Arkansas—Powell Clayton and Stephen W. Dorsey.

Missouri—Lewis V. Bogy and Francis M. Cockrell.

Tennessee—Henry Cooper and David M. Key.

Kentucky—Thomas C. McCreery and John W. Stevenson.

West Virginia—Henry G. Davis.

Ohio—Allen G. Thurman.

Indiana—Joseph E. McDonald and Oliver P. Morton.

Illinois—John A. Logan.

Michigan—Isaac P. Christiancy and Thomas W. Ferry.

Wisconsin—Angus Cameron.

Iowa—William B. Allison and George G. Wright.

Minnesota—William Windom.

Kansas—James M. Harvey and John J. Ingalls.

Nebraska—Phineas W. Hitchcock and Algernon S. Paddock.

California—Newton Booth and Aaron A. Sargent.

Oregon—John H. Mitchell.

The PRESIDENT *pro tempore* (THOMAS W. FERRY, of Michigan) called the Senate to order at twelve o'clock m., there being a quorum of Senators present.

PRAYER.

Rev. BYRON SUNDERLAND, D. D., Chaplain to the Senate, offered the following prayer:

O, Thou, Almighty and Everlasting God, in Whom we live, and move, and have our being, we come here together this day to lift up to Thee our united prayer in worship and adoration. We come to thank Thee for the kindness of that providence which has gone over us and over all the land during the months that are past. We thank Thee that in Thy goodness Thou hast preserved the lives of so many of these, Thy

servants, and brought them hither again to greet each other and to resume their serious labors in this place. We thank Thee for that great measure of mercy which Thou hast vouchsafed to our country during this centennial year. We thank Thee for the success of those wonderful arrangements by which it has been commemorated. We thank Thee that in the midst of a momentous political contest so much of right sense and good order has prevailed among the people. And we come to confess and to deplore before Thee and before the nations whatever of evil, in any quarter or upon any side, may have been in the violation or abuse of the great franchise of freemen. And now that we and this whole nation are in the midst of this vital business, which has yet to be concluded, we humbly entreat Thee to remember all those who have any part to take in the solemn juncture of our national affairs.

We beseech Thee to remember and bless Thy servant, the President of the United States, and his Cabinet; Thy servants, the officers and members of the Congress now convened; the judges and magistrates of the land; the officers and men of the Army and Navy; and all those who have any rule or authority to bear over us.

O, we beseech Thee, grant to these, Thy servants, special wisdom and understanding, that they may be able to determine and to do that which is right in accordance with Thy most gracious will and in furtherance of the welfare of all the people. O, Thou Father of Light, may they see light in Thy light. O, Thou Author of all Peace, suffer us not for our sins to fall into confusion, but breathe peace and stability over all the land. And forasmuch as the members of this Congress first came together under the shadows that yet lingered about these halls for the death of him who once presided here, and forasmuch as they parted away in the anticipation of the same sad event for him who presided yonder, and whose memory yet claims our reverent attention, we entreat Thee, O Lord, that these united voices, speaking from the grave, may give tender counsel to all the living; and we beseech Thee that there may be a continual effort to understand and to know the way of right, and truth, and justice.

O, Thou God of our fathers, keeping covenant and mercy for thousands of them that love Thee and obey Thy law, forsake us not, we beseech Thee, before the eyes of all the nations in such a time as this; but do Thou be graciously pleased to preside over us in all our affairs, and do not, for any single instant, let go Thy care upon us. Through Jesus Christ, our Lord. Amen.

SWEARING IN OF SENATORS.

The PRESIDENT *pro tempore* presented the credentials of Jerome B. Chaffee, elected by the Legislature of the State of Colorado a Senator from that State; which were read.

He also presented the credentials of Henry M. Teller, elected by the Legislature of the State of Colorado a Senator from that State; which were read.

The PRESIDENT *pro tempore*. The Senators-elect who are present will please advance to the desk and take the constitutional oath.

Messrs. Chaffee and Teller advanced to the desk.

The PRESIDENT *pro tempore*. The Chair understands there are other Senators-elect present, who will please advance to the desk to be sworn at the same time.

James G. Blaine (whose credentials of appointment by the governor of Maine as Senator from that State to fill until the next meeting of the Legislature the vacancy occasioned by the resignation of Lot M. Morrill were presented at the last session) advanced to the desk.

The oaths prescribed by law having been administered by the Presi-

dent *pro tempore* to Messrs. BLAINE, CHAFFEE, and TELLER, they took their seats in the Senate.

Mr. DAVIS presented the credentials of Samuel Price, appointed by the governor of the State of West Virginia a Senator from that State to fill, until the next meeting of the Legislature thereof, the vacancy caused by the death of Allen T. Caperton.

The credentials were read; and, the oaths prescribed by law having been administered to Mr. PRICE, he took his seat in the Senate.

CLASSIFICATION OF COLORADO SENATORS.

Mr. HITCHCOCK submitted the following resolution and order; which were considered by unanimous consent, and agreed to:

Resolved, That the Senate now proceed to ascertain the classes to which the Senators from the State of Colorado shall be assigned, in conformity with the resolution of the 14th of May, 1789, and as the Constitution requires—

Ordered, That the Secretary put into the ballot-box two papers of equal size, one of which shall be numbered *two* and the other shall be a blank. Each of the Senators of the State of Colorado shall draw out one paper, and the Senator who shall draw the paper numbered *two* shall be inserted in the class of Senators whose term of service will expire the third day of March, 1879.

That the Secretary then put into the ballot-box two papers of equal size, one of which shall be numbered *one* and the other shall be numbered *three*. The other Senator shall draw out one paper. If the paper drawn be numbered *one* the Senator shall be inserted in the class of Senators whose terms of service will expire the 3d day of March, 1877, and if the paper drawn be numbered *three* the Senator shall be inserted in the class of Senators whose terms of service will expire the 3d day of March, 1881.

The Secretary having put into the ballot-box two papers, one numbered *two* and the other a blank, Mr. CHAFFEE drew the paper numbered *two*, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of March 1879.

The Secretary having then put into the ballot-box two papers, one numbered *one* and the other numbered *three*, Mr. TELLER drew the paper numbered *one*, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of March, 1877.

NOTIFICATION TO THE HOUSE.

Mr. ANTHONY offered the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary inform the House of Representatives that a quorum of the Senate is assembled and that the Senate is ready to proceed to business.

NOTIFICATION TO THE PRESIDENT.

Mr. ANTHONY offered the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That a committee consisting of two members be appointed to join such committee as may be appointed by the House of Representatives, to wait upon the President of the United States and inform him that a quorum of each House is assembled, and that Congress is ready to receive any communication that he may be pleased to make.

By unanimous consent, the President *pro tempore* was authorized to appoint the committee on the part of the Senate; and Messrs. ANTHONY and McCREERY were appointed.

HOUR OF MEETING.

On motion of Mr. ANTHONY, it was

Ordered, That the hour of the daily meeting of the Senate be twelve o'clock meridian until otherwise ordered.

RECESS.

Mr. THURMAN, (at twelve o'clock and twenty minutes p. m.) I move that the Senate take a recess for three-quarters of an hour.

The motion was agreed to; and at the expiration of the recess (at one o'clock and five minutes p. m.) the Senate re-assembled.

ANNUAL REPORTS.

The PRESIDENT *pro tempore* laid before the Senate the report of the Secretary of the Senate, communicating, in obedience to law, a statement of the receipts and expenditures of the Senate from July 1, 1875, to June 30, 1876; which was ordered to lie on the table and be printed.

He also laid before the Senate the annual report of the Sergeant-at-Arms of the Senate, communicating, in obedience to law, a statement of property belonging to the United States in his possession December 4, 1876; which was ordered to lie on the table and be printed.

He also laid before the Senate the report of the clerk of the Court of Claims, communicating, in obedience to law, a statement of all judgments rendered by that court for the year ending December 4, 1876; which was ordered to lie on the table and be printed.

VOTERS IN CERTAIN STATES—ELIGIBILITY OF ELECTORS.

Mr. EDMUNDS submitted the following resolutions; which were ordered to lie on the table and be printed:

Whereas it is provided in the second section of the fourteenth article of the amendments to the Constitution of the United States that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State;" and

Whereas it is alleged that in several of the States, and particularly in the States of South Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi, the right of male inhabitants of said States, respectively, being twenty-one years of age, and citizens of the United States, to vote at the late elections of the electors for Pres-

ident and Vice-President of the United States, and for Representatives in Congress, and for the executive and judicial officers of such States, and for members of the Legislatures thereof, has been denied or greatly abridged: Therefore,

Resolved, That the Committee on Privileges and Elections, when appointed, be and it hereby is instructed to inquire and report as soon as may be—

1. Whether in any of the elections named in said amendment, in said States, in the years 1875 or 1876, the right of any portion of such inhabitants and citizens to vote as aforesaid has been in any wise denied or abridged.

2. To what extent such denial or abridgment has been carried.

3. By what means such denial or abridgment has been accomplished.

4. By whom has such denial or abridgment been effected.

5. With what motives and for what purposes has such denial or abridgment been carried on.

6. By what authority or pretended authority has such denial or abridgment been exercised.

Resolved further, That the said committee have power to employ such number of stenographers as shall be needful, and to send for persons and papers, and have leave to sit during the sessions of the Senate, and to appoint subcommittees with full power to make the inquiries aforesaid, and report the same to the committee.

Resolved further, That said committee, in order to the more speedy performance of its duties, have power to provide for the taking of affidavits on the subjects aforesaid before any officer authorized by the laws of the United States to take affidavits; and to receive and consider the same.

Resolved further, That the said committee be, and is hereby, instructed to inquire into the eligibility to office under the Constitution of the United States of any persons alleged to have been ineligible on the 7th day of November last, or to be ineligible as electors of President and Vice-President of the United States, to whom certificates of election have been or shall be issued by the executive authority of any State as such electors, and whether the appointment of electors, or those claiming to be such in any of the States, has been made either by force, fraud, or other means otherwise than in conformity with the Constitution and laws of the United States and the laws of the respective States; and whether any such appointment or action of any such elector has been in anywise unconstitutional or unlawfully interfered with; and to inquire and report whether Congress has any constitutional power, and, if so, what, and the extent thereof, in respect of the appointment of, or action of, electors of President and Vice-President of the United States, or over returns or certificates of votes of such electors; and that said committee have power to send for persons and papers, and to employ a stenographer, and have leave to sit during the session of the Senate.

PROPOSED CONSTITUTIONAL CONVENTION.

Mr. INGALLS. I offer a joint resolution, and ask that it be read, laid on the table, and printed.

By unanimous consent, leave was granted to introduce a joint resolution (S. R. No. 27) recommending a convention to revise and amend the Constitution of the United States; which was read twice, and ordered to lie on the table and be printed. It is as follows:

Whereas article 5 of the Constitution empowers Congress to call a convention for proposing amendments to the Constitution, on the application of the Legislatures of two-thirds of the several States; and whereas it is apparent that there are important defects in the system of the Federal Government which render the situation of the United States at this time delicate and critical, calling for an exertion of the combined virtue and wisdom of all the people: Therefore,

Be it resolved, etc., 1. That in the opinion of Congress a convention of delegates from the several States should be held for the sole and express purpose of revising the Constitution of the United States and reporting such alterations and amendments in the nature of an entire instrument as shall, when ratified as provided in said article 5, render the Federal Constitution adequate to the exigencies of the Government and the preservation and support of the Union.

2. That in the opinion of Congress each State should be represented in said convention by as many delegates as it is entitled to Senators and Representatives in Congress; two of said delegates from each State to be chosen by the Legislature thereof, and one to be elected from each congressional district by the qualified voters thereof, at such time and places as the Legislature may prescribe; and that no person holding an office of honor, trust, or profit under any State or under the United States should be eligible as a delegate to said convention.

3. That in the opinion of Congress said convention should be held at Columbus, in the State of Ohio, on the second Monday in May, 1877, and sit without unnecessary interruption till its deliberations are concluded.

4. That in the opinion of Congress the Chief Justice of the Supreme Court should be the presiding officer of said convention, and that each delegate should receive compensation at the rate of \$20 per day, with mileage at the rate of twenty cents for each mile necessarily traveled in going to and returning from the place of meeting, and that all the expenses of said convention should be defrayed from the Treasury of the United States.

5. That in the opinion of Congress the revised and amended Constitution should be reported to the President of the United States upon the adjournment of said convention, and that it should thereupon immediately be submitted by the President to a convention of delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification.

6. That it is recommended to the Legislatures of the several States of the Union to apply to Congress without delay to call a convention as aforesaid, as provided in article 5 of the Constitution.

Mr. WRIGHT. I move that the Senate do now adjourn.

The motion was agreed to; and (at one o'clock and thirteen minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, December 4, 1876.

This being the day designated by the Constitution for the meeting of Congress, the members of the House of Representatives of the Forty-fourth Congress assembled in their Hall for their second session.

At twelve o'clock m. the Clerk, Hon. GEORGE M. ADAMS, called the House to order in the following words:

The time for the meeting of the second session of the Forty-fourth Congress having arrived, the Speaker of the House having since the last session of Congress departed this life, the Clerk, in conformity with the rules of the House, now requests the House to be in order. If there be no objection, the roll will be called to ascertain whether there be a quorum of members in attendance.

CALL OF THE ROLL.

The roll was called, and the following members answered to their names:

MAINE.
John H. Burleigh.
William P. Frye.
Harris M. Plaisted.

NEW HAMPSHIRE.
Frank Jones.
Samuel N. Bell.
Henry W. Blair.

VERMONT.
Charles H. Joyce.
Dudley C. Denison.

MASSACHUSETTS.
William W. Crapo.
Benjamin W. Harris.
Henry L. Pierce.
Josiah G. Abbott.
Nathaniel P. Banks.
Charles P. Thompson.
John K. Tarbox.
William Wirt Warren.
George F. Hoar.
Julius H. Seelye.
Chester W. Chapin.

RHODE ISLAND.
Benjamin T. Eames.
Latimer W. Ballou.

CONNECTICUT.
George M. Landers.
James Phelps.

NEW YORK.
Henry B. Metcalfe.
Simoon B. Chittenden.
Archibald M. Bliss.
Edwin R. Meade.
Samuel S. Cox.
Smith Ely, jr.
Fernando Wood.
Abram S. Hewitt.
Benjamin A. Willis.
George M. Beebe.
John H. Bagley, jr.
Charles H. Adams.
Martin I. Townsend.
Andrew Williams.
Henry H. Hathorn.
Samuel F. Miller.
George A. Bagley.
Elias W. Leavenworth.
Clinton D. MacDougall.
Elbridge G. Lapham.
Charles C. B. Walker.
John M. Davy.
George G. Hoskins.
Nelson I. Norton.

NEW JERSEY.
Miles Ross.
Robert Hamilton.
Augustus W. Cutler.
Frederick H. Teese.
Augustus A. Hardenbergh.

PENNSYLVANIA.
Chapman Freeman.
Charles O'Neill.
Samuel J. Randall.
John Robbins.
Washington Townsend.
Alan Wood, jr.
Hiester Clymer.
A. Herr Smith.
William Mutchler.
Francis D. Collins.
James B. Reilly.
John B. Packer.
Joseph Powell.
Sobieski Ross.
John Reilly.
William S. Stenger.
Levi Maish.
L. A. Mackey.
Jacob Turney.
James H. Hopkins.
Alexander G. Cochrane.
John W. Wallace.
George A. Jenks.
James Sheakley.
Albert G. Egbert.

DELAWARE.
James Williams.

MARYLAND.
Philip F. Thomas.
Charles B. Roberts.
William J. O'Brien.
Thomas Swann.
Eli J. Henkle.
William Walsh.

VIRGINIA.
Beverly B. Douglas.
John Goode, jr.
Gilbert C. Walker.
William H. H. Stowell.
William Terry.
George C. Cabell.
John Randolph Tucker.
John T. Harris.
Eppa Hunton.

NORTH CAROLINA.
Jesse J. Yeates.
John A. Hyman.
Alfred M. Waddell.
Joseph J. Davis.
Alfred M. Scales.
Thomas S. Ashe.
William M. Robbins.
Robert B. Vance.

SOUTH CAROLINA.
Alexander S. Wallace.
Robert Smalls.

GEORGIA.
Julian Hartridge.
Philip Cook.
Henry R. Harris.
Milton A. Candler.
James H. Blount.
William H. Felton.
Alexander H. Stephens.
Benjamin H. Hill.

ALABAMA.
Jere Haralson.
Jeremiah N. Williams.
Taul Bradford.
Charles Hays.
John H. Caldwell.
William H. Forney.

MISSISSIPPI.
Lucius Q. C. Lamar.
G. Wiley Wells.
Hernando D. Money.
Otho R. Singleton.
Charles E. Hooker.
John R. Lynch.

LOUISIANA.
Randall L. Gibson.
E. John Ellis.
Chester B. Darrall.
William B. Spencer.

OHIO.
Milton Saylor.
Henry B. Banning.
John S. Savage.
John A. McMahon.
Americus V. Rice.
Frank H. Hurd.
Lawrence T. Neal.
William Lawrence.
Earley F. Poppleton.
Charles Foster.
John L. Vance.
Ansel T. Walling.
Milton I. Southard.
Jacob P. Cowan.
Nelson H. Van Vorhes.
Lorenzo Danford.
Laurin D. Woodworth.
James Monroe.
Henry B. Payne.

KENTUCKY.

Andrew R. Boone.
John Young Brown.
Charles W. Milliken.
J. Proctor Knott.
Henry Watterson.
Thomas L. Jones.
Joseph C. S. Blackburn.
Milton J. Durham.
John D. White.

TENNESSEE.

George G. Dibrell.
Haywood T. Riddle.
John F. House.
Washington C. Whitthorne.
John D. C. Atkins.
William P. Caldwell.
Casey Young.

INDIANA.

Benoni S. Fuller.
Jephtha D. New.
William S. Holman.
Morton C. Hunter.
Thomas J. Cason.
William S. Haymond.
Milton S. Robinson.
Franklin Landers.
James L. Evans.
Andrew H. Hamilton.
John H. Baker.

ILLINOIS.

Bernard G. Caulfield.
Carter H. Harrison.
John V. Le Moine.
Stephen A. Hurlbut.
Horatio C. Burchard.
Thomas J. Henderson.
Greenbury L. Fort.
Richard H. Whiting.
John C. Bagby.
Scott Wike.
William M. Springer.
Adlai E. Stevenson.
Joseph G. Cannon.
John R. Eden.
William A. J. Sparks.
William R. Morrison.
William Hartzell.
William B. Anderson.

MISSOURI.

Edward C. Kehr.
Erastus Wells.
William H. Stone.
Robert A. Hatcher.
Richard P. Bland.
Charles H. Morgan.
John F. Phillips.
Benjamin J. Franklin.
David Rea.
Rezin A. De Bolt.
John B. Clark, jr.
John M. Glover.
Aylett H. Buckner.

ARKANSAS.

Lucien C. Gause.
William F. Slemons.
William W. Wilshire.
Thomas M. Gunter.

MICHIGAN.

Alpheus S. Williams.
Henry Waldron.
William B. Williams.
George H. Durand.
Omar D. Conger.
George Willard.
Allen Potter.
Nathan B. Bradley.
Jay A. Hubbell.

FLORIDA.

Jesse J. Finley.

TEXAS.

John H. Reagan.
David B. Culberson.
James W. Throckmorton.
Roger Q. Mills.
John Hancock.

IOWA.

George W. McCrary.
John Q. Tufts.
Lucien L. Ainsworth.
Henry O. Pratt.
James Wilson.
Ezekiel S. Sampson.
John A. Kasson.
Addison Oliver.

WISCONSIN.

Charles G. Williams.
Lucien B. Caswell.
Henry S. Magoon.
William Pitt Lynde.
Samuel D. Burchard.
Alanson M. Kimball.
Jeremiah M. Rusk.
George W. Cate.

CALIFORNIA.

William A. Piper.
Horace F. Page.
John K. Luttrell.

MINNESOTA.

Mark H. Dunnell.
Horace B. Strait.
William S. King.

OREGON.

Lafayette Lane.

KANSAS.

William A. Phillips.
John R. Goodin.
William R. Brown.

WEST VIRGINIA.

Benjamin Wilson.
Charles J. Faulkner.
Frank Hereford.

NEVADA.

William Woodburn.

NEBRASKA.

Lorenzo Crounse.

The CLERK. Two hundred and forty-eight members have answered to their names, more than a quorum to transact business, and the Clerk is now prepared to receive nominations for the office of Speaker.

Mr. HOLMAN. I offer the following memorandum and move its adoption by the House.

Mr. BLACKBURN. I desire, Mr. Clerk, to have entered the reason for the absence of my colleague, Mr. CLARKE, who, as I am informed by telegram, is detained at home by serious illness in his family.

Mr. HOLMAN. I move the adoption of the order which I have sent to the Clerk's desk.

Mr. BANKS. I rise to a question of privilege, Mr. Clerk. I hold the certificate of the election of the member from the State of Colorado, which State was admitted—

Mr. WIKE. I object.

Mr. BANKS. It is a question of privilege.

Mr. HOLMAN. The highest privilege is the organization of this House by the election of a Speaker.

The CLERK. The gentleman from Indiana was recognized by the Clerk to submit a motion.

Mr. BANKS. The motion I have made is of higher privilege than the one in reference to the organization of the House.

Mr. WIKE. I object.

Mr. BANKS. I desire to say that the right of a member to vote is the highest possible privilege which can be presented to the House. The election of Speaker is a secondary matter which can be determined only after the right of members to vote has been decided. The *prima facie* right of a member, that upon which we were all admitted, is the certificate of the governor of a State.

Mr. WIKE. I object.

Mr. BANKS. I send the credential of the member from Colorado—

Mr. COX. There is nobody to administer the oath to the member from Colorado until we organize by the election of a Speaker.

Mr. BANKS. The oath can be administered by any member of the House.

Mr. HOLMAN. The administration of the oath is not necessary. The statute prescribes in reference to the proceedings in the organization of the House the manner in which the roll of members shall be made out, and who shall participate in the organization of the House. Under that law the Clerk of Congress has prepared the roll of members which has just been called, and he has announced the presence of a quorum for the transaction of business. I therefore submit, Mr. Clerk, that the highest step in the progress of the House at this moment is its complete organization, which is effected, upon the basis of the roll made out in pursuance of law, by the election of Speaker. No gentleman is prejudiced by this action.

Mr. BANKS. Yes; he loses his vote.

Mr. HOLMAN. But he could not be placed on the roll of the House in conformity with law. The Clerk could not place him there. The law does not authorize the placing of a gentleman on the roll representing a State not represented in the preceding Congress.

Mr. BANKS. I desire the privilege of saying, in reply to the gentleman from Indiana, that the election of a Speaker, which is necessary to the completion of the organization of the House, is a matter secondary to the determination of who is to participate in the vote upon that election. Now, sir, the making up of the roll which the Clerk has read, and to which members have responded when their names were called, is, as far as the Clerk is concerned, a mere ministerial duty. He receives the certificates of governors of States as to the election of members, and upon the *prima facie* evidence he placed the names upon the roll. That does not prevent the House from changing it, if in the intermediate time another member should be elected.

Now, sir, I think there are half a dozen members here from different States of the Union whose seats are uncontested, about which no question can be made, who are ready to be sworn. The executive officers of the States, according to the Constitution of the United States and the laws of the several States, have certified to their election; and they should not be deprived of their right to vote in this case. But I say to the gentleman from Indiana that in the history of this House he cannot find a single instance where a certificate of a governor of a State has been presented to the House certifying to the proper and legal election of a member, and that election has been undisputed, that that certificate has not been received as *prima facie* evidence of this election and he has not been permitted to vote.

Mr. LUTTRELL. I desire to ask the gentleman from Massachusetts one question: What evidence have we of Colorado being a State?

Mr. BANKS. The President has proclaimed it a State. I hold the President's proclamation in my hand. I ask that the credentials of the Representative elected from that State shall be received; and I would ask that the oldest member of the House should administer the oath to him, and also to other members who have credentials and who have not been sworn.

Mr. HOLMAN. Mr. Clerk, the administration of the oath is not a prerequisite of the right to vote in the election of Speaker. That is not a prerequisite.

Mr. BANKS. I do not think it is.

Mr. HOLMAN. The gentleman from Massachusetts himself [Mr. BANKS] was not sworn as a member before he voted in the organization of the present House. The only prerequisite to the act of electing a Speaker of the House is the preparation of the roll under the law. And the gentleman from Massachusetts must bear in mind that since the enactment of the present law upon the subject declaring who shall be placed upon that roll, and providing in effect that the persons so placed upon the roll shall alone participate in the organization of the House, the question to which he has referred has never arisen.

There is at present no House organized. There is no person to determine whether the gentleman from Colorado is entitled to have his name placed upon the roll or not. The embarrassment in the way is that the law does not provide for a case such as that of Colorado. The Clerk has not the right to place upon the roll the name of the gentleman claiming to represent Colorado; but he is not prejudiced, except in the particular act of the organization of the House.

Mr. BANKS. And that is the most important act of all. The law, Mr. Clerk—

Mr. HOLMAN. I believe I have the floor.

Mr. BANKS. I trust the gentleman will permit me one remark in reply.

Mr. HOLMAN. Very well.

Mr. BANKS. The law to which the gentleman from Indiana refers is for the instruction of the Clerk of the House alone, in the performance of a ministerial duty. It is for his instruction alone. He can do nothing except what the law specifies and provides he may do. But the Constitution of the United States gives to this House the power to determine who are its members and who shall vote on this very question of the election of Speaker. Now, sir, there is not a precedent in the history of this House—I venture to say there is not one single precedent, where the certificate of the governor of a State has been presented, certifying to the election of a member of this House, there being no dispute and no contest in regard to it, that it has not been received.

Mr. HAMILTON, of New Jersey. Will the gentleman allow me to correct him?

Mr. BANKS. In a moment. In this case it is essential that the member presenting the certificate should vote in what may be the most important act of the session. I will now hear the gentleman from New Jersey.

Mr. HAMILTON, of New Jersey. I beg to remind the gentleman that in the New Jersey case in 1838 those holding the certificates were not admitted. In that case the members had received certificates from the proper officer of the State.

Mr. BANKS. The gentleman from New Jersey is mistaken, I think, upon that point. A part of the members-elect from the State of New Jersey had the governor's certificate and a part of the members had certificates from the secretary of the State. The governor who had given the certificates stated in an argument which was presented to the House of Representatives that he regretted that under the laws of the State of New Jersey he was not able to do justice to the contestants by giving them certificates.

Mr. WADDELL. Allow me to correct the gentleman from Massachusetts in regard to what has been the former practice of this House. I will state what occurred in my own case. I came here with a certificate from the governor of the State of North Carolina to the Forty-second Congress, and when I went up to be sworn in, Mr. Maynard, of Tennessee, objected and I was made to stand aside.

Mr. BANKS. That was on account of disabilities.

The CLERK. The gentleman from Indiana [Mr. HOLMAN] is entitled to the floor.

Mr. WIKE. Mr. Clerk—

Mr. HOLMAN. The gentleman from Massachusetts [Mr. BANKS] must perceive that the precedents to which he refers have no application to the present law and the present rule of the House.

Mr. COX. I call for the reading of the resolution now pending.

Mr. WIKE. What is before the House?

The CLERK. The gentleman from Indiana [Mr. HOLMAN] submitted a resolution, which has not yet been read.

Mr. HOLMAN. Before it is read—

Mr. WIKE. I call for the reading of the resolution.

Mr. HOLMAN. Before it is read I desire to submit two points in reply to what the gentleman from Massachusetts [Mr. BANKS] has said.

Mr. BANKS. I desire to have it stated by the Clerk that I have presented a question of privilege involving the right of a member of this House to take part in its organization.

The CLERK. The RECORD will show what the gentleman from Massachusetts has submitted.

Mr. HOLMAN. I desire to have read the present rule of procedure in the organization of this House. I will then ascertain the views of the House, so far as one member can do so, by calling the previous question on the resolution which I have submitted. I ask that so much of the thirty-first section of the Revised Statutes as I have marked be now read, together with that portion of the rules of this House relating to the subject.

The following was read:

In making up of said roll, he is directed to place thereon the names of all persons claiming seats as Representatives-elect from States which were represented in the next preceding Congress, and of such persons only, and whose credentials show that they were regularly elected in accordance with the laws of their States respectively, or the laws of the United States.—(Laws Second Session Thirty-ninth Congress, Session Laws, page 28.) Having ascertained whether or not a quorum is present, he announces the fact to the House. If a quorum shall have answered, it is then usual for some member to move "that the House do now proceed to the election of a Speaker *viva voce*."

Mr. HOLMAN. It will be perceived from these provisions, the one of the statutes found as section 31 of the present Revised Statutes, and the other a rule of this House, that, avoiding the very question which the gentleman from Massachusetts now seeks to raise, it is made clearly the duty of the Clerk to proceed as he has done in conformity with that statute and with that rule of the House in making up the roll. I therefore call the previous question on the pending resolution.

Mr. BANKS. I trust the gentleman will allow me—

Mr. COX. I call for the reading of the resolution offered by the gentleman from Indiana.

The CLERK. The Clerk begs to state the condition of the two questions submitted here that the House may properly understand them. The gentleman from Indiana submitted a resolution which has not yet been read.

Mr. WIKE. I claim the floor, Mr. Clerk.

The CLERK. By what right?

Mr. WIKE. I submit to the Clerk the question whether I have the floor or not?

The CLERK. The Clerk does not understand that the gentleman is entitled to the floor.

Mr. WIKE. I want to state my understanding of the question. I rise here to object to the introduction of Colorado as a State into the Union.

The CLERK. The Clerk does not understand that that question is now pending.

Mr. WIKE. I want to make my objection in time.

The CLERK. The Clerk will state the question before the House. When it was announced by the Clerk that a quorum had answered to their names and the Clerk was ready to receive any motion which the House might be pleased to entertain, the gentleman from Indiana rose and submitted a resolution, which has not yet been read. Pending that question, the gentleman from Massachusetts arose to a question of privilege and presented the certificate of a member-elect to the present Congress. The House must perceive that it is impossible for the Clerk to make any decision upon any question of privilege or as to which question shall take precedence, that of the gentleman from Indiana [Mr. HOLMAN] or that of the gentleman from Massachusetts, [Mr. BANKS,] until the Clerk and the House have heard read the resolution of the gentleman from Indiana, [Mr. HOLMAN.] That resolution will now be read:

The resolution was read, as follows:

The House being informed that since its last adjournment Hon. Michael C. Kerr, who at the commencement of the present Congress was elected Speaker of the House, has departed this life, creating a vacancy in the office of Speaker, it is therefore ordered that the House do now proceed to the election of a Speaker *vice vacante*.

Mr. HOLMAN. This being a question of the highest privilege, and a necessary result of proceedings already had, the reading of the roll made out in conformity to law, it not being contended but what every gentleman entitled by virtue of the present law to have his name placed on the roll has had his name placed on that roll, I call the previous question on the adoption of the resolution.

Mr. BANKS. I hope the gentleman from Indiana [Mr. HOLMAN] will allow me to say only this, that the law to which he refers concerns only the opening of a new Congress; it has nothing to do with the case now presented. Even if it had it is only an instruction to the Clerk in regard to his performance of a ministerial duty. The Constitution of the United States gives to a man who has the certificate of his election from the governor of the State which he has been chosen to represent—the Constitution gives to him, until the question is decided otherwise, the *prima facie* right to vote upon this very question of the organization of the House.

Mr. HOLMAN. Does not the gentleman see that it is far better to act under the law and the rule of the House in these preliminary proceedings than to go into questions upon which there may be diversity of opinion? I have, myself, no doubt that the gentleman referred to as representing the new State of Colorado is entitled to be sworn in as a member of this House. But under the law he is not entitled to have his name placed on this roll, and the persons whose names are placed on this roll are those who are entitled to take part in the election of Speaker of this House.

Mr. BANKS. The House can direct that his name shall be placed on the roll.

Mr. HOLMAN. I insist upon the previous question.

Mr. BANKS. I desire to say, Mr. Clerk—

Mr. WILLIS and others called for the regular order.

Mr. FRYE. I rise to a question of privilege.

The CLERK. What question of privilege?

Mr. FRYE. I hold in my hand the certificate of the governor of the State of Maine of the election of Edwin Flye in place of JAMES G. BLAINE, resigned.

Mr. WOOD, of New York. I rise to a question of order. Until the pending question is disposed of, that involved in the resolution submitted by the gentleman from Indiana, [Mr. HOLMAN,] any other proposition is clearly out of order. The organization of the House is a question of the highest privilege, and this is the question now pending.

Mr. FRYE. Mr. Clerk, this is a proposition to proceed to the election of a Speaker. Under the rule read at the instance of the gentleman from Indiana [Mr. HOLMAN] the case of Edwin Flye clearly demands that his name should be placed upon the roll, and that he be permitted to vote upon the question of the election of Speaker. I therefore ask that the name of that gentleman may be placed on the roll.

Mr. WOOD, of New York. There are four or five cases in which since the last session of this Congress elections have been held to fill vacancies. I propose that the ordinary course of procedure of this House from time immemorial shall be followed in those cases. We should first elect a Speaker, commencing as it were *de novo*, according to the roll made up by the Clerk under the law, from the credentials filed in his office. After the Speaker shall have been elected, his first duty will be to swear in those members who have the proper credentials and present themselves at the Clerk's desk for that purpose. It does appear to me that this attempt to interpose objections and dilatory proceedings—I do not accuse gentlemen of any such intention, but such is the effect of their propositions—before we or-

ganize the House by the election of a Speaker, is, to say the least, unnecessary and inopportune. I suggest therefore that if those gentlemen will wait twenty minutes or a half an hour, until we have organized the House, these other proceedings will be clearly in order. But taking precedence of all other questions, as a matter of the highest privilege, is the organization of this House. We now have no Speaker, no properly constituted official organ or presiding officer of the House.

Mr. HOLMAN. I must insist upon my demand for the previous question. The Clerk has made up the roll in conformity to law from the data furnished to him from the several States of the Union. There is no pretense to the contrary. If the question was raised whether the Clerk had properly performed his duty, I admit that it would be a very grave question. But no such question is raised. He has made up the roll according to law, upon official documents furnished to him and on file in his office. I insist upon the previous question.

Mr. FRYE. The Clerk has—

Several MEMBERS. Regular order!

Mr. BANKS. I want the regular order.

The CLERK. Does the gentleman from Indiana [Mr. HOLMAN] demand the previous question?

Mr. HOLMAN. I have been demanding the previous question with great patience.

Mr. BANKS. I rise to a question of order. I submit that this question should be submitted to the House. The Clerk cannot decide that a member, with a certificate of his State government that he is a member, has not a right to vote on this question of the choice of Speaker. Mr. Clerk, you should submit the question to the House.

Mr. HOLMAN. Does not the gentleman from Massachusetts know very well that, since the unhappy contest in the opening of the Thirty-sixth Congress, the present rule, conferring upon the Clerk the power to administer the rules of the House, has operated with admirable effect in the public interest and in maintaining the peace and order of this body? On an occasion like this, the Clerk administers the rules as the Speaker would administer them. I therefore call upon him to administer that rule which gives effect to the demand for the previous question.

Mr. FRYE. One moment—

The CLERK. The gentleman from Massachusetts has risen to a question of order. Questions of order must be decided, as the gentleman from Maine [Mr. FRYE] very well understands, without debate.

Mr. FRYE. I wish to say that the question of order—

The CLERK. Questions of order are not debatable. The point of order raised by the gentleman from Massachusetts is, as the Clerk understands, the first thing under consideration. That point was that the Clerk had no right to decide this question. For the information of the House, the Clerk begs to call attention to Rule 146, which reads as follows:

All elections of officers of the House, including the Speaker, shall be conducted in accordance with these rules, so far as the same are applicable; and, pending the election of a Speaker, the Clerk shall preserve order and decorum, and shall decide all questions of order that may arise, subject to appeal to the House.

Mr. BANKS. I am perfectly aware of that rule. I remember very well the fact that at the opening of a previous Congress the Clerk presided for nine weeks. But I understood the position of the gentleman to be that there was to be no decision upon the question I made, and that it was not to be submitted to the House in such a way that the House could pass its judgment upon it. If the Clerk decides the question, then I am perfectly satisfied; for upon his decision we can take an appeal and thus have a vote of the House.

The CLERK. If the gentleman from Massachusetts will allow, the Clerk will say that he understands it to be his duty to decide these questions of order as they may arise.

Mr. BANKS. Yes, sir.

The CLERK. The gentleman from Indiana has submitted a resolution, pending which the gentleman from Massachusetts rose to a question of privilege. The Clerk is of opinion that the resolution submitted by the gentleman from Indiana, looking to the organization of the House, is also a question of privilege, and that it takes precedence of the question of privilege submitted by the gentleman from Massachusetts. These are, however, questions which the House can decide for itself. If any member is dissatisfied with the ruling of the Clerk in this regard, he can of course appeal to the House.

Mr. BANKS. I make that appeal on the ground that the right of a member to participate in this election is a question of higher privilege than the election of Speaker.

Mr. HOLMAN. It is not a question higher than the law or the rules of the House.

Mr. COX. I move to lay the appeal on the table. This motion, I am aware, is not debatable; but I would like to say one word upon it. Several members objected.

The CLERK. The gentleman from Massachusetts [Mr. BANKS] appeals from the decision just made, and the gentleman from New York [Mr. COX] moves to lay that appeal on the table. The question will be upon laying on the table the appeal taken by the gentleman from Massachusetts.

Mr. BANKS, and Mr. TOWNSEND of New York, called for the yeas and nays.

The yeas and nays were ordered.

Mr. BLACKBURN. I ask that the Clerk will again state the question.

The CLERK. Before the roll-call begins the Clerk begs to state again the question under consideration. It has been ruled by the Clerk that the motion submitted by the gentleman from Indiana relating to the organization of the House is a question of privilege, and that it takes precedence of the questions of privilege raised by the gentleman from Massachusetts [Mr. BANKS] and the gentleman from Maine [Mr. FRYE] respectively. From that decision the gentleman from Massachusetts appeals; and the gentleman from New York [Mr. COX] moves to lay the appeal upon the table. The yeas and nays have been ordered.

Mr. LUTTRELL. Before the vote is taken I ask for the enforcement of the rule in regard to admission to the floor, so that all persons who are not entitled to the privilege of the floor shall be excluded.

Several MEMBERS. That is right.

The CLERK. For the information of persons who may be upon the floor without authority, the rule in reference to admission to the floor will be read.

Mr. STONE. And let the rule be enforced.

The CLERK. The Clerk will now read the one hundred and thirty-fourth rule.

The Clerk read as follows:

No person except members of the Senate, their secretary, heads of Departments, the President's Private Secretary, foreign ministers, the governor for the time being of any State, Senators and Representatives elect, judges of the Supreme Court of the United States and of the Court of Claims, and such persons as have by name received the thanks of Congress—March 15, 1867—shall be admitted within the Hall of the House of Representatives—March 19, 1869—or any of the rooms upon the same floor or leading into the same—March 2, 1865; provided that the ex members of Congress who are not interested in any claim pending before Congress, and shall so register themselves, may also be admitted within the Hall of the House; and no persons except those herein specified shall at any time be admitted to the floor of the House.—March 15, 1867.

Mr. STONE. I demand the enforcement of that rule before the roll-call proceeds.

The CLERK. Persons not entitled to the privilege of the floor are requested to retire. The Doorkeeper has been requested to remove all such persons, but the Clerk himself sees a number of persons present who are not entitled to the privilege of the floor, and the roll-call will not be proceeded with until they retire.

Mr. CONGER. I wish to inquire of the Clerk whether his ruling includes the motion of the gentleman from Maine [Mr. FRYE] as well as the motion of the gentleman from Massachusetts, [Mr. BANKS?]

The CLERK. The pending question is on the motion to lay on the table the appeal from the decision of the Clerk, on which the yeas and nays have been ordered.

The question was then taken; and it was decided in the affirmative—yeas 165, nays 84, not voting 37; as follows:

YEAS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Elbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyné, Lord, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, Phelps, John F. Phillips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—82.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—84.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbins, Garfield, Hale, Hays, Hendee, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Levy, Lewis, McDill, McFarland, Nash, Platt, Parman, Ramey, Randall, Schleicher, Schmucker, Sinnickson, Smalls, William E. Smith, Stowell, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wiggington, and Willard—37.

So the appeal was laid on the table.

During the vote,

Mr. LUTTRELL stated that his colleague [Mr. WIGGINTON] was detained at home by sickness in his family.

Mr. COX. I move to dispense with the reading of the names.

Mr. TOWNSEND, of New York. I object.

The reading of the roll was concluded.

The vote was then announced as above recorded.

The previous question was seconded and the main question ordered; and under the operation thereof Mr. HOLMAN's resolution was adopted.

ELECTION OF SPEAKER.

Mr. COX. I propose the name of Hon. SAMUEL J. RANDALL, of the third district of Pennsylvania, as Speaker of this House.

Mr. MCCRARY. I place in nomination Hon. JAMES A. GARFIELD, of the nineteenth district of Ohio.

The CLERK. There being no further nominations, the Clerk requests that Mr. CLYMER of Pennsylvania, Mr. BANNING of Ohio, Mr. BANKS of Massachusetts, and Mr. WILSON of Iowa, act as tellers, and the tellers will please take their places.

The House then proceeded to vote *viva voce* for Speaker, with the following result; which was announced by Mr. CLYMER on behalf of the tellers:

Whole number of votes cast, 246; necessary to a choice, 114; of which—

SAMUEL J. RANDALL received	162
JAMES A. GARFIELD received	82
CHARLES G. WILLIAMS received	1
W. R. MORRISON received	1
GEORGE F. HOAR received	1

The following is the vote in detail:

For Mr. Randall—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Elbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyné, Lord, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, Phelps, John F. Phillips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Saylor, Seales, Sheakley, Singleton, Slemmons, Southard, Sparks, Spencer, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—162.

For Mr. Garfield—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Pratt, Robinson, Sobieski Ross, Rusk, Sampson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—82.

For Charles G. Williams—Mr. Magoon—1.

For George F. Hoar—Mr. Seelye—1.

For William R. Morrison—Mr. Potter—1.

The Clerk announced that SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, having received a majority of all the votes given, was duly elected Speaker of the House of Representatives for the remainder of the Forty-fourth Congress.

Mr. COX, of New York, and Mr. MCCRARY, of Iowa, having been nominated by the Clerk for that purpose, conducted Mr. RANDALL to the chair amid applause, when he addressed the House as follows:

Gentlemen of the House of Representatives:

Called to this position because of the death of the late Speaker, Mr. Kerr, of Indiana, I only express the universal sentiment in saying that he was a good and great man, whose public and private life was characterized by purity, patriotism, and unswerving integrity.

Nobody can more completely appreciate than I do the high honor of presiding over the deliberations of the Representatives of the American people, and for this mark of your esteem and confidence I return my profound and heart-felt acknowledgments.

In the discharge of the important duties confided to me I shall endeavor to be absolutely fair and impartial. While enforcing the rules and upholding the constitutional prerogatives of this body I shall at the same time protect each and every member in the rights and privileges to which he may justly be entitled.

In the exercise of the parliamentary powers of the Chair it will be my duty and my pleasure to give true expression in the appointment of committees to the opinions and wishes of the House upon every question presented, believing myself, as I really am, no more than the voice of the House itself.

We stand in the presence of events which strain and test to the last degree our form of government. Our liberties, consecrated by so many sacrifices in the past and preserved amid the rejoicings of an exultant people to our centennial anniversary as one among the nations of the earth, must be maintained at every hazard. [Loud applause.] The people look confidently to your moderation, to your patient, calm, and firm judgment, to your wisdom in this time fraught with so much peril. Let us not, I beseech you, disappoint their just expectations and their keen sense of right, but by unceasing vigilance let us prevent even the slightest departure from the Constitution and the laws, forgetting in the moment of difficulty that we are the adherents of party and only remembering that we are American citizens with a country to save which may be lost if unauthorized and unconstitu-

tional acts of executive officers be not frowned down at once with relentless and unsparing condemnation. [Great applause.]

I am now ready to take the oath of office, and the gentleman from Indiana [Mr. HOLMAN] will be kind enough to administer it.

Mr. HOLMAN then administered to the Speaker-elect the oath prescribed by law.

MESSAGE FROM THE SENATE.

A message from the Senate was announced; when Mr. SYMPSON, one of its clerks, said: I am directed by the Senate to inform the House that a quorum of the Senate has assembled and that the Senate is ready to proceed to business; also that a committee has been appointed by the Senate to join such committee as may be appointed by the House to wait upon the President of the United States and inform him that a quorum of each House has assembled, and that Congress is ready to receive any communication that he may be pleased to make, and that Mr. ANTHONY and Mr. MCCREERY have been appointed as such committee on behalf of the Senate.

SWEARING IN OF MEMBERS.

Mr. WOOD, of New York. I rise to a question of privilege. I move that the gentleman from Georgia, Mr. Alexander H. Stephens, a member of this House, be now sworn in.

The motion was agreed to.

Mr. WOOD, of New York. I request that, for reasons which will be obvious to the House, the gentleman from Georgia be permitted to remain in his seat while the oath is administered.

The SPEAKER. If there be no objection, the gentleman will be allowed to remain in his seat.

Mr. A. H. STEPHENS was then qualified by taking the modified oath provided in the act of July 11, 1868.

Mr. LANDERS, of Connecticut. I ask leave to present the credentials of Mr. Levi Warner, Representative-elect from the fourth congressional district of Connecticut, to fill the vacancy caused by the resignation of Mr. W. H. BARNUM.

Mr. FRYE. I also rise to a question of the same privilege, and present the credentials of Mr. Edwin Flye, Representative-elect from the second district of Maine, to fill the vacancy caused by the resignation of Mr. JAMES G. BLAINE.

Mr. BANKS. I present the credentials of James B. Belford, Representative-elect from the State of Colorado.

Mr. HOLMAN. I present the credentials of Mr. Andrew Humphreys, Representative-elect from the second district of Indiana, and move that he be sworn in as a member of the House.

The SPEAKER. The Chair suggests that these credentials should be all forwarded to the Clerk; that they should be read, that the members to whom there is no objection be sworn in, and that those to whom there are objections, if any, shall stand aside until the judgment of the House shall be determined thereon.

Mr. HOLMAN. The more usual practice, I think, has been where there has been no objection, and the reading of the certificate is not called for, not to require its reading.

The SPEAKER. The Chair thinks that the certificates should be read.

Mr. CLYMER. I present the credentials of Mr. W. H. Stanton, Representative-elect from the twelfth district of Pennsylvania, to fill the vacancy created by the resignation of Mr. Winthrop W. Ketcham.

The various credentials presented were then read.

When the credentials of Mr. James B. Belford, Representative-elect from the State of Colorado, were read,

Mr. SPRINGER said: I object to the swearing in of the member from Colorado. I ask that he stand aside till the other members have been sworn.

Mr. BANKS. I am entitled to the floor on that question; and I move that the oath be administered to Mr. Belford.

Mr. HOLMAN. I rise to a further question of privilege, and present the credentials of Mr. Nathan T. Carr, Representative-elect from the third congressional district of Indiana.

The credentials of Mr. Carr were read.

Mr. MCCRARY. I present the credentials of Mr. Charles W. Butt, Representative-elect from the second district of South Carolina.

The credentials of Mr. Butt were read.

Mr. MORRISON. There is a protest on file from sundry citizens of this congressional district, and, for the present, I object to the swearing in of this gentleman.

The SPEAKER. The Clerk will read the protest.

Mr. HOLMAN. I presume it is more in accordance with precedent that the gentlemen to whom there is no objection shall now come forward and be sworn.

The SPEAKER. The Chair will state that after all the certificates have been read he will then suggest that those to whom there is no objection shall qualify. No advantage will be taken in any respect as to those to whom there is objection.

Mr. MCCRARY. I suppose I will have the floor at the proper time to move that the gentleman from South Carolina be sworn in.

The SPEAKER. The gentleman shall have no advantage whatever taken of him.

Mr. HOLMAN. It is not necessary, then, to read this protest at this time.

The SPEAKER. If there is no call for the reading of the protest, it will be postponed until that case is before the House.

Mr. FLYE, Mr. WARNER, Mr. STANTON, Mr. CARR, and Mr. HUMPHREYS then presented themselves and were duly qualified by taking the oath prescribed by the act of July 2, 1862.

COLORADO ELECTION CASE.

Mr. SPRINGER. In reference to the credentials which have been presented from Colorado, I submit a resolution, which I send to the desk.

Mr. BANKS. I believe I have the floor upon that matter.

The SPEAKER. The Chair will recognize the gentleman from Massachusetts [Mr. BANKS] to make any motion that he sees fit.

Mr. BANKS. I move that the gentleman presenting credentials from the State of Colorado be sworn in.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] moves that the gentleman presenting credentials from Colorado be sworn in, and the gentleman from Illinois [Mr. SPRINGER] moves a substitute, which the Clerk will read.

The Clerk read as follows:

Resolved, That the credentials of James B. Belford be referred to the Judiciary Committee, and that said committee be instructed to inquire and report at as early a day as possible whether Colorado is a State in the Union, and that until such report is received no person claiming to be a Representative from Colorado be sworn in as a member of this House.

Mr. SPRINGER. I now move the previous question on the substitute which I have offered.

Mr. BANKS. I desire to say that I was entitled to the floor upon my motion that the oath be now administered to the gentleman presenting credentials as a member from the State of Colorado.

The SPEAKER. The gentleman from Massachusetts will bear with the Chair a moment. The gentleman will remember that when the credentials were read objection was made to the swearing in of the person claiming to be the Representative-elect from the State of Colorado. It was therefore the duty of the Speaker first to recognize the gentleman from Massachusetts [Mr. BANKS] to make his motion, and then to recognize the gentleman from Illinois [Mr. SPRINGER] to submit his objection in the form of a substitute. The Chair would suggest to the gentleman from Illinois [Mr. SPRINGER] that he allow a reasonable time to the gentleman from Massachusetts—

Mr. BANKS. I think the Chair misunderstands the precise state of the question. I moved that the oath be administered, and I have the floor upon that question. Of course there will be time for the proposition of the gentleman from Illinois, [Mr. SPRINGER,] but he cannot submit it while I have the floor. I am entitled upon this question to the floor for one hour if I desire to use that time; of course I do not intend to do so. But I submit to the Chair that that is the position of the question, and that is my right.

The SPEAKER. The Chair would suggest to the gentleman from Illinois to withdraw temporarily his motion for the previous question, so as to allow the gentleman from Massachusetts to be heard.

Mr. SPRINGER. In deference to the wishes of the Chair, I will withdraw for the present my motion for the previous question.

Mr. BANKS. The motion for the previous question could not be made by the gentleman from Illinois, because I am entitled to the floor upon this question.

The SPEAKER. The gentleman from Massachusetts [Mr. BANKS] is recognized by the Chair as now entitled to the floor.

Mr. BANKS. I have been requested to present these credentials for the gentleman claiming to be a Representative-elect from the State of Colorado. I have very little acquaintance with the historical part of the question, so far as the election or the circumstances connected with the election are concerned. I present these credentials as a question of privilege. Congress passed a statute which was approved March 3, 1875, authorizing the people of the Territory of Colorado to form a State government, with certain conditions to be embodied in ordinances to be passed by the convention, which was authorized at the same time to frame a constitution for the State. Upon that being properly certified to the President of the United States by the executive officer of the Territory, the President was authorized and directed to issue a proclamation declaring the State of Colorado admitted into the Union "without further action of Congress."

Now I have not the slightest objection to any possible inquiry that can be made into the history of this election. I simply state here in my place, as a member of the House, that there is not a precedent for the rejection of the credentials of the gentleman claiming a seat as a member of this House from the State of Colorado. I do not believe that there can be found one single precedent where the House has ever, under the same circumstances, refused to recognize such certificate as entitling a person *prima facie* to his seat. If a question of any kind arises in regard to the legality or propriety of any proceeding connected with this election, it can be referred by the House to any committee hereafter and full and complete investigation had thereof.

The reason for taking this course is one of great importance and ought to weigh upon the minds of members of the House. The reason is this: if any member is entitled to object to any person who presents himself with the certificate of the governor of a State that he has been elected, and upon that objection the question is sent to a committee for investigation, it may be, as very often it has been, a year or perhaps more before the question will be decided, and in that event there will be no person to represent the State. And such objection and action can be repeated in as many instances as the House may choose

to enforce so arbitrary a rule, and thus effectually to impair if not defeat the right of a State to be represented in this House.

It is upon this principle, laid down by most of the writers upon this subject, that, wherever the officers of a State who are authorized to perform that duty by the constitution or the laws of the State certify that a member has been elected, that certificate is received as *prima facie* evidence of his right to a seat, and he is admitted without further question. After that, of course every avenue of inquiry is open. That is all I ask of the House in this case, and I believe it is perfectly in accordance with the precedents of the House, with the Constitution of the United States, and with the laws and constitution of the State of Colorado.

The precedents of the House with one single exception are uniform in favor of the admission of a member to his seat upon the certificate of the governor of the State. The case of New Jersey is perhaps the most remarkable exception to this rule that can be shown. In the text of parliamentary writers, especially in the text of the work by the distinguished gentleman from Iowa, [Mr. McCrory,] which is so often quoted here on both sides of the House, it is laid down as a rule of procedure that wherever a certificate is presented in proper form it is received as *prima facie* evidence upon the question of the right of the member to take the oath of office.

In the case of New Jersey, which was a remarkable contest growing out of the equally balanced condition of parties at that time, the certificates were sent to a committee; but there were two sets of contestants present in the House claiming seats: one set upon the certificates of the governor of the State, while the other set, with one exception, had certificates of the secretary of state of New Jersey. Therefore a question arose upon the right of the claiming members to the seats which they claimed. But, in addition to that, it appears to have been stated by the governor of New Jersey, in an argument upon that subject, that he regretted the laws of his State required him to give the certificates which he did give to one set of persons claiming seats, and that he was not able to do justice by giving certificates to the other parties. So that, upon the very evidence presented from the governor himself, the authority of the credentials in those cases was assailed. It was upon that ground, if upon any ground whatever, that the reference of those certificates to a committee was made.

There have been one or two other cases in which it has appeared upon the face of the certificate itself that there was a doubt of the election—a doubt of the right of the member to the seat. In such cases the certificate has been referred to a committee. But with exceptions of this kind, where the evidence impeaching the integrity or the truth of the certificate has been found in the circumstances attending its receipt by the House or upon the face of the certificate itself—with these exceptions, the practice has been uniform and unvarying; so that there is scarcely a single exception to the rule even upon the grounds which I have just indicated.

Now I do not know what may have been the condition of affairs in the State of Colorado which resulted in the election upon which Mr. Belford claims a seat. I do not express any opinion upon that point. I see here a certificate of the State of Colorado—a State that was authorized by the Congress of the United States to be formed, and which has complied with the conditions imposed by Congress in forming its constitution and adopting the proper ordinances; and the Congress of the United States, in the statute itself, has declared that, without any further proceedings by Congress—upon the declaration of the President of the United States that these conditions have been complied with—Colorado shall be admitted as a State of the Union upon an equal footing with all other States.

Now, under the laws of the United States, the House in view of the admission of this State has the right to add another member to its roll. This is the privilege which the House has of increasing its membership upon the admission of this State. All the circumstances being completely verified and every condition being complied with, there can be no objection—no just or proper objection—to the admission of a member claiming the right to a seat as Representative from the State of Colorado.

I send to the Clerk's desk and ask to have read a copy of the proclamation of the President of the United States upon this subject.

The Clerk read as follows

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A Proclamation.

Whereas the Congress of the United States did, by an act approved on the 3d day of March, 1875, authorize the inhabitants of the Territory of Colorado to form for themselves out of said Territory a State government with the name of the State of Colorado, and for the admission of such State into the Union on an equal footing with the original States upon certain conditions in said act specified; and

Whereas it was provided by said act of Congress that the convention elected by the people of said Territory to frame a State constitution should, when assembled for that purpose and after organization declare on behalf of the people that they adopt the Constitution of the United States, and should also provide by an ordinance, irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States; and

Whereas it was further provided by said act that the constitution thus formed by the people of the Territory of Colorado should by an ordinance of the convention forming the same be submitted to the people of said Territory for ratification or rejection at an election to be held in the month of July, 1876, at which election the lawful voters of said new State should vote directly for or against the proposed constitution, and the returns of said election should be made to the acting governor of the Territory, who with the chief justice and United States attorney of said Territory, or any two of them, should canvass the same, and if a majority of legal votes should be cast for said constitution in said proposed State, the said acting governor should certify the same to the President of the United States together with a copy of said constitution and ordinances; whereupon it should be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States without any further action whatever on the part of Congress; and

Whereas it has been certified to me by the acting governor of said Territory of Colorado that within the time prescribed by said act of Congress a constitution for said proposed State has been adopted, and the same ratified by a majority of the legal voters of said proposed new State in accordance with the conditions prescribed by said act of Congress; and

Whereas a duly authenticated copy of said constitution and of the declaration and ordinance required by said act has been received by me.

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do, in accordance with the provisions of the act of Congress aforesaid, declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Colorado to entitle that State to admission to the Union have been ratified and accepted and that the admission of the said State into the Union is now complete.

In testimony whereof I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundred and first.

U. S. GRANT.

By the President:
HAMILTON FISH,
Secretary of State.

Mr. BANKS. Mr. Speaker, this proclamation is in accord with the directions given to the President upon this subject in section 5 of the act of March 3, 1875, to enable the people of Colorado to form a constitution and State government. That section provides that—

If a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

The record is therefore complete. The State of Colorado is admitted by the Congress of the United States. It is a State. A Representative from that State has been legally elected. He has the certificate of the governor and secretary of the State. Such a certificate under circumstances similar to these has never been disregarded by this House, and it ought not to be in this case. Desiring that the fullest possible inquiry may be made hereafter into this subject, I trust that the usual course may be adopted in reference to this member claiming a seat under his certificate and that the oath of office may be administered to him.

I now yield the floor for ten minutes to my colleague, [Mr. HOAR.] Mr. HOAR. My colleague [Mr. BANKS] has very well stated the law and usage of the House, if this were a mere question of the sufficiency of credentials of the due election of a member. But no such question is made. The gentleman from Illinois [Mr. SPRINGER] bases his objection on the extraordinary suggestion that he desires a legal inquiry to be made as to what country he belongs to—as to the question who constitute the States of the American Union. Now, Mr. Speaker, he might as well refer to the Judiciary Committee the question whether the Declaration of Independence ever took effect, whether the Constitution of the United States was ever adopted by the proper number of States, what amendments have been ingrafted upon it since, or any other question which goes to that simple fundamental inquiry what makes up the country called the United States of America—a matter which every American citizen and every American law-giver is conclusively presumed to take notice of as of right, without proof from any other quarter.

The Congress of the United States (the present House of Representatives concurring in the act) directed the President to signify to the American people at large by executive proclamation, the highest evidence known to legislative or judicial processes, the addition of this State to the number which make up the American Union—the same formality which has always conclusively attested and proved the changes which have taken place in the Constitution of the United States itself.

Now it is utterly idle and trivial. The territorial government of Colorado, as a matter of history, is ended. The State government, the State judiciary, the State legislature, the State executive have taken its place. The Senators from Colorado are already sworn and in their seats at the other end of the Capitol. In what attitude would the suggestion of the gentleman from Illinois place the House, to refer to a committee to take evidence as to the constituent parts which make up the country of whose Legislature we form a branch?

Mr. BANKS. I now yield for ten minutes to the gentleman from Illinois, [Mr. HURLBUT.]

Mr. HURLBUT. Mr. Speaker, this question is altogether too important to pass on suddenly, and, in order to be passed upon with care and with consideration, there is or ought to be in business of all kinds some final adjudication, some complete testimony.

Now, under the law of the 3d of March, 1875, in the fifth section, I

find certain things required to be done by the territorial convention and the territorial officers as evidences of the fact that the action of the people of that Territory had converted under this law their territorial condition into a State condition. The Congress of the United States made the President by that law their organ to put forth the final determination, not of the law question, but of the fact. The fifth section, after prescribing various things to be done, concludes, "whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States," without any further action whatever on the part of Congress. That is the law; that is the direction given by the joint action of the two Houses exercising the legislative sovereignty of the United States to the President of the United States; and his proclamation which has been read to you is the assertion by the agent whom you constituted that all those facts had taken place, and that the great fact of the change of territorial condition in Colorado was accomplished without requiring any further legislation on the part of Congress.

Nor is that assertion capable of being questioned in any court or in any body of Congress. It is final and conclusive upon the people, and upon the courts, and upon Congress.

There is no new State in this Union but what stands precisely upon the same grounds. It is just as competent for any one to challenge the right of my comrade to sit from the State of Illinois, as it is for him to make this question in regard to the Delegate from Colorado, because both States stand upon the same consummation of authority—the power given by Congress, completed by the act of the Executive.

Now, sir, if Colorado became a State, that is a fact, and a fact we are presumed to know. If Colorado became a State, she is entitled under the Constitution to her Representative, and when that Representative comes and presents the regular form of certificate, such as we all hold, it is not competent to refuse him, unless upon attacking the validity of the election; and that, as a rule, has always taken place as a secondary thing, in the nature of contest.

I can imagine no possible ground upon which the proposition made by my colleague can stand. I know him to be a man of infinite ingenuity, but I think it would puzzle all the ingenuity of all the perverse men of the world to get clear of that plain statement of fact, and that completes the action of both Houses of Congress.

I do not know, because he has not yet stated upon what grounds he bases it, but believing as I do that the absolutely final action has taken place, that the Congress of the United States authorized the people of that Territory to do certain things, and upon their doing certain things and reporting in the regular way to the President of these United States that they had done certain things it authorized the President by proclamation, the highest evidence, as stated by my friend from Massachusetts, to put that fact officially before the country. Now, sir, the day when that proclamation took place the territorial government of that State had disappeared. Its territorial Delegate has no right here, and the State can be and must be represented, and in justice ought to be represented, by the man whom the people of that State under the forms of law have selected to perform that duty.

Mr. BANKS. I have only a few words to say in addition.

This State, as has been stated, has been admitted by the Congress of the United States, and the people of the State of Colorado, and nobody else, has anything to do with it. It is in exact accordance with the conditions of the Constitution for the admission of new States. The Constitution requires that every State of the Republic shall give full faith and credit to every act of this State of Colorado, and we are bound to do the same thing ourselves. We cannot require of other States that recognition which we refuse ourselves.

It is quite possible, I suppose, to discuss the question of the destructibility of a State. I do not know whether it can be done or not; whether a State that has been created by the act of the Congress of the United States, and by the people of the State itself, can be destroyed by Congress or by any other power in the Government. That is a question which is involved in the proposition of the gentleman from Illinois. It has been tried once in another field; but it is believed, and I think justly believed by the people of this country, and it is a recognized principle in regard to the governments in every part of the world, that a government once established and recognized cannot be destroyed. It may encounter defeat in war; it may be subjected to misfortunes of various kinds; but so long as there is anybody to represent it the State has an existence. It is indestructible; and this State of Colorado is indestructible. Its star is upon the flag of our country. That place cannot be made vacant by anything that is within the power of the House of Representatives.

These questions are involved in the proposition of the gentleman from Illinois. I do not propose to enter upon the discussion of them now, because the question that is presented to the House does not involve considerations of that character. Here is a State, made so by the Congress of the United States and the act of the people of the Territory, declared upon the instructions given to the President by Congress as a conceded and completed fact. The member has been elected by the people of that State and claims his seat. He has a certificate from the governor of the State in the form required by the Constitution and laws of the United States, and by the constitution

and the laws of the State of Colorado. And where there is no contestant, where no one else is contending for the seat, there is no precedent for the rejection of the motion now before the House, which is that the member shall be permitted to take his oath upon the presentation of these credentials. If afterward the House shall think proper to institute an inquiry into the history connected with the organization of the State it has full power to do so. This will not interfere with it in any degree whatever. We recognize the fact that there is *prima facie* evidence of the election of the member, and for the time being will give him the seat upon the credentials presented.

The SPEAKER. Does the gentleman from Massachusetts yield the floor?

Mr. BANKS. I do.

Mr. SPRINGER was recognized, and yielded ten minutes to Mr. WOOD, of New York.

Mr. WOOD, of New York. I do not propose in this preliminary discussion of this matter to follow the gentleman from Massachusetts [Mr. BANKS] and the gentleman from Illinois [Mr. HURLBUT] in discussing the questions they have referred to. But I submit, sir, that this House is made the judge of the qualifications of its own members; and that implies that we have the full right to consider not only whether a man presents a *prima facie* case, but to go behind that case and institute an inquiry into the election, and into every thing appertaining to the claim which he sets up to become a member of this body. That involves in this case not only a consideration as to the regularity and form of the credentials he may present, but also the question what constituency he claims to represent.

Now, sir, I agree with these gentlemen that Congress did pass an act authorizing the Territory of Colorado to become a State under certain conditions. I also admit that the President of the United States has issued his proclamation in which he declares certain facts, and upon those alleged facts he proclaims Colorado a State. I go further. I admit that this person who is presented by the gentleman from Massachusetts [Mr. BANKS] may, in form, present a proper certificate signed by the so-called governor of that so-called State. But are we to be deprived of the privilege of examining the records? Is this House in judging of the qualification of this person, who claims the right to sit here as our peer, to be deprived of the right of knowing whether he is entitled to sit here or not?

The gentleman from Massachusetts [Mr. BANKS] tells us, give him his seat and inquire afterward. Does the gentleman from Massachusetts not know that in giving him his seat we give full recognition to his position that Colorado is a State, and are precluded from investigation into that fact afterward? Now, sir, I am quite sure that there is no disposition on this side of the House to exclude this gentleman from his seat if he be entitled to it. But as Colorado when we adjourned last August was a Territory represented by a Delegate without the right to vote, it is our right and duty to institute an inquiry as to the facts whether Colorado as a Territory has been converted into a State in pursuance of the Constitution and laws of the United States; whether she has adopted a constitution for the State which is republican in form. We have no proof of that fact. A few years ago our republican friends were exceedingly anxious that every State should have a government republican in form. And now, sir, I hold it is entirely legitimate and appropriate, preliminary to swearing in this gentleman, that we shall institute an inquiry into all these questions. And if Colorado be a State, then I am certain we shall not object to this gentleman being sworn in as a member.

Mr. SPRINGER. I now yield ten minutes to the gentleman from Pennsylvania, [Mr. JENKS.]

Mr. JENKS. Before deciding on the regularity of the election of the gentleman who comes from Colorado, it is first necessary that it shall be determined that there is a State in existence in this Union known as Colorado. Next, the question arises, is Colorado a State in this Union. Before speaking further on that question, I would remark that there is sufficient doubt to justify the reference of this question to the Judiciary Committee.

I do not propose to commit myself upon the question whether Colorado is or is not now a State of this Union. But I propose to show that there are questions of doubt surrounding the case sufficient to justify the reference of the subject to a committee for inquiry. The act under which it is claimed that Colorado has been admitted provides in the fifth section as follows:

And if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

Now, by that provision of the fifth section it is devolved upon the President to admit the State of Colorado when it shall have been established that a certain state of facts exists. The President of the United States is to be the judge of those facts. Suppose a law should be passed to authorize the President to admit as a State any portion of the territory of the United States when the inhabitants thereof shall petition to be so admitted, provided they have framed and adopted a constitution of a given form. That would only be extending this act a little farther than it goes, for the principle would be identically the same. It would be a delegation to the President of

legislative powers or judicial powers, or of both. The third section of the fourth article of the Constitution of the United States provides that—

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, &c.

This act, from which I have read, provides that the President shall admit Colorado as a State. Now, before a new State can be admitted the Constitution of the United States provides that the constitution of said State shall be republican in form. Judicial action or legislative action is required to determine whether said constitution is republican in form.

Now, if Congress has power to delegate any portion of its legislative functions to the President it may delegate them all, and if Congress may delegate all its legislative functions to the President, we may then dissolve this Congress and allow the President of the United States to rule this country by his mere proclamations.

Taking this view of the question, it seems to me to be sufficiently doubtful to justify its reference to the Committee on the Judiciary to determine whether the provisions of the act have been complied with, and whether Congress can delegate to the President any of its legislative or judicial functions, as the case may be.

Mr. SPRINGER. I do not know that it is necessary for me to say anything in behalf of the motion I have made, in addition to what has been said by the gentleman from New York [Mr. Wood] and the gentleman from Pennsylvania, [Mr. Jenks.]

In reference to the remark of the gentleman from Massachusetts [Mr. Banks] that this question has been settled and that Colorado is now as much a State of the Union as is Illinois, and that it is now too late to raise that question, I desire to say that it is not too late for this House now and at all times to judge of the election returns and qualifications of its own members, and one of the chief qualifications of a member of this House is that he shall have a State behind him to represent.

As has been remarked by the gentleman from Pennsylvania, [Mr. Jenks,] certain formalities have passed between the President of the United States and the Legislature of the late Territory of Colorado. The Territory of Colorado has formed what purports to be a State constitution. Who has seen that instrument? Who has read it? Who knows one of the provisions of that instrument which is to be received as the constitution of one of the States of this Union? Is it republican in form? Have the boundaries of that State been fixed in conformity with that provision of the Constitution of the United States which requires that no new State shall be formed or erected within the jurisdiction of any other State? And have the other provisions of the Constitution been complied with? No one knows. I do not know; nor do I know what will be the result of the proposed investigation by the Judiciary Committee.

As the gentleman from Pennsylvania [Mr. Jenks] has well said, the facts will justify an inquiry on the part of the Committee of the Judiciary of this House to determine whether the law of Congress has been complied with, and whether the President of the United States may exercise legislative powers which by the Constitution, in the third section of the fourth article, have been committed to Congress alone, and whether new States should be admitted into this Union by the Congress and not by a proclamation of the President of the United States.

I think, therefore, that no injustice can be done to the territory of Colorado, which in point of population is smaller than any congressional district represented upon this floor. That territory is now claiming the right to have two representatives in the Senate Chamber and one upon this floor, and to cast three votes in the electoral college for President and Vice-President of the United States. I say that no injustice can be done to that handful of population about to be endowed with so important prerogatives by having the question determined by the highest judicial power of this House, and in the mean time requiring the Representative to wait as Representatives from other States have long waited about the lobbies of this House, before being admitted upon an equality with other members upon this floor.

I ask that this resolution be adopted in the form in which I have modified it by the addition of a provision directing the committee to inquire whether the election has been held in pursuance to the acts of Congress. I ask that the resolution, as modified, be read.

The resolution, as modified, was read, as follows:

Resolved, That the credentials of James B. Belford be referred to the Judiciary Committee, and that said committee be instructed to inquire and report at as early a day as possible whether Colorado is a State in the Union, and whether an election has been held therein in pursuance to law for a Representative in Congress; and that until such report is made no person claiming to be a Representative from Colorado be sworn in as a member of this House.

Mr. CONGER. I make the point of order that the reference proposed is irregular under the rules; that this matter should go to the Committee of Elections.

Mr. SPRINGER. I move the previous question.

The SPEAKER. The gentleman from Michigan [Mr. Conger] is raising a point of order.

Mr. SPRINGER. Excuse me; I did not hear it.

Mr. CONGER. I make the point of order that under the rules of the House this question can only be referred, except by a suspension of the rules, to the Committee of Elections.

The SPEAKER. The Chair overrules the point of order. It is

competent for the House to make any reference it may choose of a legal question of this sort: either to the Committee of Elections or to the Committee on the Judiciary or to any other committee.

Mr. CONGER. Then I move an amendment so as to refer the question to the Committee of Elections.

Mr. SPRINGER. I have the floor and do not yield it. I call for the previous question.

Mr. CONGER. I made my motion before the call of the previous question.

Mr. SPRINGER. The gentleman took the floor upon a point of order, which has been overruled by the Chair.

The SPEAKER. The gentleman from Illinois moves the previous question.

Mr. BANKS. I hope the gentleman will not press the demand for the previous question.

The SPEAKER. The Chair would suggest to the gentleman from Illinois to allow the motion of the gentleman from Michigan to be made, so that if the majority of the House wish to adopt it they may have an opportunity to do so. That course may facilitate business.

Mr. SPRINGER. What is the amendment? I did not hear it.

The SPEAKER. The amendment of the gentleman from Michigan is to strike from the resolution "the Committee on the Judiciary" and insert instead "the Committee of Elections."

Mr. SPRINGER. I think the Judiciary Committee is the proper committee to make this examination; and I prefer not to yield for the amendment.

The SPEAKER. The gentleman from Illinois declines to yield and demands the previous question upon his resolution.

Mr. BANKS. I hope he will not press the demand for the previous question.

Mr. SPRINGER. I will yield for the amendment and then move the previous question.

Mr. CONGER. If the gentleman does not yield to allow me to speak upon the proposition, I withdraw the amendment.

Mr. BANKS. Let us have a little time for debate.

The SPEAKER. The gentleman from Michigan withdraws the amendment and the gentleman from Illinois renews the demand for the previous question.

Mr. BANKS. I hope that the call for the previous question will not be pressed.

The question being taken, the previous question was seconded; there being—yeas 120, nays 71.

The question then recurring on ordering the main question, there were—yeas 116, nays 73.

Mr. CONGER. I demand the yeas and nays on ordering the main question, because gentlemen wish to speak further upon this subject and the opportunity is refused.

The yeas and nays were ordered.

The question was taken; and there were—yeas 147, nays 95, not voting 48; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Boone, Bradford, John Young Brown, Buckner, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cato, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Culbertson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Raymond, Hereford, Abram S. Hewitt, Hill, Hooker, Hopkins, House, Humphrey, Hutton, Hurd, Jinks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morrison, Mutehler, New, Odell, Payne, Phelps, John F. Phillips, Piper, Poppleton, Powell, Reagan, John Reilly, James B. Reilly, Rice, Riddle, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Seelye, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stricker, Tarbox, Teese, Terry, Thompson, Thomas, Throckmorton, Tucker, Turner, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, Yates, and Young—147.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Blount, Bradley, William R. Brown, Horatio C. Burchard, Samuel D. Burchard, Burleigh Cannon, Cason, Caswell, Chittenden, Conger, Cox, Crapo, Crounse, Danford, Darvall, Davy, Denison, Dunnell, Durham, Eames, Evans, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Holman, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kehr, Kimball, King, Lapham, Lawrence, Leavenworth, Le Moynes, Magoon, MacDougall, McCrary, Miller, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, John Robbins, Robinson, Sobieski Ross, Rusk, Sampson, A. Herr Smith, Strait, Stevenson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, Watterson, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—95.

NOT VOTING—Messrs. Anderson, William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbins, Flye, Garfield, Gunter, Hale, Hays, Hendee, Heukle, Goldsmith W. Hewitt, Hoge, Hubbell, Kasson, Kelley, Lane, Levy, Lewis, Lord, Lynch, McCall, McFarland, Nash, Platt, Purman, Rainey, Rea, Saylor, Schleicher, Schumaker, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, and Wilshire—48.

So the main question was ordered to be now put.

During the vote,

Mr. JOYCE stated that his colleague, Mr. HENDEE, was absent on account of sickness.

The vote was then announced as above recorded.

The question then recurring on the adoption of Mr. SPRINGER's substitute for the resolution.

Mr. HOLMAN demanded a division.

The House divided; and there were—ayes 133, noes 88.

So the substitute was agreed to.

Mr. BANKS demanded the yeas and nays on the resolution as amended.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 142, nays 93, not voting 49; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, Jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, Jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Culbertson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Forney, Franklin, Gause, Gibson, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hatcher, Haymond, Hereford, Abram S. Hewitt, Hill, Hooker, Hopkins, House, Humphreys, Hutton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Luttrell, Lynde, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Mutebier, New, Odell, Payne, Phelps, John F. Philips, Poppleton, Powell, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Sheakley, Singleton, Slemons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Swann, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yeates—142.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Blount, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Cannon, Cason, Caswell, Chittenden, Conger, Cox, Crapo, Crounse, Danford, Darrell, Davy, Denison, Dunnell, Durham, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hartzell, Hathorn, Henderson, Hoar, Holman, Hoskins, Hunter, Hurbut, Hyman, Joyce, Kasson, Kehr, Kimball, King, Lapham, Lawrence, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Morgan, Neal, Norton, O'Brien, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, Rea, Robinson, Sobieski Ross, Rusk, Sampson, Savage, Seelye, A. Herr Smith, Strait, Stevenson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, Watterson, Erastus Wells, G. Wiley Wells, White, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, Jr., and Woodworth—93.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Dobbin, Fuller, Garfield, Glover, Hale, Hays, Hendee, Henkle, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Leavenworth, Le Moyne, Levy, Lewis, Lord, McDill, McFarland, Morrison, Nash, Piper, Platt, Purman, Rainey, Saylor, Schleicher, Schumaker, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Tarbox, Teese, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, Woodburn, and Young—49.

So the resolution, as amended, was adopted.

Mr. SPRINGER moved to reconsider the vote by which the resolution as amended was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MEMBER-ELECT FROM SOUTH CAROLINA.

Mr. MCCRARY. I rise for the purpose of making a privileged motion, that the member from the second district of South Carolina be sworn in. The motion will call for some debate, and as it is quite late I will yield to a motion to adjourn if gentlemen desire it.

Mr. HOLMAN. I move the House adjourn.

Mr. HEWITT, of New York. I ask the gentleman to yield to me a moment.

The SPEAKER. The Chair will not allow the gentleman from Indiana to yield to any other motion to interrupt the gentleman from Iowa.

Mr. HAMILTON, of Indiana. I ask my colleague to yield to allow me to introduce a resolution in reference to the death of Mr. Kerr.

The SPEAKER. The Chair will entertain a motion to adjourn, but will not permit the mover of that motion to yield to any other motion that will interfere with the motion of the gentleman from Iowa.

Mr. HOLMAN. The gentleman from New York desires to submit a request to the House of general importance, and I think there will be no trouble about it.

The SPEAKER. If the gentleman from Iowa will hear the motion of the gentleman from New York, the Chair has no objection.

Mr. HEWITT, of New York. My motion will require unanimous consent.

The SPEAKER. The Chair will state to the gentleman from Iowa that the motion of the gentleman from New York, whatever it may be, will require unanimous consent, so that by hearing it read he will not lose any of his rights.

ELECTION INVESTIGATION.

Mr. HEWITT, of New York. I ask unanimous consent to introduce the following resolution.

Mr. CONGER. While there is a member waiting to be sworn in I object to anything.

The SPEAKER. The Clerk will read and then the gentleman can make his objection.

Mr. CONGER. I object to its being read.

The SPEAKER. The gentleman from Iowa has yielded to have it read.

The Clerk read as follows:

Resolved, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential

to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people, and whether the electoral votes of the said States should be counted; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony, and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise.

The SPEAKER. Does the gentleman from Iowa [Mr. McCrary] yield that that resolution may be offered.

Mr. MCCRARY. I do not.

Mr. HEWITT, of New York. Is it in order to move a suspension of the rules?

The SPEAKER. The Chair understands the gentleman from Iowa [Mr. McCrary] is on the floor for a question of privilege; and the Chair would therefore rule that a motion to suspend the rules is not in order.

Mr. MCCRARY. I agreed to yield to the gentleman from Indiana, [Mr. Holman,] if he proposed to move an adjournment.

THE LATE HON. M. C. KERR.

Mr. HAMILTON, of Indiana. I ask the gentleman from Iowa to yield to me that I may offer a resolution in regard to the death of the late Speaker, Mr. Kerr.

Mr. MCCRARY. I yield for the purpose of hearing it read.

The Clerk read as follows:

Resolved, That the special order for Saturday, December 16, at two o'clock, shall be the presentation of suitable resolutions on the death of Hon. M. C. Kerr, Speaker of this House during its last session, and the expression by the members of the esteem in which he was held for his unblemished character, for his eminent services as a representative, and for his ability and impartiality as a presiding officer.

Mr. MCCRARY. I have no objection to that resolution if the gentleman will add at the end of it, "and that, as a mark of respect for the memory of the deceased Speaker, the House do now adjourn."

The SPEAKER. Does the gentleman from Iowa yield for that resolution?

Mr. MCCRARY. I do not, unless with the amendment I have stated.

Mr. HAMILTON, of Indiana. I do not accept the gentleman's amendment.

Mr. MCCRARY. I wish to understand whether it is proposed to adjourn immediately upon the adoption of this resolution?

Mr. HOLMAN. No, sir.

Mr. MCCRARY. Then we will proceed with the other matter.

The SPEAKER. The gentleman from Iowa [Mr. McCrary] is entitled to the floor.

SECOND DISTRICT OF SOUTH CAROLINA.

Mr. MCCRARY. The credentials of the member-elect from the second district of South Carolina, now submitted to the House, are under the great seal of that State. They are in due form, and while it may be a matter of very little consequence to this House, or to the country, whether that member shall be sworn in to-day or at some future time, the precedent which will be established by refusing to swear him in on these credentials is one that, I trust, the House will pause long before it establishes. There is a long but unbroken line of decisions in this House which hold that it is the absolute and imperative duty of the House in all cases to respect credentials that come here from the various districts of the country bearing the great seal of the State and certified in due form of law, so far as to swear in persons holding these credentials, and leaving to the future action of the House anything in the nature of a contest as to the legality, the fairness, the regularity of the election. There is scarcely in the history of the country an exception to this rule, and I submit to the House that it is of the utmost importance that this rule and this long-established principle shall be adhered to in this case. A departure from it, Mr. Speaker, may lead to the most serious consequences in the future.

What is it that is proposed here on this occasion? Here is a gentleman who presents the usual certificate under the seal of the State of South Carolina. He asks to be sworn in. He has presented such credentials as we have all presented. The proposition is to antagonize this certificate, to go behind it, to consider a protest, signed by some half dozen or more citizens of the State of South Carolina, alleging something against the regularity or legality of this election. Now, sir, what are we doing when we establish a precedent like that? We are saying that in all future cases, when we come to organize a Congress, when the credentials of members are presented at the Clerk's desk bearing the great seal of a State in due form of law, if a gentleman upon the floor may rise in his place and present an unsworn and unattested petition, or protest, or paper of any kind purporting to come from some citizen or citizens of a State, that thereupon the House may refuse to swear the member in and give him a voice in the organization of the House, or, it may be, may refuse to swear him in, and thereby deny to the people he represents a voice in the election of a President of the United States.

Sir, when a case shall arise, as a case may arise in any Congress when parties are equally divided, when two or three votes on one side or the other will determine the organization and control of the House of Representatives, it is proposed here to establish a precedent

by which by mere petition, by mere protest, a number of members may be kept out of their places and denied a voice in the organization of the House. There is no case on record that begins to establish any such precedent as will be established here by refusing to swear in this gentleman. The case from New Jersey is not like this; and that is the strongest case that can be found against the doctrine that a man shall always be sworn in when he presents the proper credentials under the proper seal and executed by proper authority. That certainly was not a case where the governor of a State certified to the election of Representatives, and where citizens sent in a protest against it. Not at all, sir. It was a case where the governor had certified the election of one set of members, and the secretary of state had certified the election of another set of members. And even as regards that case it has been ever since universally conceded that the House made a grave mistake in it in going behind the certificate given by the governor of the State. But now it is proposed, not that we shall act upon the certificate of the secretary of state; not that we shall decide between two certificates coming from officials of the State, but that we shall set aside the regular and formal certificate of the governor of South Carolina under the great seal of that State, and shall refuse to swear in a member on this floor, upon the petition or protest of some citizens of South Carolina.

Sir, you open the door if you establish this precedent, and at the organization of the very next Congress, if the two parties shall be divided almost evenly, with but a small majority on the one side or the other, you establish a precedent whereby members may be kept out of their places upon this floor until the House has been organized and the power of legislation placed in the hands of a Speaker and of committees of this House that represent only a minority of the legally elected members. This is what is proposed; and, in the presence of a proposition to establish a precedent like this, the claims of individuals, the claims of parties ought to sink out of sight. There is no safety for us but to stand by the precedents so often repeated, that in the swearing in of members in the first instance we will not go behind the regular credentials from the governor of a State.

If we ever establish the doctrine that the House may do this upon any pretense, especially upon the mere petition or protest of a citizen, from that day on we are at sea, and it may be that in some cases the House could not be organized at all. If you may keep one man out of his seat by the presentation of a protest from private citizens against the regularity or legality of his election, calling upon the House to go behind the credentials, issued by the governor of a State, you may keep all men out of their seats upon this floor in the same way, because it is not required by this proposition that there should be proof that the objection is well founded. There is no evidence filed in this case, nothing but the protest of certain citizens, not even under oath, a protest setting forth false grounds of contest.

Mr. WOOD, of New York. Will the gentleman allow me to ask him a question?

Mr. McCRARY. Certainly.

Mr. WOOD, of New York. I would ask the gentleman whether Mr. Pinchback, of Louisiana, did not come here with credentials of the same character and he was refused admission?

Mr. McCRARY. The gentleman from New York [Mr. WOOD] knows very well that when that claimant came here there were two governments in the State of Louisiana, two gentlemen claiming to be the governor of that State. One set of claimants came here with the certificates of Governor Kellogg and the other set of claimants came with the certificates of Mr. McEnery, and the question was unsettled as to who was the governor of the State. In such a case as that there may be some reason for pausing and instituting an investigation.

Mr. WOOD, of New York. I would ask the gentleman whether he himself or his political friends had any doubt as to who was then the governor of Louisiana?

Mr. McCRARY. We are not now, I believe, discussing the Louisiana question, and I do not wish to be drawn off into a discussion of it. But I say that the refusal to swear in Mr. Pinchback was put upon the ground that there was another gentleman here claiming to have the certificate of the governor of Louisiana; and also upon another ground, that Mr. Pinchback also held a certificate for a seat in the Senate of the United States.

I challenge the gentleman from New York, [Mr. WOOD,] or any other member upon this floor, to find one single case in the whole history of Congress where the regular certificate was set aside, and the House went behind it and refused to swear in a member who was certified to be elected, merely upon the protest of a half dozen private citizens of any State of this Union.

I beg the House to pause before it establishes any such precedent. It does seem to me that the House will not take this step; I cannot believe the House will do it. Why, sir, at the beginning of this very Congress a similar objection and protest was made against the swearing in of Mr. Morey, of Louisiana. After debate, this House, with its large democratic majority, ordered that he be sworn in, and under the lead of the honorable gentleman from Indiana [Mr. HOLMAN] confirmed the doctrine for which I contend here to-day, that we cannot, we must not go behind the regular credentials in determining whether a man shall be sworn in or not.

I trust that the usual course will be taken; that this regular credential shall be respected; that the great seal of the State of South

Carolina shall be respected, and that this man shall be sworn in. If any gentleman has cause to contest his election, the way is open for him to do it. But there is no contestant here; there is nothing upon which the House can act as against this credential except the protest of some private citizens of South Carolina.

The fact is that this gentleman has a majority, I believe, of about 8,000 votes; that he carried every county in his district; that there is no question made in the State of South Carolina as to his right to a seat in this House; that no objection was made that any votes were thrown out, and that there is not a particle of ground for claiming that he is not entitled to his seat even upon the merits of the case, and that question is not now here.

What I ask is that the House will not depart from this simple and necessary rule. It is a right, and I claim it here as the right of the people of that district of South Carolina under the Constitution to be represented upon this floor by the man who comes here and presents the credentials which the Constitution and laws of the land require.

Deny that right in this case, deny it to this claimant, and you have opened a door whereby you may deny it in the future to anybody and everybody who comes here with similar credentials. I trust, I say, that the House will not take this step, but that the usual course will be observed.

The gentleman from Illinois [Mr. MORRISON] desires, I believe, to offer a resolution; and I yield to him for that purpose.

Mr. MORRISON. I desire that the protest in this case be read, which is all the speech I have to make on the subject. When that has been read, I desire to offer a resolution.

The Clerk read as follows:

To the honorable the House of Representatives of the United States:

The memorial and protest of M. P. O'Conner, Edward McCrary, G. L. Buist, C. R. Miles, F. W. Dawson, T. G. Barker, Henry E. Young, Aug. T. Smythe, H. A. M. Smith, T. R. McGahan, and C. H. Simonton, on behalf of themselves and others, citizens of South Carolina and voters in the second congressional district thereof, respectfully sheweth unto your honorable body that upon the 31 day of November, 1874, there was had in the State and district aforesaid, a general election for the choice of a member of Congress for the said second congressional district.

That E. W. M. Mackey and C. W. Buttz were candidates thereat, the said E. W. M. Mackey receiving a majority of the votes cast.

That the said C. W. Buttz protested the election of the said Mackey, and, the said protest having been heard before the Committee of Elections, the said committee reported to the House of Representatives the following resolution, which was adopted by the House of Representatives upon the 19th day of July, 1876:

Resolved. That neither C. W. Buttz nor E. W. M. Mackey was lawfully elected to the Forty-fourth Congress from the second congressional district of South Carolina, nor is either of them entitled to a seat in said Congress.

By the adoption of which resolution a vacancy was created in the representation of said second congressional district of South Carolina.

And your petitioners further shew that the said C. W. Buttz now claims to have been elected to fill such vacancy, and to take his seat under a certificate from the secretary of state of the State of South Carolina, forwarded to your honorable body, and purporting to be a legal certificate of said election, whereas no such legal election has ever been had, and the said certificate is null and void for the following reasons:

1. The Constitution of the United States, section 2, article 1, provides, "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancy." But in this case of vacancy the executive authority of the State of South Carolina failed and neglected to issue any writ of election to fill such vacancy.

2. That the vacancy created and declared by the resolution of the House of Representatives was a vacancy in the representation of the second congressional district of South Carolina composed by law of the counties of Charleston, Orangeburgh, Clarendon and Lexington, while the said pretended election was held only in the counties of Charleston, Orangeburgh, and Clarendon, altogether omitting the county of Lexington.

3. By the election law of the State of South Carolina it is provided (chapter viii, section 24, Revised Statutes) that the board of State canvassers "shall upon certified copies of the statements made by the board of county canvassers proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names."

"Sec. 25. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the secretary of state."

By section 32 it is provided that the secretary of state "shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the person so chosen at such election as Representative of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting."

But the certificate issued in this case by the said board of State canvassers in pretended obedience to this law was issued in defiance and contempt of a prohibitory order of the supreme court of the State of South Carolina, prohibiting them to take any action thereunder until the decision of said court of certain questions then properly pending before it, and that for such contempt of the order of said court the said board of State canvassers was duly and lawfully committed to custody by the said supreme court and have not by purging said contempt been discharged therefrom. Wherefore the said certificate and the certificate of the said secretary of state based thereon are null and void.

And your petitioners pray that your honorable body will therefore refuse to receive said credentials, and declare said pretended election null and void.

M. P. O'CONNER,
ED. MCCRARY,
G. L. BUIST,
C. R. MILES,
F. W. DAWSON,
T. G. BARKER,
H. E. YOUNG,
A. T. SMYTHE,
H. A. M. SMITH,
T. R. MCGAHAN,
C. H. SIMONTON,
By WM. HENRY TRESKOT,
Attorney for Petitioners.

Mr. MORRISON. As a substitute for the proposition of the gentleman from Iowa, [Mr. McCrary,] I offer the following resolution:

Resolved, That the credentials of C. W. Buttz, claiming to be a member-elect to fill the vacancy which under a resolution of this House has occurred in the second congressional district of South Carolina, together with the protest on behalf of certain citizens of said congressional district, which has been filed with the Clerk of the House, alleging that the said credentials are null and void, and all the papers relating to said matter in the possession of the Clerk, be referred to the Committee of Elections, with instructions as early as possible to report upon the *prima facie* right of the said C. W. Buttz to a seat on the floor of this House as the representative of said second congressional district of South Carolina.

On this resolution I move the previous question, if I have the floor.

Mr. McCRARY. I will yield to the gentleman in a moment for that purpose; but before doing so I wish to make one suggestion. I desire simply to call the attention of the House to the fact which is very apparent, even if the statements in this protest be true from beginning to end, that everything in it is a matter for subsequent inquiry and investigation, and forms nothing more than the basis for an ordinary contest of a seat on this floor. It does not relate to the *prima facie* case at all, but goes altogether to the question of the merits. The *prima facie* case stands upon the face of the certificate; and the gentleman makes no objection to the *prima facie* case.

I say furthermore, however, that it is a matter of public history that the mandamus about which that protest speaks had nothing to do with the election of members of Congress. That mandamus commanded the issuing of certificates in accordance with the votes as actually cast; and if it applied at all to this case it would support this very certificate, because there was a majority of 8,000 votes in favor of Mr. Buttz.

I yield to the gentleman from Illinois to demand the previous question.

Mr. MORRISON. I desire to call the attention of the gentleman to the fact that the election claimed by this man is by only a portion of the district in which the vacancy existed.

Mr. McCRARY. My friend from Illinois is mistaken. At the last session of the Legislature of South Carolina, that defect was remedied; and the district is now entirely contiguous. The question which arose in the other case does not arise here at all.

Mr. MORRISON. The district is the same in number.

Mr. McCRARY. It is the same in number, but not in territory.

Mr. MORRISON. When the original election was held before the contest, four counties voted; now only three vote; so that the admission of this man is the disfranchisement of one county.

Mr. McCRARY. Does the gentleman from Illinois claim that the Legislature could not make a district containing only three counties? If so, I think he is mistaken.

Mr. MORRISON. I do not claim that; but the vacancy existed in the second congressional district as it was then formed, and not in the district as newly made.

Mr. HOAR. Will the gentleman from Illinois be kind enough to inform the House whether that change was not made by the Legislature to remedy the defect in the original districting of the State, upon the recommendation of the Committee of Elections of this House? In the original arrangement of the districts, the Legislature being required to form each district of contiguous territory, failed in this one instance, so that a portion of the district was separated from the remainder of it by another district.

That case went before the Committee of Elections of this House, and was fully argued, and thereupon they held that the original district was a void district, so that it could not be represented in this House, not being composed of contiguous territory, and the Legislature, in pursuance of their opinion, accepted by this House, remedied the defect in this way.

Mr. MORRISON. I do not know what the exact facts are, but I know that the counties composing the district from which these gentlemen were contesting are not the same as those composing the present district.

Mr. HOAR. Any democratic member of the Committee of Elections of this House will inform the gentleman from Illinois, unless I am mistaken—

Mr. HARRIS, of Virginia. I will inform the gentleman from Massachusetts that he is wrong.

Mr. HOAR. Perhaps the gentleman will be good enough to state the facts.

Mr. MORRISON. I demand the previous question.

The previous question was seconded and the main question ordered.

Mr. McCRARY. I demand the yeas and nays.

The yeas and nays were ordered.

Mr. HOAR. I should like to have the gentleman from Virginia answer my question.

Mr. HARRIS, of Virginia. I desired to answer the question of the gentleman from Massachusetts.

The SPEAKER. The main question having been ordered, it can only be done by unanimous consent.

Mr. HARRIS, of Virginia. I expected to have had time to do so before the previous question.

Mr. CONGER. I object.

The question was taken; and it was decided in the affirmative—yeas 141, nays 89, not voting 60; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley jr., Banning, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown,

Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Cox, Cutler, Davis, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Ely, Faulkner, Felton, Finley, Flye, Franklin, Fuller, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Hereford, Hill, Holman, Hooker, House, Humphrey, Hutton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Phillips, Poppleton Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Slemmons, Southard, Sparks, Spencer, Springer, Stanton, Stenger, Stevenson, Tarbox, Teese, Terry, Thomas, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—141.

NAYS—Messrs. Adams, Anderson, George A. Bagley, John H. Baker, Ballou, Banks, Beebe, Bell, Blair, Bradley, William K. Brown, Buckner, Horatio C. Burdard, Samuel D. Burdard, Barleigh, Caenon, Cason, Caswell, Chittenden, Conger, Crapo, Cronse, Darrall, Davy, Denison, Dannel, Eames, Evans, Forney, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hopkins, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lord, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Potter, Pratt, James B. Reilly, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Thompson, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, and Alan Wood, jr.—89.

NOT VOTING—Messrs. William H. Baker, Bass, Bright, Campbell, John B. Clarke of Kentucky, Culbertson, Danford, De Bolt, Dobbins, Durand, Fort, Garfield, Goodin, Hale, Hays, Hendee, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hoge, Hubbel, Kehr, Kelley, Le Moyne, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Platt, Purman, Rainey, Sobieski Ross, Savage, Sayler, Schleicher, Schumaker, Sheakley, Simcikson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Thornburgh, Wait, Walsh, Ward, Wheeler, Whitehouse, Wigginton, Willard, Wilshire, Woodburn, Woodworth, and Young—60.

So Mr. MORRISON's resolution was adopted.

Mr. MORRISON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELECTION INVESTIGATIONS.

Mr. HEWITT, of New York. I ask unanimous consent to introduce some resolutions for adoption at this time.

Mr. HURLBUT. I demand the regular order of business.

Mr. HEWITT, of New York. Then I move to suspend the rules and pass the resolutions.

Mr. HURLBUT. It is not in order to suspend the rules.

Mr. HOLMAN. If there has been no morning hour and these resolutions cannot be introduced—

Mr. BLACKBURN. The motion to suspend is in order one hour after the reading of the Journal and not after the morning hour.

The SPEAKER. The Clerk will read the fifty-first and fifty-second rules.

Mr. KASSON. I ask particularly for the reading of the one hundred and thirtieth rule, to which I call the attention of the Speaker.

The Clerk read as follows:

51. As soon as the Journal is read, and the unfinished business in which the House was engaged at the last preceding adjournment has been disposed of, reports from committees shall be called for and disposed of; in doing which the Speaker shall call upon each standing committee in regular order, and then upon select committees; and if the Speaker shall not get through the call upon the committees before the House passes to other business, he shall resume the next call where he left off—September 15, 1837—giving preference to the report last under consideration: *Provided*, That whenever any committee shall have occupied the morning hour on two days, it shall not be in order for such committee to report further until the other committees shall have been called in their turn.—December 7, 1837.

52. Reports from committees having been presented and disposed of, the Speaker shall call for resolutions from the members of each State and Delegate from each Territory, beginning with Maine and the Territory last organized, alternately; and they shall not be debated on the very day of their being presented, nor on any day assigned by the House for the receipt of resolutions unless where the House shall direct otherwise, but shall lie on the table, to be taken up in the order in which they were presented; and if on any day the whole of the States and Territories shall not be called, the Speaker shall begin on the next day where he left off the previous day: *Provided*, That no member shall offer more than one resolution, or one series of resolutions, all relating to the same subject, until all the States and Territories shall have been called.

Mr. HOSKINS. Rule 51 has no relation to the business of Monday. I call attention to Barclay's Digest, page 150, in reference to Rule 130.

The Clerk read as follows:

130. All the States and Territories shall be called for bills on leave and resolutions every Monday during each session of Congress; and, if necessary to secure the object on said days, all resolutions which shall give rise to debate shall lie over for discussion, under the rules of the House already established; and the whole of said days shall be appropriated to bills on leave and resolutions, until all the States and Territories are called through.—February 6, 1838. And the Speaker shall first call the States and Territories for bills on leave; and all bills so introduced during the first hour after the Journal is read shall be referred, without debate, to their appropriate committees: *Provided, however*, That a bill so introduced and referred, and all bills at any time introduced by unanimous consent and referred, shall not be brought back into the House upon a motion to reconsider.—March 16, 1860, and January 11, 1872. And on said call, joint resolutions of State and territorial legislatures for printing and reference may be introduced.—January 11, 1867.

Mr. HURLBUT. I call the Speaker's attention to Rule 145.

The SPEAKER. The Chair rules that as there has been no reading of the Journal to-day there is no morning hour and that a motion can be entertained to suspend the rules.

Mr. HEWITT, of New York. I renew my motion to suspend the rules and adopt the resolution which I have sent to the desk.

Mr. HOAR. I rise to a privileged motion. I submit the following resolution:

Resolved, That a committee of three members be appointed on the part of the House, to join such committee as has been appointed on the part of the Senate, to wait upon the President and inform him that a quorum of both Houses has assembled, and that Congress is ready to receive any communication he may be pleased to make.

The SPEAKER. That resolution is not in order pending a motion to suspend the rules. The gentleman from New York [Mr. HEWITT] moves to suspend the rules and adopt a resolution, which the Clerk will read.

Mr. HOAR. My proposition is that, under the usage which has prevailed since the foundation of the Government, this resolution which I submit takes precedence of any other business under the rules.

The SPEAKER. This is a motion to suspend the rules.

Mr. BANKS. It is not in order until we have had the morning hour.

The SPEAKER. The Chair has ruled upon that point.

Mr. KASSON. I appeal from the ruling of the Chair, because it is in violation of the one hundred and thirtieth rule of the House.

The SPEAKER. The gentleman will submit his appeal in writing.

Mr. HURLBUT. Pending that I ask the Clerk to read Rule 145 on page 205 of the Digest.

Mr. HOSKINS. I submit to the Chair that, without reference to the reading of the Journal, Rule 130 says that—

All the States and Territories shall be called for bills on leave and resolutions every Monday during each session of Congress.

The SPEAKER. That relates to the morning hour on Monday.

Mr. HOSKINS. That rule is imperative; and in Barclay's Digest, on page 150, in the paragraph relating to Rule 130, it is also there made imperative. The morning hour shall be held on every Monday, whether there be any Journal to read or not, for the reference of bills on a call of the States and Territories. Barclay's Digest says:

On every Monday it is made the duty of the Speaker to call the States and Territories; first for bills on leave for reference only, and without debate, and not to be brought back by motions to reconsider, at which time joint resolutions of State and territorial Legislatures may be introduced for reference and printing; then for resolutions, at which time bills on leave may be introduced; and all resolutions which shall give rise to debate shall lie over for discussion.

The SPEAKER. The gentleman from New York [Mr. HOSKINS] will notice that the morning hour is the hour after the reading of the Journal. There has been no Journal read to-day; and this is a motion to suspend all rules, including the very rule to which the gentleman has just called the attention of the Chair.

Mr. HOSKINS. The morning hour is not necessarily one hour after the reading of the Journal on Monday. The Digest says:

On every Monday it is made the duty of the Speaker to call the States and Territories.

The Speaker shall call the States and Territories without reference to whether there has been a reading of the Journal or not. It is imperative. The question whether there is a Journal or not has nothing to do with it.

Mr. BURCHARD, of Illinois. Rule 145 forbids the Speaker to entertain a motion to suspend the rules until one hour after the Journal is read.

Mr. LAWRENCE. Let Rule 145 be read.

Mr. WOOD, of New York. I submit, Mr. Speaker—

The SPEAKER. If gentlemen will preserve order each will have an opportunity of being heard in order. The gentleman from New York [Mr. WOOD] is now upon the floor.

Mr. WOOD, of New York. I rise to a question of order. The Chair has ruled on this question. The gentleman from Iowa [Mr. KASSON] has taken an appeal from the decision of the Chair and has been requested to submit his appeal in writing. Pending that, I hold that the introduction of references to these various rules is out of order, unless the Chair desires to reconsider its decision.

The SPEAKER. The Chair will say that the gentleman from Iowa appealed from his decision; that the Chair then requested the gentleman from Iowa to submit his appeal in writing; and pending that, and while the gentleman from Iowa was preparing that statement of his appeal in writing, the Chair did, for the time being, allow and still allows the gentleman from New York on the left [Mr. HOSKINS] to call the attention of the Chair to other rules, for the reason that he wants to be well informed.

Mr. WOOD, of New York. The Chair will pardon me for saying that a number of gentlemen around me desire to know if the appeal of the gentleman from Iowa has been reduced to writing; and we desire that the House shall act upon that appeal so that we may not be kept here the whole night.

The SPEAKER. The Clerk will read the appeal of the gentleman from Iowa.

The Clerk read as follows:

Mr. KASSON appeals from the decision of the Chair just rendered as a violation of the rule of the House, No. 130.

Mr. KASSON. I believe that under the rules I am entitled to be heard. I desire only to make a very brief explanation.

The SPEAKER. The gentleman can be heard, but will confine himself to the question of order.

Mr. KASSON. Certainly; I have no other purpose.

I regret the necessity of taking an appeal from the decision of the Chair; but as it is the first time such a ruling has been rendered in the history of the House, I think it should not be allowed to pass into a precedent without, at least, having it also on record that the House deliberately sustained that ruling. This is the first day of the second session of Congress. Touching that day there is no provision in the rule whatever that distinguishes it from any other corresponding day during the session. It is Monday, and being Monday it comes under the general provision of the rule which says that a certain order of business shall be pursued on Monday, binding of course upon the House as well as upon the Speaker. That order of business is to devote one hour to the calling of the States and Territories for bills on leave and joint resolutions.

The question, therefore, for the Speaker to decide is, Whether there is any authority under the rules that takes that Monday, being the first instead of the second Monday of the session, out of the ordinary rules of the House. I thought if the attention of the Speaker and the House was directed to that question they might in the absence of all precedents to the contrary adhere to the usual course of procedure in the House, and hold that the rules of the House applied to this Monday as to other Mondays during this session. At any rate I have myself found no precedent or authority for distinguishing the first Monday of the second session of Congress, after it has had a first session, and has adopted rules and put them in force, from any other Monday of the session.

It is for that reason that I have desired to take this appeal, that the House may not inadvertently consent to a precedent which to many of its members seems to violate the written rules of the House, which I know the Speaker is as anxious to respect as any members of the House. I will add to my exception Rule 145, the latter rule simply prohibiting the entertainment of a motion to suspend the rules until the expiration of the morning hour.

Mr. CONGER. I ask that Rule 145 be read.

The SPEAKER. The Clerk will read Rule 145.

The Clerk read as follows:

No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor; nor shall any rule be suspended, except by a vote of at least two-thirds of the members present; nor shall the order of business, as established by the rules, be postponed or changed, except by a vote of at least two-thirds of the members present; nor shall the Speaker entertain a motion to suspend the rules, except during the last six days of the session, and on Monday of every week at the expiration of one hour after the Journal is read, unless the call of States and Territories for bills on leave and resolutions has been earlier concluded, when the Speaker may entertain a motion to suspend the rules.

Mr. KASSON. One single word further. It is proper to call for the regular order, this being a continuation of the former session of Congress. The Journal of the last day never having been read and approved, under the call for the regular order the reading of that Journal would now be in order.

The SPEAKER. The Chair desires to state that as a matter of fact there has been no Journal read to-day, and the rule provides that the morning hour shall be the hour after the reading of the Journal. The Chair entertains the motion of the gentleman from New York [Mr. HEWITT] to suspend the rules and decides that motion is in order. The gentleman from Iowa [Mr. KASSON] appeals from that decision of the Chair.

Mr. HEWITT, of New York. I move to lay that appeal upon the table.

Mr. WILSON, of Iowa. Will the Chair allow me to make one suggestion.

The SPEAKER. Certainly.

Mr. WILSON, of Iowa. The Chair bases his ruling upon the fact that there has been no reading of the Journal to-day. Now, it is quite a common practice of the House when business presses to dispense with the reading of the Journal. The ruling of the Chair, if it passes into a precedent, as it undoubtedly will, would put it in the power of every member, on a Monday when the reading of the Journal has been dispensed with, to move to suspend the rules and pass a resolution while a State was being called for bills; for it is a well-established practice of the House that when it is in order to suspend the rules the motion to do so will take any member from the floor; consequently I am afraid that this decision of our Speaker will lead us into this complication.

The SPEAKER. The Chair would state in reply to the gentleman from Iowa [Mr. WILSON] that, in the first place, dispensing with the reading of the Journal is not a practice of this House, and if it was it could only be done by unanimous consent, which is equivalent to the Journal having been approved without reading. So that, even under the statement of the case as presented by the gentleman from Iowa, [Mr. WILSON] the Journal is practically approved and agreed to.

Mr. HURLBUT. I understand the Chair to base his right to entertain this motion to suspend the rules upon the fact that there has been no Journal read to-day. If that is so, then Rule 145 unquestionably defeats the doctrine of the Chair, because under that Rule 145 the rules cannot be suspended, even on a Monday, until the Journal has been read.

The SPEAKER. This is a motion to suspend that rule with all others.

Mr. HURLBUT. And by that rule the Speaker is expressly forbidden to entertain such a motion. "Nor shall the Speaker enter-

tain a motion to suspend the rules, except during the last six days of the session and on Monday of every week at the expiration of one hour after the Journal is read." If the Journal is not read, the Speaker cannot entertain any such motion.

[Cries of "Regular order."]

The SPEAKER. The pending question is upon the motion of the gentleman from New York [Mr. HEWITT] to lay on the table the appeal of the gentleman from Iowa [Mr. KASSON] from the decision of the Chair.

Mr. HURLBUT. Upon that question I call for the yeas and nays. The yeas and nays were ordered.

The question was taken; and there were—yeas 145, nays 73, not voting 72; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartbridge, Hartzell, Hatcher, Haymond, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Franklin Landers, George M. Landers, Lane, Le Moyné, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Phillips, Poppleton, Powell, Rea, Reagan, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Slemmons, Southard, Sparks, Spencer, Springer, Stenger, Stevenson, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—145.

NAYS—Messrs. Adams, George A. Bagley, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crapo, Crouse, Davy, Denison, Dunnell, Eames, Evans, Flye, Foster, Freeman, Frye, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Pratt, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—73.

NOT VOTING—Messrs. Anderson, John H. Baker, William H. Baker, Bass, Bliss, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Culbertson, Danford, Darrall, Dobbins, Durand, Ely, Fort, Garfield, Goode, Goodin, Hale, Haralson, Hays, Hendee, Henkle, Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Lamar, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Platt, Potter, Purman, Rainey, James B. Reilly, Sobieski Ross, Savage, Saylor, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Stanton, Stephens, Stone, Stowell, Swann, Teese, Thomas, Thornburgh, Wait, Waldron, Walsh, Ward, Wheeler, Whitehouse, Wigginton, Willard, Charles G. Williams, Wilshire, Woodburn, and Young—72.

So the motion to lay on the table was agreed to.

Mr. KASSON. I beg to submit a point of order.

The SPEAKER. The Chair will hear the gentleman's point.

Mr. KASSON. It is that the first business now in order is the reading of the Journal; and I desire to say a word in support of this point. By the first rule of the House it is made the duty of the Speaker to cause the Journal of the preceding day to be read. It thus appears by the rules to be the duty of the Speaker (when there is one) to make that the first business of the day. The other business that has come in to-day by the consent of the Speaker, and also because it involved questions of very high privilege relating to the organization of the House and the admission of persons authorized to vote and authorized also to call for the reading of the Journal, is all the business that has yet been transacted prior to the points of order which have been made. Inasmuch as the interpretation given to the rule by the Speaker, and from which we on this side have dissented, rests upon the fact that the Journal has not been read, and as it thus appears that there has been a neglect to do a thing which the rule calls for, I desire to submit that it is now in order for any member to call for the reading of the Journal, the reading of which has simply been postponed without any order of the House and by the intervention of certain business of high privilege.

I find that at the second session of the Forty-third Congress (and this is one of the precedents to which I alluded when I was up before) a point like that which the House has been considering was distinctly made. I read from the proceedings of the first day of the second session—

Mr. LUTTRELL. I rise to a question of order.

The SPEAKER. The gentleman from California [Mr. LUTTRELL] will allow the Chair to ask him not to interrupt the gentleman from Iowa, because the Chair is desirous beyond all measure to be right in all these decisions. He therefore wants to hear everything that the gentleman from Iowa has to say.

Mr. LUTTRELL. I supposed that the House had voted upon the question and the case had been decided.

Mr. KASSON. The point to which I am now speaking has not been decided, so far as I know. In addition to that, as I understand, it is the usage for the Chair to hear an explanation of any point of order submitted.

The SPEAKER. It has been the usage, and, more than that, it is the wish of the present occupant of the chair to do so.

Mr. KASSON. I was going to say that the reason the point is now made is because of the importance which the fact assumes in the re-

cent ruling of the Chair. On turning to the first day's proceedings of the second session of the Forty-third Congress, I find this record:

ORDER OF BUSINESS.

Mr. BUTLER, of Massachusetts. I demand the regular order of business. I think the rules require that the States shall be called for bills and joint resolutions.

The SPEAKER. If the regular order be demanded, that is the regular order of business.

Then the gentleman from Pennsylvania [Mr. KELLEY] insisted on a motion to adjourn, which the House supported.

It thus appears that at the second session of the Forty-third Congress there was a decision of the Speaker (there may have been others previously; I have not had time to examine further back) that this business was in the regular order of business for Monday. Now, as I say, the Speaker having stated as a reason for a different opinion, overruling precedents of the House heretofore, that the Journal has not been read, I desire to present to the Chair and to the House the point that it is in order for any member to call for the reading of the preceding day's Journal at any time during the day on which it is in order to make corrections, if, by inadvertence or by anybody's neglect of the duty pointed out by the ruling of the Chair, the Journal has not been read. And the rule requiring it—I simply make the point that we have the right to the reading of the Journal, that we may know whether it is to be approved or not.

The SPEAKER. The Chair states the fact that the last session of Congress was adjourned without day, *sine die*, and that there is not, therefore, any preceding day's Journal to be read.

Mr. KASSON. Then the reason of the Chair's ruling fails.

Mr. HEWITT, of New York. I now renew my motion to suspend the rules and pass the resolution.

Mr. PAGE. I now move the House adjourn.

The SPEAKER. One motion to adjourn is in order pending the motion to suspend the rules.

Mr. PAGE demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken, and decided in the negative; yeas 75, nays 145, not voting 70; as follows:

YEAS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crouse, Darrall, Davy, Denison, Dunnell, Eames, Evans, Flye, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lane, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Plaisted, Robinson, Rusk, Sampson, Seelye, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., and Woodworth—75.

NAYS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Beebe, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Gibson, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartbridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Phillips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Scales, Singleton, Slemmons, Sparks, Spencer, Springer, Stanton, Stenger, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walsh, Warner, Watterson, Erastus Wells, Whitthorne, Wike, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Benjamin Wilson, Fernando Wood, and Yeates—145.

NOT VOTING—Messrs. Anderson, William H. Baker, Banning, Bass, Bell, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Crapo, Culbertson, Danford, Dobbins, Ely, Foster, Garfield, Glover, Goodin, Hale, Haymond, Hays, Hendee, Hoge, Hubbell, Hurd, Kelley, Le Moyné, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Pierce, Platt, Potter, Purman, Rainey, Sobieski Ross, Savage, Saylor, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Southard, Stevenson, Stephens, Stone, Stowell, Swann, Teese, Thomas, Thornburgh, Wait, Waldon, Ward, Warren, Wheeler, Whitehouse, Wigginton, Willard, Wilshire, Woodburn, and Young—70.

So the House refused to adjourn.

The question then recurred on the motion of Mr. HEWITT, of New York, to suspend the rules and pass the resolution.

Mr. KASSON. Let the resolution be again read.

The resolution was again read.

Mr. KASSON. I ask the gentleman from New York to modify his resolution so as to confine it to Federal officers.

Several MEMBERS. Regular order!

The SPEAKER. The question now is on the motion of the gentleman from New York to suspend the rules and pass the resolution as it has been just read. Debate and amendment are out of order.

Several MEMBERS. Regular order!

Mr. KASSON. I ask, according to the usual custom heretofore, to suggest a modification of the resolution, if the gentleman is willing to accept it.

Mr. HEWITT, of New York. I insist on the resolution as presented.

Mr. COX. I object to any modification or debate.

Mr. KASSON. It refers to State elections and State officers, and I ask it be limited to Federal officers, as it is now an encroachment upon State rights in that respect.

Mr. BLACKBURN. I demand the regular order of business, which

is on the motion to suspend the rules and pass the resolution, and on that motion I demand the yeas and nays.

The yeas and nays were ordered.

Mr. LYNCH. I wish to make an inquiry.

The SPEAKER. It is not in order.

Mr. LYNCH. But the gentleman from New York has a right to yield.

The SPEAKER. For what purpose does the gentleman rise?

Mr. LYNCH. I merely wish to ask the gentleman from New York to yield to allow Mississippi to be included.

The SPEAKER. The motion to suspend the rules cannot be amended.

Mr. LYNCH. But he can modify his motion.

Mr. COX. Let the roll-call proceed.

The question was taken; and it was decided in the affirmative—yeas 156, nays 78, not voting 56; as follows:

YEAS—Messrs. Abbott, Ainsworth, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Beebe, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, Canfield, Chapin, John B. Clark, jr., of Missouri, Clymer, Cochran, Collins, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Gause, Gibson, Glover, Goode, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Henkle, Hereford, Abram S. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hutton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyné, Lord, Luttrell, Mackey, Maish, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Payne, Phelps, John F. Phillips, Pierce, Poppleton, Powell Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Scales, Seelye, Singleton, Slemmons, Southard, Sparks, Spencer, Stanton, Springer, Stenger, Stevenson, Tarbox, Terry, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wike, Willard, Alpheus S. Williams, James Williams, Jeremiah N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, and Yates—156.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, Ballou, Banks, Blair, Bradley, William R. Brown, Horatio C. Burchard, Cannon, Cason, Caswell, Conger, Crapo, Crouse, Danford, Darrall, Davy, Denison, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Haralson, Benjamin W. Harris, Hathorn, Henderson, Hoar, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kimball, King, Lapham, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, Miller, Monroe, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pratt, Robinson, Rusk, Sampson, A. Herr Smith, Strait, Martin I. Townsend, Washington Townsend, Tufts, Van Vorhes, Waldron, Alexander S. Wallace, John W. Wallace G. Wiley Wells, White, Whiting, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—78.

NOT VOTING—Messrs. Anderson, William H. Baker, Bass, Bright, Burleigh, Campbell, Chittenden, John B. Clarke of Kentucky, Culberson, Dobbins, Ely, Fuller, Garfield, Goodin, Hale, Haymond, Hays, Hendee Goldsmith W. Hewitt, Hoge, Hubbell, Kelley, Levy, Lewis, Lynde, McDill, McFarland, Nash, Odell, Piper, Plaisted, Platt, Potter, Purnan, Rainey, Solieski Ross, Saylor, Schleicher, Schumaker, Sheakley, Sinnickson, Smalls, William E. Smith, Stephens, Stone, Stowell, Swann, Teese, Thomas, Thornburgh, Wait, Ward, Wheeler, Whitehouse, Wigginton, and Young—56.

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was adopted.

During the call of the roll the following proceedings took place:

Mr. CONGER. The name of my colleague, JAY A. HUBBELL, a republican Representative from Michigan, was read by the Clerk as voting in the affirmative; he is not in the city.

The SPEAKER. The clerks have informed the Chair that there was a mistake in the reading of the name of Mr. HUBBELL. He is not recorded as voting at all. His name was read by mistake for that of Mr. HUMPHREYS, which is inserted on the roll-call in writing.

Mr. STRAIT. My name was read in the affirmative and also in the negative vote.

The SPEAKER. That, of course, cannot be allowed. [Laughter.]

Mr. STRAIT. I voted in the negative.

Mr. CONGER. I ask that the names be read again.

Mr. SPRINGER. I call for the regular order. Let the vote be announced.

Mr. WHITE. I understand that my name was read on both sides.

The SPEAKER. The gentleman from Kentucky [Mr. WHITE] is recorded as voting in the negative.

The Chair will now announce the vote. On the motion to suspend the rules and adopt the resolution submitted by the gentleman from New York [Mr. HEWITT] the yeas are 156 and the nays 78. Two-thirds having voted in the affirmative, the rules are suspended and the resolution adopted. [Applause.]

ORDER OF BUSINESS.

Mr. DURHAM. I rise to a question of privilege.

The SPEAKER. The House will come to order. Gentlemen will please take their seats. [After a pause.] The gentleman from New York [Mr. WOOD] is recognized. The Chair will afterward recognize the gentleman from Kentucky.

NOTIFICATION OF ORGANIZATION.

Mr. WOOD, of New York. I move the adoption of the following resolution:

Resolved, That a committee of three be appointed on the part of the House, to join such committee as may be appointed on the part of the Senate, to wait on the President of the United States and inform him that a quorum of the two Houses has assembled and that Congress is ready to receive any communication that he may be pleased to make.

Mr. KASSON. I ask if there has not been a message from the Sen-

ate announcing the appointment of the committee on the part of that body. If so, I would suggest that the language of the resolution be modified so that it shall read: "Such committee as has been appointed."

Mr. WOOD, of New York. That is a technical matter, but I have no objection to modifying the resolution in the way suggested.

The resolution, as modified, was adopted.

The SPEAKER. The Chair announces as the committee to wait upon the President of the United States, under the resolution just adopted, Mr. WOOD of New York, Mr. CLYMER of Pennsylvania, and Mr. HOAR of Massachusetts.

Mr. MORRISON. I offer the following resolution:

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled and that Hon. SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been chosen Speaker, and that the House is now ready to proceed to business.

Mr. HOLMAN. I believe, sir, that the law requires that the President of the United States shall be notified of the election of the Speaker. If so, I submit the following resolution:

Resolved, That the Clerk of the House inform the President of the United States that Hon. SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been elected Speaker of the House of Representatives.

Mr. HOAR. I would suggest that both that resolution and the last one be modified by the addition of the words "in room of Hon. Michael C. Kerr, deceased."

Mr. HOLMAN. I think that is hardly necessary.

The resolution was agreed to.

CORRECTION OF THE JOURNAL.

Mr. DURHAM. I rise to a question of privilege. On the last day of last session a vote was taken on the report of the conference committee on the bill (H. R. No. 4146) to authorize the President to accept the services of volunteers to aid in the suppression of Indian hostilities. I was reported as voting in the affirmative on that bill. I desire to state that I voted in the negative. I did not know that I was recorded as having voted in the affirmative on that proposition until I saw it so announced in the Louisville Courier of August 17. I immediately addressed a letter to the Clerk of the House, asking him to make the correction. He wrote to me that it was not in his power to make that correction of the Journal. I take this the first opportunity I have to set myself right on the record.

The SPEAKER. The Journal cannot now be corrected, but the Chair supposes the gentleman has accomplished his object by making his statement.

Mr. DURHAM. Yes, sir; that is all I desire.

ORDER OF BUSINESS.

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

Mr. MACDOUGALL. I hope the gentleman will yield to me that I may offer a resolution.

Mr. HAMILTON, of Indiana. I desire to offer the resolution which I submitted some time ago.

The SPEAKER. Does the Chair understand the gentleman from Indiana [Mr. HOLMAN] to yield?

Mr. HOLMAN. I presume that by unanimous consent the resolution of my colleague may be adopted.

The SPEAKER. If the gentleman from Indiana [Mr. HOLMAN] does not yield, the question is on his motion that the House do now adjourn.

Mr. MACDOUGALL. I ask the gentleman to yield to me for this resolution. I think it is a little early to begin these tactics. I have been on my feet for some time with the promise of the Chair that I should be permitted to offer this resolution.

The SPEAKER. The Chair will say to the gentleman from New York [Mr. MACDOUGALL] that he has no power to prevent a member from making a motion to adjourn.

Mr. HOLMAN. Without withdrawing the motion to adjourn, as it seems to be the wish of gentlemen that a resolution should be adopted fixing a day upon which proper respect may be shown to the memory of the late Speaker of this House, I will yield for that resolution. I suppose there will be no objection to that.

Mr. MACDOUGALL. We have no objection to that. We were willing to adjourn some time ago out of respect to the late Speaker, but there was no respect for him then. All I desire is to submit the resolution which I have in my hand.

Mr. HOLMAN. I cannot yield for any other resolution than the one I have indicated. I hope that it will be read and considered without my withdrawing the motion to adjourn.

Mr. MACDOUGALL. I object to the reading of any resolution until—

Mr. HOLMAN. Then I insist upon the motion to adjourn. And in order to comply with the rule I will move that the House now adjourn until twelve o'clock to-morrow, inasmuch as no time has been fixed for the regular meeting of the House.

The SPEAKER. The Chair understands that that is the regular hour of meeting.

Mr. HOLMAN. By the rule the regular hour of meeting must be fixed by the House. As it has not yet been fixed, I move that the House now adjourn to twelve o'clock to-morrow.

ELECTION IN SOUTH CAROLINA.

The SPEAKER. Before putting the motion to adjourn, the Chair will announce as the select committee authorized by the resolution this day adopted to investigate the late election in South Carolina, Mr. SAYLER, of Ohio; Mr. ABBOTT, of Massachusetts; Mr. STENGER, of Pennsylvania; Mr. EDEN, of Illinois; Mr. JONES, of Kentucky; Mr. PHILLIPS, of Missouri; Mr. BANKS, of Massachusetts; Mr. HALE, of Maine, and Mr. LAWRENCE, of Ohio.

Mr. HOAR. Mr. HALE, of Maine, as I am informed, is not in this city. Putting him on that committee will deprive the republicans of this House of one of their number.

The SPEAKER. That is not the wish of the Chair, who will appoint Mr. WILLARD, of Michigan.

Mr. CONGER. I wish there might be a republican appointed in place of Mr. HALE.

Mr. SPRINGER. Is not Mr. WILLARD a republican?

Mr. CONGER. He voted with the other side.

Mr. WILLARD. I am already on an important committee, which will employ all my time during this entire month. I therefore ask to be excused.

The SPEAKER. Then the Chair will appoint Mr. LAPHAM, of New York.

The motion of Mr. HOLMAN was then agreed to; and accordingly (at seven o'clock and thirty minutes p. m.) the House adjourned till twelve m. to-morrow.

IN SENATE.

TUESDAY, December 5, 1876.

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

JAMES L. ALCORN from the State of Mississippi, GEORGE GOLDTHWAITE from the State of Alabama, TIMOTHY O. HOWE from the State of Wisconsin, JOHN W. JOHNSTON from the State of Virginia, JOHN P. JONES from the State of Nevada, SAMUEL J. R. McMILLAN from the State of Minnesota, and RICHARD J. OGLESBY from the State of Illinois, appeared in their seats to-day.

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

MESSAGE FROM THE HOUSE.

A message was received from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, as follows:

Mr. President, I am directed by the House of Representatives to inform the Senate that a quorum of the House of Representatives has assembled, and that SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, has been chosen Speaker, and that the House is now ready to proceed to business.

Also that a committee of three on the part of the House has been appointed, to join such committee as may be appointed on the part of the Senate, to wait on the President of the United States and inform him that a quorum of each House has assembled and that Congress is ready to receive any communication which he may be pleased to make, and that the Speaker has appointed Mr. FERNANDO WOOD of New York, Mr. HEISTER CLYMER of Pennsylvania, and Mr. GEORGE F. HOAR of Massachusetts the said committee on the part of the House.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a report of the Secretary of the Interior, communicating, in obedience to law, an inventory of the property belonging to the United States in the buildings and grounds in the District of Columbia under the charge of the Interior Department; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. WRIGHT presented a resolution of the board of supervisors of Woodbury County, Iowa, in favor of dividing the State of Iowa into two judicial districts, to be known as the northern and southern districts, and fixing Sioux City as one of the places at which sessions of the United States courts shall be held in the northern district; which was ordered to lie on the table, to be referred to the Committee on the Judiciary when appointed.

He also presented the petition of T. A. Walker, a citizen of Iowa, praying to be re-imbursed for the amount of certain money paid by him for clerk hire while acting as register of the United States land office at Des Moines, Iowa; which was ordered to lie on the table, to be referred to the Committee on Public Lands when appointed.

BILLS INTRODUCED.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1048) to establish the Territory of the Black Hills, and to provide a temporary government therefor; which was read twice by its title, and ordered to lie on the table and be printed.

POPULAR VOTE FOR PRESIDENT.

Mr. MORTON. I offer a joint resolution, which I ask to have printed and laid on the table until committees are appointed, and then referred to the Committee on Privileges and Elections.

The joint resolution (S. R. No. 28) proposing an amendment to the Constitution of the United States, so as to elect the President and Vice-President by the direct vote of the people, was read at length, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein.) That the following article is hereby proposed as an amendment to the Constitution of the United States, and, when ratified by the Legislatures of three-fourths of the several States, shall be valid, to all intents and purposes, as a part of the Constitution, to wit:

ARTICLE —.

I. The President and Vice-President shall be elected by the direct vote of the people in the manner following: Each State shall be divided into districts, equal in number to the number of Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be; and the person having the highest number of votes in each district for President shall receive the vote of that district, which shall count one presidential vote.

II. The person having the highest number of votes for President in a State shall receive two presidential votes from the State at large.

III. The person having the highest number of presidential votes in the United States shall be President.

IV. If two persons have the same number of votes in any State, it being the highest number, they shall receive each one presidential vote from the State at large; and if more than two persons shall have each the same number of votes in any State, it being the highest number, no presidential vote shall be counted from the State at large. If more persons than one shall have the same number of votes, it being the highest number in any district, no presidential vote shall be counted from that district.

V. The foregoing provisions shall apply to the election of Vice-President.

VI. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President, and to establish tribunals for the decision of such elections as may be contested.

VII. The States shall be divided into districts by the Legislatures thereof, but the Congress may at any time by law make or alter the same.

Mr. MORTON. I desire to state that that is the identical proposition reported by the Committee on Privileges and Elections two years ago.

The PRESIDENT *pro tempore*. The joint resolution will lie on the table and be printed, being considered as read twice.

MANNER OF COUNTING ELECTORAL VOTES.

Mr. MORTON. Mr. President, I have here a compilation prepared by Major McDonald, our very able and experienced Chief Clerk, containing the action of the Senate and House of Representatives in regard to the manner of counting electoral votes for President and Vice-President from 1789 to 1873, with a statement in detail of the electoral votes for President and Vice-President for the same period. I think that the information contained in this compilation is very important and will be of great interest to Congress and to the country at this time. In this matter, Major McDonald has simply carefully and accurately compiled the action taken, and has given no opinion of his own. I move that 10,000 copies of this compilation be printed for the use of the Senate. The cost will be \$327.72.

The PRESIDENT *pro tempore*. The Senator from Indiana moves that the compilation presented by him be printed. The question is on that motion.

Mr. CONKLING. Mr. President, I should like to inquire whether this compilation was not made in pursuance of a resolution adopted by the Senate two or three years ago.

The PRESIDENT *pro tempore*. The Chair understands that two or three years ago there was a similar statement made in response to a resolution, but that there was no resolution inviting the present compilation.

Mr. CONKLING. It may not be important; but I am quite sure there was a resolution adopted by the Senate, I think in 1873 or 1874—

Mr. EDMUNDS, (to Mr. CONKLING.) Which was offered by yourself.

Mr. CONKLING. As my friend from Vermont reminds me, and that is my recollection, I had the honor to offer myself the resolution which was adopted by the Senate. It directed this compilation, and directed it to be made by the gentleman who has made it; and for that reason, as well as for others, it seems to me a matter of course that it should be printed. Although I speak from recollection, I am quite sure I am not mistaken.

The PRESIDENT *pro tempore*. The Chair is advised, in answer to the Senator from New York, that the Chief Clerk reported a statement, which was printed, in answer to the resolution referred to by the Senator, but it was not so full as the present compilation.

Mr. CONKLING. That is quite possible.

The PRESIDENT *pro tempore*. That is the statement of the Chief Clerk.

Mr. THURMAN. What is the motion?

The PRESIDENT *pro tempore*. The motion is to print 10,000 copies of the compilation.

Mr. THURMAN. That motion will have to go to the Committee on Printing, will it not?

The PRESIDENT *pro tempore*. It will, unless the motion be considered by unanimous consent.

Mr. THURMAN. I have no doubt of the general accuracy of the compiler of this statement, but I have not seen it at all and know nothing whatsoever about it. I should like to see it before ordering 10,000 copies of it to be printed for distribution among the people, of course. Ten thousand copies cannot be needed for the use of the Senate. I say this the more freely because I have seen what purport to be com-