men have discharged their duty with fidelity and courage and without complaint. These circumstances, in my judgment, constitute an extraordinary occasion, requiring that Congress be convened in advance of the time prescribed by law for your meeting in regular session. The importance of speedy action upon this subject on the part of Congress is so manifest that I venture to suggest the propriety of making the necessary appropriations for the support of the Army for the current year at its present maximum numerical strength of 25,000 men, leaving for future consideration all questions relating to an increase or decrease of the number of enlisted men. In the event of the reduction of the Army by subsequent legislation during the fiscal year the excess of the appropriation could not be expended and in the event of its enlargement the additional sum required for the payment of the extra force could be provided in due time. It would be unjust to the troops now in service, and whose pay is already largely in arrears, if payment to them should be further postponed until after Congress shall have considered all the questions likely to arise in the effort to fix the proper limit to the strength of the Army.

Estimates of appropriations for the support of the military establishments for the fiscal year ending June 30, 1878, were transmitted to Congress by the former Secretary of the Treasury at the opening of its session in December last. These estimates, modified by the present Secretary so as to conform to present requirements, are now renewed—amounting to $32,436,764.98—and, having been transmitted to both Houses of Congress, are submitted for your consideration.

There are also required by the Navy Department $2,003,861.27. This sum is made up of $1,446,688.16 due to officers and enlisted men for the last quarter of the last fiscal year, $311,953.50 due for advances made by the fiscal agent of the Government in London for the support of the foreign service, $50,000 due to the naval-hospital fund, $150,000 due for arrearages of pay to officers, and $45,219.58 for the support of the Marine Corps.

There will also be needed an appropriation of $262,535.22 to defray the unsettled expenses of the United States courts for the fiscal year ending June 30 last, now due to attorneys, clerks, commissioners, and marshals, and for rent of court-rooms, the support of prisoners, and other deficiencies.

A part of the building of the Interior Department was destroyed by fire on the 24th of last month. Some immediate repairs and temporary structures have in consequence become necessary, estimates for which will be transmitted to Congress immediately, and an appropriation of the requisite funds is respectfully recommended.

The Secretary of the Treasury will communicate to Congress, in connection with the estimates for the appropriations for the support of the Army for the current fiscal year, estimates for such other deficiencies in the different branches of the public service as require immediate action and cannot, without inconvenience, be postponed until the regular session.

I take this opportunity, also, to invite your attention to the propriety of adopting at your present session the necessary legislation to enable the people of the United States to participate in the advantages of the international exhibition of agriculture, industry, and the fine arts which is to be held at Paris in 1878 and in which this Government has been invited by the government of France to take part.

This invitation was communicated to this Government in May, 1876, by the minister of France at this capital, and a copy thereof was submitted to the proper committees of Congress at its last session, but no action was taken upon the subject.

The Department of State has received many letters from various parts of the country expressing a desire to participate in the exhibition, and numerous applications of a similar nature have also been made at the United States legation at Paris.

The Department of State has also received official advice of the strong desire on the part of the French government that the United States should participate in this enterprise, and space has hitherto been, and still is, reserved in the exhibition buildings for the use of exhibitors from the United States, to the exclusion of other parties who have been applicants therefor.

In order that our industries may be properly represented at the exhibition, an appropriation will be needed for the payment of salaries and expenses of commissioners, for the transportation of goods, and for other purposes in connection with the object in view; and as May next is the time fixed for the opening of the exhibition, if our citizens are to share the advantages of this international competition for the trade of other nations, the necessity of immediate action is apparent.

To enable the United States to co-operate in the international exhibition which was held at Vienna in 1873, Congress then passed a joint resolution making an appropriation of $200,000 and authorizing the President to appoint a certain number of practical artisans and scientific men who should attend the exhibition and report their proceedings and observations to him. Provision was also made for the appointment of a number of honorary commissioners.

I have felt that prompt action by Congress in accepting the invitation of the government of France is of so much interest to the people of this country and so suitable to the cordial relations between the Governments of the two countries that the subject might properly be presented for attention at your present session.

The government of Sweden and Norway has addressed an official invitation to this Government to take part in the international prison congress to be held at Stockholm next year. The problem which the congress proposes to study—how to diminish crime—is one in which all civilized nations have an interest in common; and the congress of Stockholm seems likely to prove the most important convention ever held for the study of this grave question. Under authority of a joint resolution of Congress, approved February 16, 1875, a commissioner was appointed by my predecessor to represent the United States upon that occasion, and the prison congress having been, at the earnest desire of the Swedish Government, postponed to 1878, his commission was renewed by me. An appropriation of $8,000 was made in the sundry civil-service act of 1875 to meet the expenses of the commissioner. I recommend the re-appropriation of that sum for the same purpose, the former appropriation having been covered into the Treasury and being no longer available for the purpose without further action by Congress. The subject is brought to your attention at this time in view of circumstances which render it highly desirable that the commissioner should proceed to the discharge of his important duties immediately.

As the several acts of Congress providing for detailed reports from the different Departments of the Government require their submission at the beginning of the regular annual session, I defer until that time any further reference to subjects of public interest.

R. B. HAYES.

WASHINGTON, *October* 15, 1877.

Mr. WINDOM. I move that the message be printed and referred to the Committee on Appropriations.

The motion was agreed to.

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

Mr. ANTHONY. Are there not some executive communications?

The VICE-PRESIDENT. There are no further communications on the table of the Chair. The question is on the motion of the Senator from Vermont.

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

HOUSE OF REPRESENTATIVES.

TUESDAY, *October* 16, 1877.

The House met at twelve o'clock m. Prayer as follows, by the Chaplain, Rev. JOHN POISAL, D. D., Methodist Church South, Baltimore, Maryland:

We look to Thee, our heavenly Father, the giver of every good and perfect gift, for Thy special blessing upon this Congress. We thank Thee for all the tokens of Thy heavenly care, for Thy providence and grace, for all the dispensations of Thy love and bounty, and for Thine inestimable love in the gift of Thy dear Son, Jesus Christ.

We bless Thee that we can come to Thee in prayer. We thank Thee for unrestricted access to the throne of heavenly mercy. Blessed be Thy name for the very favorable auspices under which the Congress of our nation has just assembled.

Bless us with continued peace. Let quietness and assurance, peace and prosperity, be the heritage of our whole country. We pray Thee plenteously to endow the members of this Congress with Thy heavenly grace, with wisdom and righteousness and sanctification and redemption.

Bless, we beseech Thee, Thy servant, the President of the United States; give him heavenly wisdom. Favor Thy cause and people throughout the land. Destroy the causes of war in their fountain, the human heart; and bring the desolations of our land to a speedy and perpetual end. Help us to put our whole trust and confidence in God. Help us to exercise implicit faith in the immutable promise, "I will never leave thee; I will never forsake thee."

As a nation may we be firm and united. May peace and happiness, may truth and justice, may religion and piety be established throughout this land. And finally, through infinite riches of grace in Christ Jesus, our Lord, save us forever. Amen.

MESSAGE FROM THE SENATE.

A message from the Senate by Mr. SYMPSON, one of its clerks, informed the House that a quorum of the Senate had assembled and that the Senate was ready to proceed to business.

The Journal of yesterday was read and approved.

ORDER OF BUSINESS.

Mr. HALE. I now call up the question of privilege upon which I had the floor yesterday—the case of the Representative from Colorado.

Mr. COX, of New York. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. COX, of New York. I make the point of order that those who were first called upon to stand aside should have their cases first passed upon by the House. In support of that point I refer to a decision made by the Speaker in the first session of the last Congress, which will be found on page 533 of "Questions of order de-

cided in the organization of the House of Representatives," as compiled by our journal clerk. I send it to the Clerk's desk to be read, and I think that decision will dispose of the point of order and give priority to those first on the roll.

The Clerk read as follows:

When the State of Louisiana was called,

Mr. WOOD, of New York, said: I ask that Mr. Morey, claiming the seat from the fifth district of Louisiana, stand aside.

When the State of Virginia was called,

Mr. GARFIELD said: I ask that Mr. JOHN GOODE, jr., from the Second Virginia district, stand aside.

At the close of swearing in of members,

Mr. HARRIS, of Virginia, said: I move that Hon. JOHN GOODE jr., member-elect from the second district of Virginia, who holds the regular certificate, according to the laws of the Commonwealth, by which we all have taken our seats, be allowed to qualify now. He has the *prima facie* case; and I believe it is the universal custom of the House in such cases to permit the party holding the *prima facie* evidence of the right to a seat to qualify, and then let the contest, if there be one, go on before the Committee of Elections. I will ask for the reading of the certificate of election of Mr. GOODE.

Mr. GARFIELD. I make the point of order that the question must first be taken upon the member who was first called upon to stand aside. That question must first be decided.

The SPEAKER. The Chair sustains the point of order.

Mr. HARRIS, of Virginia. Very well, then; I will reserve the question for a moment.

Mr. HALE. I have been made familiar with that decision by the very convenient compilation of the journal clerk, which I have just read upon that point. But I make this point, and it seems to me it ought to be a good one, that upon the very principles of the decision as just read by the Clerk the Colorado case should have precedence. The Speaker will bear in mind that in the case now before the House the rights of priority of members who were set aside upon the objection of a single member are antagonized by another case different from anything in the case just read. They are antagonized here by the Colorado case, which was before the House previous to the case of any of these other gentlemen.

Now, of course, the fundamental thing upon which members are sworn in, whether in a body together in front of the Chair or singly, is the certificate which they present—that is, the credential—that entitles them *prima facie* to a seat and to be sworn in. The mere fact that their names are placed upon a roll is only an incident succeeding to the presentation of a certificate. In this case the member from Colorado, the gentleman whose credentials I have in my hand, presents his certificate. The Clerk rules him out. He is, then, like these other gentlemen who have been ruled out on the objection of a single member, outside of those who have been sworn in; but, although outside, he is before the House in a position preceding any of them; and while I can see, upon the decision which has been read, that, as antagonizing any other business, those gentlemen who have stood aside on the objection of a single member should have their cases submitted at once and passed upon, (and this, I claim, is the whole scope of the ruling just read,) yet in this case it does seem to me that the member from Colorado has the right to have his case first heard and first passed upon, because he possesses what entitles any one to go before the Speaker and be sworn in: the uncontested certificate from his own State. I claim that, as a matter of precedent, the record just read does not controvert my position.

The SPEAKER. In the opinion of the Chair, the proposition that before taking up the case of any gentleman whose name was not upon the roll at all the House shall consider the qualification of members upon the roll who were asked to step aside is reasonable and right and in accord with the practice. Any other ruling would work great hardship. These gentlemen were placed upon the roll by the Clerk under the law, and upon the objection of an individual member, which in its nature is arbitrary and might be factious, they were prevented from being sworn in. The Chair stated yesterday that such a single objection did not deprive those gentlemen of any right which they possessed; and if the occasion had presented itself these gentlemen, in the opinion of the Chair, would have had the right to vote, as they did in fact vote upon the election of Speaker, in the same manner as though they had been sworn in. For these reasons the Chair sustains the point of order of the gentleman from New York.

Mr. CONGER. I would like to submit one proposition to the Chair. The question arising in this case of Colorado refers to the correction or the making up of the roll, which precedes the swearing in of any member or the opportunity of any member to be sworn in. Now, it is claimed by some that the roll was not fully made up or was not made up as it should have been, and that therefore, before any member was sworn in, the roll should have been corrected. Others thought, however, that it was best to wait until the House was organized; but as soon as it is organized the first question, it seems to me, should be whether the original roll was made up properly. I ask the Chair to consider this point.

The SPEAKER. The Chair desires to say, in answer to the gentleman from Michigan, [Mr. CONGER,] that he does not think the language employed by the gentleman states this case correctly. He does not think that a correction of the roll should, in fact, precede the action upon the roll as made up under the law.

Mr. CONGER. But, Mr. Speaker, suppose the roll had contained the names of but ten members; suppose it had presented a clear, open failure to comply with the law, (as is thought by some to be the case here,) would there not have been power at any time, either before the House was organized or immediately afterward, to correct that roll and to correct the judgment of the Clerk?

The SPEAKER. The Chair presumes the gentleman from Michigan does not desire the Chair to express any opinion upon a case which has not occurred and which the Chair thinks is not likely ever to occur.

Mr. CONGER. Our only proposition is that this name had a right to be placed upon the roll, and that, if the Clerk failed to place it there, this House has a right to decide the question.

The SPEAKER. The Chair will remind the gentleman that according to uniform practice, immediately upon the election of a Speaker, the first business is that those who are upon the roll should be qualified. That business was interrupted in the manner which has been stated. And now, at the first opportunity, it is the reasonable right of those gentlemen who stood aside upon a single objection, that they should have their rights determined.

Mr. REAGAN. In reply to what has been said by the gentleman from Michigan about the correction of the roll, I wish to say that this is not a mere question of the correction of the roll, because one of the principal matters to come up will be the determination as to who is *prima facie* entitled to the seat. I do not wish it to be understood that a *prima facie* case has yet been made out for any one.

REPRESENTATIVE FROM FIRST DISTRICT OF SOUTH CAROLINA.

The SPEAKER. The first case in order——

Mr. HALE. The Chair has, I understand, sustained the point of order?

The SPEAKER. The Chair sustains the point of order.

Mr. HALE. And the Colorado case will be recognized as a matter of privilege immediately after these other cases are disposed of?

The SPEAKER. It will. The case first in order is that of the gentleman from South Carolina, [Mr. Rainey.]

Mr. COX, of New York. I propose to have read to the House the certification from the late secretary of state of South Carolina, and also a statement of Governor Wade Hampton as to the first congressional district of South Carolina, and then I propose to offer a resolution based upon that statement. When these papers shall have been read I propose to show to the House the precedents for the action which I propose.

The SPEAKER. Does the gentleman ask that the resolution shall be read?

Mr. COX, of New York. Yes, sir; and I will then call the previous question unless some gentleman on the other side proposes to move to amend it or to debate it.

The Clerk read the resolution, as follows:

Resolved, That the question of the *prima facie* as well as the final right of J. S. Richardson and Joseph H. Rainey, contestants respectively claiming a seat in this House from the first district of South Carolina, be referred to the Committee of Elections, hereafter to be appointed; and until such committee shall have reported in the premises and the House have decided said question, neither of said contestants shall be admitted to a seat.

The Clerk then read the paper sent up by Mr. COX, as follows:

THE STATE OF SOUTH CAROLINA:

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

Hon. Henry E. Hayne, late secretary of state, as I am informed, has furnished to Joseph H. Rainey a certificate that, according to the returns of the board of State canvassers then in office, he, the said Joseph H. Rainey, has been *prima facie* elected to the Forty-fifth Congress of the United States as the Representative of the first congressional district of the State of South Carolina.

In the discharge of what I deem an imperative duty, and as showing the views I entertain of the actual and substantial merits of the claim of said Rainey and of the contestant, John S. Richardson, to the seat, I make the following statement of facts connected with the case, with a view of conducing to a proper decision of the case when submitted to your honorable body, which is to render final judgment thereon:

First. The board of State canvassers, upon whose returns said certificate of election to said Rainey was based, was at the time when said returns were made, under prohibition issued from the supreme court of the State, enjoined and prohibited from making and certifying said returns as to members of the State Legislature; and said returns were made by them in contravention of the said order of the supreme court of the State.

Secondly. That on the 14th day of November the counsel for the democratic party notified the said board of canvassers that he had applied to the supreme court of the State for a writ of prohibition and mandamus in every case of election coming before said board, in consequence of which notification the said board adjourned to await the result of said application; and that at their next meeting on the following day, 15th November, the said board unanimously adopted the following resolution, which was filed in the supreme court, namely:

"*Resolved*, That this board will not act upon any proposition until the question of its jurisdiction and duties be decided by the supreme court."

That notwithstanding such resolution of the board of State canvassers and the pending of the proceedings in prohibition in the supreme court of the State, the board of State canvassers proceeded to declare the result of the general election held on the 7th November, 1876, and for such illegal action the said board of State canvassers were adjudged guilty of contempt and punished by fine and imprisonment.

Thirdly. That said board of State canvassers, making the said returns upon which said certificate of election was certified to said Rainey, was composed of persons who themselves were candidates upon the same general ticket as said Rainey, and did thus pass upon and certify to their own election as well as that of said Rainey; but that each person composing said board who had so certified to his own election, after full investigation and proof under proceedings had in the supreme court of the State as to the correctness of said returns, and their rights to the offices, claimed thereunder, has been ousted by the judgment of the supreme court of the State of the several offices to which they had certified themselves elected.

Fourthly. That said board of State canvassers returned that John S. Richardson, the contestant, received 16,661 votes at said election for said seat, and the said Joseph H. Rainey, according to his answer to the protest of said John S. Richard-

son, to me shown, has admitted that the said Richardson received said number of legal votes.

Fifthly. I find that 16,661 votes is according to the last United States census a majority of all the legal votes in said congressional district, and from the evidence within my knowledge and submitted to me I firmly and confidently believe that 16,661 legal votes is a majority of all the legal votes cast at said election for said seat in said congressional district.

Sixthly. I further find upon evidence submitted to me, and within my knowledge, that the election at which the said Rainey appears by said returns to have been elected was accompanied by such wide-spread intimidation, resulting from the intrusion and presence in the State and in the said congressional district of United States troops, as well as with such disorder, outrages, and frauds, on the part of the political friends of said Rainey, as to satisfy me that the certificate held by said Joseph H. Rainey, based upon said election returns, is false as a certificate that he was duly elected by a majority of the legal and qualified votes of said congressional district. Abundant and conclusive evidence of the facts and views above stated will be in due time presented to the Congress of the United States; but the said certificate of election having been issued to the said Joseph H. Rainey, I deem it due to truth and justice, as well as to the contestant, John S. Richardson, and the constituency voting for him, that I should certify this statement that the whole case may be fully stated and explained.

Witness my hand and the seal of the State at Columbia this 10th October, 1877, and in the one hundred and second year of American Independence.

[L. S.] R. M. SIMS,
Secretary of State.

COLUMBIA, *October* 10, 1877.

While I cannot with propriety express any official opinion upon a subject so peculiarly within the jurisdiction of the House of Representatives of the United States, I deem it due to truth and but justice to the contestants, Messrs. J. S. Richardson, M. P. O'Conner, and G. D. Tilman, to say that I am personally cognizant of many of the facts stated by the secretary of state in the within paper, and I concur in the opinion that in the first, second, and fifth congressional districts of this State there were outrages, intimidation, and fraud to such an extent as to render the result of the election held on the 7th of November exceedingly doubtful as a fair and legal expression of the will of the people.

WADE HAMPTON.

Mr. MILLS. I desire to ask the gentleman from New York if either one of the parties has the certificate in due form signed by the governor of the State?

Mr. COX, of New York. There is no regular authenticated certificate. I have had the papers read, and call the previous question on the adoption of the resolution.

Mr. HALE. I hope the gentleman will not do that until there has been an opportunity for further explanation.

Mr. COX, of New York. I will yield to the gentleman from Maine to offer a substitute.

Mr. HALE. First let me answer the question asked by the gentleman from Texas, [Mr. MILLS.] Mr. Rainey does present a certificate in due form, which is at the Clerk's desk, and which I ask may be read. I am informed that it is in the Clerk's room.

The SPEAKER. The paper to which the gentleman from Maine alludes is in charge of the Clerk of the House, and has been sent for.

Mr. HALE. Let me say here that the question of the gentleman from Texas really covers this whole case of objection. What has been read at the Clerk's desk may be matter of import to be passed upon by the Committee of Elections when the contestant presents his case. Whether or not there was intimidation, whether or not there was overvoting, whether or not a due or undue proportion of votes were thrown in this district, are not questions which this House can consider or ever has considered as settling the *prima facie* case. It will be seen, when the certificate of Mr. Rainey is read, that it is a certificate which I presume nobody will question in regard to form, and that it is as good, *prima facie*, as my certificate, or as yours, or as that of the gentleman from New York, and it was so considered by the Clerk, who placed him upon the roll; and Mr. Rainey stands here as half a dozen or more gentlemen on either side of this House stand, with a certificate, which the Clerk has passed upon, objected to by one member, and it is now sought to smother his case temporarily by sending it to the Committee of Elections. It is a bad precedent, Mr. Speaker. It is a dangerous thing to embark on. I consider no certificate is worth anything if on such objections as have been read here I can be set aside and sent to the Committee of Elections, which, with a full docket, may be weeks and weeks in reporting, while I should have the same right to vote, act, and speak here as every other member.

The action of the supreme court has been referred to in the memorial which has been read. I hold in my hand a certificate from that court reciting the vote, reciting the condition of things upon which the certificate has been made up, and reciting the facts upon which undoubtedly the Clerk, if he examined this case, placed Mr. Rainey upon the roll. I protest, and would equally protest if the case were on the other side of the House and any member there was sought to be kept out upon no better reason than this, against preventing a member from being sworn in, whatever may be the underlying grounds for a contest. I ask the Clerk to read the certificate.

The Clerk read as follows:

STATE OF SOUTH CAROLINA,
Office Secretary of State.

I, H. E. Hayne, secretary of state, do hereby certify that at the general election, held pursuant to the constitution and statutes of this State on the seventh day of November, A. D. 1876, the following-named persons were duly chosen, as appears by the certificate and determination of the board of State canvassers on file in this office, as members of the Forty-fifth Congress of the United States from the State of South Carolina:

First district—Joseph H. Rainey.
Second district—Richard H. Cain.
Third district—D. Wyatt Aiken.
Fourth district—John H. Evans.
Fifth district—Robert Smalls.

Given under my hand and the seal of the State, at Columbia, this 4th day of December, A. D. 1876, and in the one hundred and first year of the Independence of the United States of America.

[SEAL.] H. E. HAYNE,
Secretary of State.

Mr. HALE. Now, Mr. Speaker, following that I read the law, and the only law, the undisputed law of the State of South Carolina.

The SPEAKER. There is still another paper accompanying that which has just been read.

Mr. HALE. I prefer at this point to read the law as affecting the certificate itself. I read from title 2, chapter 8, section 32, referring to the secretary of state:

He 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.

Under that statute, Mr. Speaker, every member who has been sworn in upon this floor from the State of South Carolina has presented himself with just such a certificate as Mr. Rainey presents now.

Mr. MILLS. Mr. Speaker——

Mr. COX, of New York. Mr. Speaker, who holds the floor?

The SPEAKER. The gentleman from New York, [Mr. COX.]

Mr. COX, of New York. Then I yield to the gentleman from Texas, [Mr. MILLS.]

Mr. MILLS. I desire to say, from the reading of that certificate it occurs to me that the gentleman from South Carolina has a right upon this floor equal to the right of any other gentleman upon it. The Clerk of this House is empowered by law to decide. He has a judicial power to decide what name shall be placed upon the roll, and whether the certificate was in compliance with law. After he has made that decision and reported it to this House it is in the power of the House to revise it. But every presumption is in favor of the correctness of that decision. And if the gentleman from South Carolina can be ousted in this summary manner without a hearing there is no other gentleman on this side of the House or on the other side of the House who cannot be as summarily disposed of.

It was sought at the opening of last Congress to perpetrate the same kind of injustice. It was attempted on this side of the House when we had a majority of about 70 or 80, and the House refused to commit the mistake and recognized the certificate of the governor of Louisiana as ample authority to seat the member from that State. Sir, the whole order of society, public liberty, peace and security among us, the right of property, public and personal security, and everything depend upon the rigid adherence to law. Here is the law. Why should we violate it? Simply because the majority on this side of the House have it in their power to oust a member of the minority? It may be the case that what is to-day the minority may be in the majority, and they may as arbitrarily and illegally assume to themselves the right to put out a *prima facie* holder of the title to a seat until his case has been examined by the Committee of Elections. Sir, this is a judicial body, and upon all questions pertaining to the right of a member to a seat here we sit as a court and not as partisans. We have to pass upon the law and the facts as judges and not as partisans. The line of precedents is unbroken, unless it may have been broken during the storm of passion, that the man holding the certificate of the governor of his State is entitled to a seat on the floor until it is decided that he was not duly elected.

Mr. COX, of New York, resumed the floor.

Mr. HALE. Will the gentleman from New York allow me to offer a substitute for his resolution?

Mr. COX, of New York. I yield for that purpose.

Mr. HALE. I offer the following as a substitute for the resolution of the gentleman from New York, [Mr. COX:]

Resolved, That Joseph H. Rainey be now sworn in as Representative in Congress from the first district of South Carolina.

Mr. COX, of New York. It is not my intention, Mr. Speaker, to stir up any especial bad blood in this bad South Carolina business, nor will I take any precedents from this side of the House as good examples to be accepted at this or any other time. We have precedents upon this point made by the other side of the House in favor of sending to the Committee of Elections these cases to determine the *prima facie* right to seat, as well as the merits of the case.

The gentleman from Maine [Mr. HALE] rose and gave the House the idea that the governor of South Carolina had certified to Mr. Rainey's right to the seat.

Mr. HALE. Oh, no! I had the statutes before me at the time.

Mr. COX, of New York. Then the gentleman ought to have corrected himself from the statute. No governor of South Carolina ever certified that Mr. Rainey was entitled to a seat. The certification of Mr. Richardson is of equal validity with that of Mr. Rainey, excepting this, that Mr. Richardson's certificate is the last one and was issued after a re-examination, and he has as much right to a seat upon this floor as any gentleman here, as he has the latest certificate from the secretary of the State. But in addition to that he has a statement, not official, but a certification from Governor Hampton on that point, and I know that my friend from Maine will not go back on

Governor Hampton and Governor Hayes and the rest of the governors who have had their delightful little travel in the South recently. [Laughter and applause.]

I desire to read two authorities here to show that in cases where there have been two certificates the House, in its good judgment, has determined to send them to the Committee of Elections for the determination of the fact of the *prima facie* right to the seat. There was a case which occurred in 1862, when Mr. DAWES made a report from the Committee of Elections.

Mr. HOUSE. I desire to ask the gentleman from New York [Mr. COX] a question. Are both the certificates from the same source?

Mr. COX of New York. They are both from the secretary of the State, but Governor Hampton has indorsed the last certification.

Mr. MILLS. Does the gentleman from New York [Mr. COX] suppose that the governor had a revisory power on the question of who was entitled to the seat?

Mr. COX, of New York. I want to send this business to the Committee of Elections, to ascertain who was properly elected under the revision made by the noble Administration of our good friends on the other side of the House. The point I make is that where there are two certificates fairly drawn and the last one issued upon a re-examination and indorsed by Governor Hampton, it is a fair case to be sent to the Committee of Elections, to decide upon the *prima facie* right to the seat. Now I wish to refer to the precedents laid down by gentlemen upon the other side of the House. One was in the case of a territorial Delegate, Mr. Morton, who had received a certificate of election, and Mr. Dailey occupied the position of contestant subsequent to the issue of the first certificate to Mr. Morton. The governor of the Territory gave Mr. Dailey a certificate of election on the ground of alleged frauds in the vote for Morton. The question came before the House as to which gentleman was entitled to the *prima facie* right to hold the seat during the contest, and the House decided in favor of Mr. Dailey, who held the seat during the pendency of the contest. I quote from the report of Mr. DAWES, made the 14th of April, 1862:

That, in conformity with the instructions of the House, embodied in a resolution adopted at the last session, in the following words:

"*Resolved*, That the papers in the case of the contested seat for the Delegate from the Territory of Nebraska be referred to the Committee of Elections, and that they be authorized to investigate and report on the same without regard to notice, and that all other cases of contests for seats in this House be also referred to that committee for investigation and report"—

they have examined and considered all the evidence referred to the committee and contained in Miscellaneous Document No. 4, of the last session, which was taken by either party on notice to the other. The election out of which this contest has arisen was held on the 9th day of October, 1860, and the official canvass by the territorial board of canvassers showed the following result:

For Mr. Morton	2,959
For Mr. Dailey	2,945
Majority for Morton	14

Another case occurred in 1869, between Mr. Hoge and Mr. Reed, from South Carolina. I refer to the same:

Mr. Cessna submitted the following report from the Committee of Elections:

The third congressional district of South Carolina is composed of the counties of Orangeburgh, Richland, Edgeville, Lexington, Newberry, Abbeville, and Anderson. The election for members of Congress was held on the 3d day of November, 1868. The candidates for Congress were S. L. Hoge and J. P. Reed, and both presented their claims to the House and are the claimants from the said third district of the said State, mentioned in the following resolution, referring the whole subject to this committee, namely:

"*Resolved*, That the case of the claimants to seats in the House of Representatives of the United States from the third and fourth congressional districts of the State of South Carolina, with the papers relating to the same, be referred to the Committee of Elections, when appointed, with instructions to report, as soon as practicable, which of the claimants, if either, are entitled to seats."

The committee first turned its attention to an allegation filed by S. L. Hoge, one of the claimants, that J. P. Reed the other claimant, was ineligible, not being able to take the oath prescribed by the act of July 2, 1862.

The committee found this allegation to be true, and so reported to the House. This disposed of Mr. Reed's claim under the resolution of the House of March 22, 1869.

The resolution of reference being silent on the subject, the committee determined to inquire who had a *prima facie* right to the seat, leaving the merits open to such person as might desire to contest.

They found among the papers referred two certificates purporting to be certificates of election to Congress from the third district of South Carolina, which will be found in appendix "A" and "B."

One of these certificates was signed by three persons, styling themselves canvassers for said State, and certifies that J. P. Reed was duly elected by a majority of votes in said third district.

The other certificate was signed by four persons, styling themselves canvassers for the State, (three of the persons signing this being the same who signed the first-named certificate,) and certifies that S. L. Hoge was duly elected by a majority of the *legal* votes in said third district.

* * * * * * *

We think also that this decision can be sustained upon principle. The question is entirely within the control of the State canvassers or the governor of the State (as the case may be, under the law) until the roll of the House is made up by the Clerk. There is no vested right under a certificate that would prevent the canvassers from rectifying any error or mistake that may have occurred in their deliberations or action until the holder of the same has been awarded his seat by the Clerk of the House, &c.

I now move the previous question on the resolution and substitute.

Mr. HARRIS, of Virginia. I hope my friend will not call the previous question at this time.

Mr. COX, of New York. I will yield to the distinguished gentleman, formerly chairman of the Committee of Elections.

Mr. HARRIS, of Virginia. I admit the full force of all the gentleman from Maine [Mr. HALE] says in regard to the efficacy of a certificate of election. But these South Carolina cases stand by themselves. The first day or two after the commencement of the last session of Congress this same question arose in the case of Mr. Buttz, of South Carolina, who presented his certificate and asked to be sworn in. A resolution was offered to refer that case to the Committee of Elections. The case arose out of the same election, held on the same day and certified by the same officer as in the case now before the House. And after argument the House held that it was proper for that case to go to the Committee of Elections. And why? Because it was historically known to this House that that returning board in South Carolina had acted in defiance of law, had acted in defiance of the mandate of the court; that after the court had issued its mandamus directing them not to act they had acted in secret and had issued these certificates. The court held afterward that such action was in contempt of the court and was void, and the members of the board were put in jail. Of that judicial act this House is bound to take official notice. In view of that fact the case of Buttz was referred to the Committee of Elections, and my friend from Texas, [Mr. MILLS,] who certainly must have forgotten the fact, is found voting upon the yeas and nays to so refer that case.

I now ask that these cases may take the same direction. It is not improper for me to say that the committee gave that case a very thorough and a speedy examination, and in less than a month reported that Mr. Buttz was entitled to his seat, not by virtue of his fraudulent papers, but by virtue of the popular vote which he had received; and he was sworn in and took his seat. Let these cases follow the line of their illustrious predecessor. They are certified by the same officer and the election occurred on the same day. This House should not be asked to reverse the precedent which it set at the last session.

Mr. COX, of New York. I now yield to the gentleman from Texas [Mr. MILLS] for five minutes, after which I will call the previous question.

Mr. HALE. I hope the gentlemen will not insist upon closing debate so soon.

NOTIFICATION OF THE PRESIDENT.

Mr. GOODE. The committee appointed to wait upon the President and inform him that the House is organized and is ready to receive any communication he may desire to make have discharged that duty and report that the President states that he will send a message in writing forthwith to the House.

REPRESENTATIVE FROM SOUTH CAROLINA, FIRST DISTRICT.

Mr. MILLS. I do not know how the gentleman from Virginia [Mr. HARRIS] voted upon the case which he has mentioned, nor do I recollect how I voted. It is a matter of no consequence to any member of this House how either of us voted. I do not even recollect the facts of the case. But it is a matter of infinite importance that this House shall do right; it is a matter of vast importance that members of this House shall adhere to the law. It is a matter of no consequence who is benefited by such adherence to the law.

Now, I hold as a proposition that cannot be controverted even by one possessing the ability of the gentleman from Virginia, [Mr. HARRIS,] that the question of the election and qualifications of a member of this House is one which rests exclusively here. Courts and States may command ministerial officers; courts may command them to discharge their duty; but at last the question of the title to a seat in this House is to be determined here, and nowhere else in this country.

I have before me an authority stating clearly and unequivocally that where the authority has once been exercised by the governor of a State, or the secretary of a State, or whomsoever the authority is reposed in to give a certificate of the *prima facie* right to a seat in this body, that power is exhausted, and there remains no authority to revise that act. Its final decision must be by this body. I read from page 154 of McCrary's American Law of Elections:

SEC. 213. In the case of Sheafe *vs.* Tillman (2 Bartlett 907) a like question was again considered, and the sound rule that a ministerial or executive officer can exercise no judicial functions was adhered to. In the report in that case the doctrine is laid down as follows. (p. 910:)

"There is no law of the State of Tennessee that gives authority to the governor to reject the vote of any county or part of a county. His duty is only to compare the returns received by him with those returned to the office of the secretary of state, and upon such comparison being made to 'deliver to the candidate receiving the highest number of votes in his district the certificate of his election as Representative to Congress.' (Code of Tennessee, sec. 935, p. 239.) If illegal votes have been cast, if irregularities have existed in the elections in any of the counties or precincts, if intimidation or violence has been used to deter legal or peaceable citizens from exercising their rights as voters, to this House must the party deeming himself aggrieved look for redress. This great power of determining the question of the right of a person to a seat in Congress is not vested in the executive of any State, but belongs solely to the House of Representatives." (Constitution United States, art. 1, sec. 5.)

That, I think, settles conclusively the rule which should govern our action in this case.

[Here the hammer fell.]

Mr. RAINEY rose.

The SPEAKER. The Chair desires to say to the gentleman from New York [Mr. COX] that the gentleman from South Carolina, [Mr. RAINEY,] whose seat is in question, desires to be heard.

Mr. COX, of New York. I would not deprive him of that right. I was going to yield to him.

Mr. RAINEY. Mr. Speaker, I would not have a word to say on

this occasion if I were not perfectly satisfied that a misapprehension exists in the House in regard to the status of this case. The secretary of state who issued the certificate to me, issued it under the authority of law. According to the present statute of our State the governor is not required to issue certificates to persons elected as members of Congress. All the five members who come here from that State, democrats as well as republicans, come here by the count of this identical board of State canvassers. They were all counted in by that board; and they come here with certificates from a secretary of state whose title is undisputed—Secretary Hayne—by whom, before his time expired, these certificates were issued in accordance with law. We have presented them here as giving us a *prima facie* right. We all stand upon the same basis—upon a common platform. Any objection to this *prima facie* case affects equally the status of every member, because we all come here on the count of the same identical board.

I am willing that my case, at a proper time and in proper form, shall go before the Committee of Elections. I feel satisfied to have it go there. I met justice at one time at the hands of this House, and I feel that it will not be denied me in this Congress. But I do not want my case to go before the committee in this form. I do not want my case to be a precedent for making null and void the *prima facie* right of a member to his seat. Not that I am unwilling to trust the Committee of Elections, though I do not know who may compose that committee; but I prefer to enjoy my rights. Though I be a republican and a colored man, I know that I have rights under the Constitution, and I prefer to enjoy them as do other members upon this floor.

I therefore appeal to the House and ask that my case take the same course as the cases of other members standing in a similar position on this floor. Make no exception in this case. If upon a proper hearing of the case this House should decide that I am not entitled to a seat here, I shall retire. I want nothing but what is right. If I have been elected by fraud or intimidation, let me be excluded; though I know that if the records were carefully looked into I would never be charged with anything of that kind.

I thank the gentleman from New York [Mr. COX] for the courtesy he has extended to me in allowing me to make these remarks. In conclusion I ask that the certificate from the clerk of the supreme court of the State of South Carolina, as handed in by the gentleman from Maine, be read as part of my remarks.

Mr. COX, of New York. I have no objection, if it does not consume my hour.

Mr. RAINEY. Oh, not at all; it will take but a few minutes.

The Clerk read as follows:

THE STATE OF SOUTH CAROLINA:

In the supreme court.

IN RE R. M. LEWIS ET AL. vs. H. E. HAYNE ET AL. } Suggestion for prohibition and mandamus.

In the supreme court of the State of South Carolina.

The board of State canvassers, respondents herein, hereby certify that it appears by the statements of the several boards of county canvassers, laid before this board, that the following-named persons have received the number of votes set opposite their respective names for the several offices herein designated, namely:

* * * * * * *

For members of Congress.

First district:

	Votes.
Joseph H. Rainey received	18,180
J. S. Richardson received	16,661
Scattering	1
Second district, (unexpired term:)	
C. W. Buttz received	21,378
M. P. O'Connor, received	13,030
Scattering	2
Second district, (regular term:)	
Richard H. Cain received	21,385
M. P. O'Connor received	13,028
Scattering	2

* * * * * * *

H. E. HAYNE,
F. L. CARDOZO,
THOS. C. DUNN,
WILLIAM STONE,
H. W. PURVIS,
Board of State Canvassers.

THE STATE OF SOUTH CAROLINA:

In the supreme court.

I, Albert M. Boozer, clerk of the said court, do hereby certify that the foregoing is a true and correct extract, taken from the return of the board of State canvassers, respondents, in the case of The State *ex rel.* R. M. Lewis *et al. vs.* H. E. Hayne *et al.* suggestion for prohibition and mandamus, made and filed in this court in pursuance of its order in the said case, now of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Columbia, this 10th day of February, A. D. 1877.

[SEAL.] ALBERT M. BOOZER,
Clerk of Supreme Court South Carolina.

Mr. RAINEY. With the statement I have made and the paper which has just been read, I leave the case to the House.

Mr. COX, of New York. I now yield five minutes to the gentleman from Massachusetts, [Mr. BANKS.]

Mr. BANKS. I submit that the gentleman from South Carolina [Mr. Rainey] ought to be admitted to take the oath as a member of this House, because he has the certificate of his government that he has been elected according to law. There is no reason why the House should not hereafter inquire into the validity of that election. It may make such inquiry the very moment after Mr. Rainey has been admitted upon the certificate. But the very existence of our Government depends upon our recognition of the certificates of State governments to the election of members of this House. We could never organize this House if any member was permitted upon any opinion of his own to impeach the certificates of the governments under which members of this House are elected. Until the last Congress, the precedents of which have been referred to by the gentleman from Virginia, there has never been a single case where this House has set aside, as to the *prima facie* case, the certificate of a State government to the election of a member of Congress. In every case where the certificates have been disregarded as *prima facie* evidence of election, it has been where the officer or officers that made the certificate have impeached their own certificate.

Let me state briefly (for I have but a moment or two) the case of New Jersey, which was one of the historical cases upon this subject. The certificate of the governor of New Jersey was disregarded in the election of members from that State many years ago, but the fact was that the governor of New Jersey impeached his own certificate. He said he was obliged, as an officer, to give the certificates of election of certain men to this House, although he knew they were not elected, and only regretted he had not the power to give the certificates to the other men, who were the contestants. That was the ground upon which the certificate in the case of New Jersey stood, and it was rightly suspended, as I think, by the House; at least there was color for that action. The honorable gentleman from New York has remarked that they stand upon this principle: that the same government, the same officers, have given a certificate of election, which would have been received as *prima facie* evidence, but they have impeached their own act, leaving this House without any authority or evidence upon which we can stand. If I understood him correctly, (and you know, Mr. Speaker, how difficult it is for us to understand all that takes place in this Hall,) then in both of these cases the officers of the government who gave the certificate of election afterward impeached the certificates and left us without any positive knowledge of the grounds upon which the case rested.

Now, the gentleman from Texas [Mr. MILLS] has stated clearly to the House the principle upon which this practice rests: the recognizing the certificate of the governor as *prima facie* evidence. All our rights, all the rights of State governments, the very existence of the Government itself, all of them stand upon this principle; and I venture to say that there is not a gentleman on the other side of the House, not a member of the last House of Representatives who voted to sustain a different principle, who, if he continues here, will not reverse his previous action, because he will find it impossible to carry on the Government under any other principle than the one which I maintain.

Gentlemen of the House cannot give to this question too much consideration. If we do not recognize the action of the State government, then there is no government. I do not mean that we are not authorized to inquire into the validity and to set aside if we find justification for it, but in the organization of the House it is our duty to follow the uniform practice of the Government. If there is a precedent in contravention of that unbroken practice, as certainly there was in the last Congress, still the recognition of the acts of a sovereign State, to which that State is entitled when it certifies according to its laws, under its great seal, by the officers of the government, the recognition of the certificate of the governor to the fact of the election ought to be respected in this case, and the gentleman from South Carolina, in accordance with precedent and under the practice I have spoken of, should be sworn in and take his seat.

Mr. COX, of New York. I yield to my colleague, [Mr. TOWNSEND.]

Mr. TOWNSEND, of New York. I only wish to make a statement. I desire to state, Mr. Speaker, when the case of Buttz was before the last Congress there was no question made as to the merits of that case. The only question raised was whether he had the *prima facie* right upon his papers; and it was only the question whether his paper made a *prima facie* case that was referred to the Committee of Elections. It was on that alone the committee reported. The committee never examined whether there was not wrong done or not. It never had any such question referred to it. The committee examined the papers as to whether they covered the *prima facie* right of Buttz to a seat; and that was the only question decided.

Mr. HARRIS, of Virginia. In explanation of what has been stated by the gentleman from New York, I beg to add that he is substantially correct. If gentlemen will look at the report of the committee they will see that it was unanimously adopted, with only one or two exceptions. The committee reported that the certificate of the governor or secretary of state, Mr. Hayne, under which the claimant named asked to be seated, was null and void, or to that effect, and that the certificate from the supreme court giving a majority to Buttz gave him the *prima facie* case. It was the court's action which gave the *prima facie* case, and not the certificate. It was on that ground the committee decided. Being satisfied, on examining the *prima facie* case, that he received a majority of the popular vote, the question never was decided with reference to its merits, and Buttz held his seat during the remainder of that Congress.

Mr. COX, of New York. I will now close the debate in a few words. All that has been said as to precedents can be answered by the remark that the precedents are all in one direction. The case of Buttz is in the line of the thought as just expressed. In the cases of Beck, Grover, and Jones, from Kentucky in 1867, where there was a governor's certificate, they sent the *prima facie* case to the committee. It has been done again and again and the reason given. The reason at that time was not perhaps so creditable to the other side of the House as the reason we now give in this particular case of South Carolina. I wish to say that the supreme court of the State of South Carolina inhibited those particular officers from certifying to the election.

Mr. BLOUNT. I wish to inquire whether the facts in the South Carolina case are analogous to those in the precedents cited and whether there was any writ of prohibition from a court in those precedents cited against the issuing of a certificate, as in this South Carolina case?

Mr. COX, of New York. I find all of the cases tend to one conclusion. My friend from Massachusetts says that the government in South Carolina has certified. What government?

Mr. BANKS. The government that elected him.

Mr. COX, of New York. Who form the present government of South Carolina?

Mr. BANKS. That is another question. The present governor is Governor Hampton. But Hampton's government did not elect these gentlemen.

Mr. COX, of New York. There was a government there based on fraud and wrong.

Mr. BANKS. The single question is if the impeachment of a certificate by a subsequent secretary of state invalidates that which had been given by his predecessor.

Mr. COX, of New York. When a certificate comes in on a fair examination and judgment, I say, with all respect to Mr. Rainey and without any prejudice as to his color or previous condition—I say to him and to gentlemen on that side that I will take the last best judgment in that case of South Carolina. I think your Administration has reformed some judgments in regard to South Carolina; and in view of the paper received from Governor Hampton I am in favor of sending this case to a committee. I call the previous question.

Mr. BUTLER. Mr. Speaker——

Mr. COX, of New York. I yield to no one further.

The SPEAKER. The gentleman from Massachusetts [Mr. BUTLER] asks that the gentleman from New York yield to him some time.

Mr. COX, of New York. If the gentleman from Massachusetts desires to address the House on this question I will not fail to give him an opportunity, as I have not seen him here for two years; but I would like to have a chance to reply after he is through.

Mr. BUTLER. I presume my absence has been a deprivation of pleasure to the gentleman from New York, [laughter,] and therefore I accept his courtesy.

I desire, Mr. Speaker, to call the attention of the House to the exact question and to make a statement of it so that it can be understood. By the law of South Carolina the secretary of state gives the certificate. That certificate was given to Mr. Rainey, and there is no contest that that certificate was in due and regular form as much as any certificate which has been presented here. Now, then, upon that he comes here as all the rest of us do and produces the certificate to the Clerk of the House and upon examination the Clerk decides that that certificate forms the regular credentials of a member of the House, and every one of the members from South Carolina stands upon that same regular credential. Upon that they were put upon the roll and Mr. Rainey and all the members from South Carolina were allowed to vote for Speaker and for Clerk.

Mr. Rainey then presented himself to be sworn in. And now comes the objection that he should be deprived of the *prime facie* right which the Clerk, the adjudicating officer upon the subject, gave him. Upon what ground? If another certificate from the governor, or other State officer who had the right to interfere, came here, why that would raise such doubts of what was the voice of the State that the House would say, we will have that referred to the committee. But what is the paper upon which this contest is made? It is a statement from Governor Hampton that it is not his duty to officially interfere in this case. I repeat it, I went to the Clerk's desk a moment ago to get the statement of Governor Hampton, and I find that he says it is not his duty to interfere in this case officially, but for his friend, the contestant, he will certify to certain facts as an unofficial act. Am I right or wrong as to this fact? If I am right, that is the end of this case. If I am wrong, it is the end of my speech. [Laughter.]

Mr. COX, of New York. The gentleman is wrong. I call the previous question.

Mr. BUTLER. And the question is whether the gentleman on this floor, accredited according to the law of the State which he represents, is to be sent away for an indefinite length of time, (for I have always known the majority or almost all of the contested-election cases to be decided in the last weeks of the session)—to be sent away, I say, for an indefinite length of time on the unofficial action of anybody on earth.

Mr. COX, of New York. There is no unofficial action in sending matters of this kind to the Committee of Elections. That committee is the organ of the House. The *prima facie* case is to be decided there, and reported to the House. This is nothing unusual. This chalice, which is now offered to the lips of gentlemen, has very often been offered to our lips. Very often, again and again, in the Kentucky and other cases we have had this question here. Why, then, should we change a well-considered rule to gratify gentlemen on the other side when they happen to be in a minority?

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was communicated to the House by Mr. RODGERS, his Private Secretary.

REPRESENTATIVE FROM SOUTH CAROLINA FIRST DISTRICT.

Mr. POTTER. I hope the gentleman from New York [Mr. COX] will, for a few minutes, withhold his call for the previous question.

Mr. COX, of New York. I yield with pleasure to my colleague.

Mr. POTTER. The gentleman from Massachusetts [Mr. BUTLER] is entirely right, as I think, in saying Mr. Rainey comes in on a certificate regular in form. He is further right, as I think, in saying that no statement on the part of Governor Hampton can affect Mr. Rainey's right to his seat.

But there remains one other fact which the gentleman from Massachusetts has not mentioned and which seems to me to present whatever difficulty there is about this case, and that fact is that the secretary of state for the State of South Carolina, after giving the first certificate, in which he certified that Mr. Rainey was regularly elected, gave a further certificate certifying that the canvass of the votes upon which the first certificate was based was conducted in defiance of a writ of prohibition issued by the court of highest authority in that State; and the question presented to us, therefore, now is, whether a gentleman coming here with a certificate from the proper authority of the State declaring that he was legally elected, when followed by another certificate from the same authority that the canvass by which he was elected was conducted in defiance of a writ of prohibition from the highest court of the State, is entitled *prima facie* to have his seat.

This question is not free from difficulty. The judgments of courts of competent jurisdiction must be respected. At the same time it is important that the House should be organized, and this might be prevented if we should seat no one properly qualified because it was alleged that his certificate of election had been improperly issued to him. For it should be observed that the secretary of state is not vested by law with any special authority to make this second certificate. Therefore, for myself, I am bound to say that, in this case, I am rather disposed to think that the better way is to give Mr. Rainey his seat. It is not very likely that such an extraordinary state of things as existed in South Carolina at and after the time of this election will exist in this country again in this generation. It is of the first importance that we should have some means of organizing this House, and if we go into an inquiry as to writs of prohibition and other outside matters, however important, such an organization might be defeated. Mr. Rainey has the certificate from the authority in the State entitled by law to give such certificates, which in form is complete, so that his right has been recognized by the Clerk of the House, the officer authorized by law to pass upon that question in the first instance, and who in this case has passed upon it in Mr. Rainey's favor and placed his name on the roll. It seems to me that on the whole, considering the anomalous condition of things in South Carolina and the danger of going behind certificates from the proper authority, even if given against a writ of prohibition, it is better to swear in Mr. Rainey and let the merits of the case be referred to the Committee of Elections when appointed.

Mr. BANKS. Will the gentleman from New York [Mr. POTTER] allow me to ask him a question before he takes his seat?

Mr. POTTER. Certainly; with pleasure.

Mr. BANKS. My question is whether the second credential was issued by the same secretary of state who issued the first certificate?

Mr. POTTER. The certificate was issued by the same official, the secretary of the same State, but not by the same person.

Mr. BANKS. He was not secretary of state under the same government that issued the first certificate. As I understand it the secretary of state upon whose certificate Mr. Rainey claims the right to take his seat and his oath of office has never been impeached.

Mr. POTTER. The secretary of state of the administration for the time being gave Mr. Rainey the certificate of election, and his successor in office certifies to the facts which call the first certificate in question. Nevertheless, I argue that Mr. Rainey should be sworn.

Mr. COX, of New York. I approve of the argument made by my colleague, but I think his argument proves that we should send this case to the Committee of Elections, and I do not know why he does not vote with us after making that argument. I call the previous question upon the resolution and substitute offered therefor.

The SPEAKER. The first question is on the substitute offered by the gentleman from Maine, [Mr. HALE,] which will be read.

The Clerk read the resolution, as follows:

Resolved, That Joseph H. Rainey be now sworn in as a Representative in Congress from the first district of the State of South Carolina.

The previous question was seconded and the main question ordered.

The first question being on agreeing to the substitute,

The question was taken; and on a division there were—ayes 175, noes 108.

So the substitute was agreed to.

The resolution, as amended, was then adopted.

Mr. BUTLER 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.

Mr. RAINEY then appeared, and qualified by taking the oath prescribed by the act of July, 1862.

Mr. COX, of New York. I rise to a question of privilege. I move that the papers in the case be referred to the Committee of Elections, when appointed.

The motion was agreed to.

REPRESENTATIVE FROM SOUTH CAROLINA, SECOND DISTRICT.

The SPEAKER. The Chair understands that there is no objection to the swearing in of Mr. Cain.

Mr. COX, of New York. I have nothing to do with Mr. Cain, but I understand that my friend from Kentucky [Mr. CLARKE] has a resolution which he desires to offer in relation to that case.

Mr. CLARKE, of Kentucky. I offer the resolution which I send to the Clerk's desk, and in connection with it, I ask for the reading of the certificate of the secretary of state of South Carolina.

The Clerk read the resolution, as follows:

Resolved, That the question of the *prima facie*, as well as the right of M. P. O'Conner against Richard H. Cain, contestants respectively, claiming a seat in this House from the second district of South Carolina, be referred to the Committee of Elections, hereafter to be appointed. And until such committee shall have reported in the premises and the House has decided such question, neither of said contestants shall be admitted to a seat.

Mr. CLARKE, of Kentucky. I now ask for the reading of the certificate of the secretary of state of South Carolina.

The Clerk read the paper, as follows:

THE STATE OF SOUTH CAROLINA:

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

Hon. Henry E. Hayne, late secretary of state, as I am informed, has furnished to Richard H. Cain a certificate that, according to the returns of the board of State canvassers then in office, he, the said Richard H. Cain, has been (*prima facie*) elected to the Forty-fifth Congress of the United States as the Representative of the second congressional district of the State of South Carolina.

In the discharge of what I deem an imperative duty, and as showing the views I entertain of the actual and substantial merits of the claim of said Cain and of the contestant, M. P. O'Connor, to the seat, I make the following statement of facts connected with the case, with a view of conducing to a proper decision of the case when submitted to your honorable body, which is to render final judgment thereon.

First. The board of State canvassers, upon whose returns said certificate of election to said Cain was based, was, at the time when said returns were made, under prohibition issued from the supreme court of the State, enjoined and prohibited from making and certifying said returns as to members of the State Legislature, and said returns were made by them in contravention of said order of the supreme court of the State.

Secondly. That on the 14th day of November the counsel for the democratic party notified the said board of canvassers that he had applied to the supreme court of the State for a writ of prohibition and mandamus in every case of election coming before said board, in consequence of which notification the said board adjourned to await the result of said application, and that at their next meeting on the following day, the 15th of November, the said board unanimously adopted the following resolution, which was filed in the supreme court, namely:

"*Resolved*, That this board will not act upon any proposition until the question of its jurisdiction and duties be decided by the supreme court."

That notwithstanding such resolution of the board of State canvassers and the pending of the proceedings in prohibition in the supreme court of the State, the board of State canvassers proceeded to declare the result of the general election held on the 7th of November, 1876, and for such illegal action the said board of State canvassers were adjudged guilty of contempt and punished by fine and imprisonment.

Thirdly. That said board of State canvassers making the said returns upon which said certificate of election was certified to said Cain was composed of persons who themselves were candidates upon the same general ticket as said Cain, and did thus pass upon and certify to their own election as well as that of said Cain, but that each person composing said board, who had so certified to his own election, after full investigation and proof under proceedings had in the supreme court of the State as to the correctness of said returns and their rights to the offices claimed thereunder, has been ousted by the judgment of the supreme court of the State of the several offices to which they had certified themselves elected.

Fourthly. That said board of State canvassers returned that M. P. O'Connor, the contestant, received 13,028 votes at said election for said seat, and that Richard H. Cain, according to his answer to the protest of said M. P. O'Connor, to me shown, has admitted that the said O'Connor received said number of votes.

Fifthly. I find that 13,028 votes is, according to the last United States census, a majority of all the legal votes in said congressional district, and from the evidence within my knowledge, and submitted to me, I firmly and confidently believe that 13,028 legal votes is a majority of all the legal votes cast at said election for said seat in said congressional district.

Sixthly. I further find upon evidence submitted to me, and within my knowledge, that the election at which said Cain appears by said returns to have been elected was accompanied by such wide-spread intimidation, resulting from the intrusion and presence in the State and in the said congressional district of United States troops, as well as with such disorder, outrages, and frauds on the part of the political friends of said Cain, as to satisfy me that the certificate held by said Richard H. Cain, based upon the said election returns, is false as a certificate that he was duly elected by a majority of the legal and qualified voters of said congressional district. Abundant and conclusive evidence of the facts and views above stated will be presented in due time to the Congress of the United States; but the certificate of election having been issued to the said Richard H. Cain, I deem it due to truth and justice, as well as to the contestant, M. P. O'Connor, and the constituency voting for him, that I should certify this statement that the whole case may be fully stated and explained.

Witness my hand and the seal of the State at Columbia this 10th day of October, 1877, and in the one hundred and second year of American Independence.

[SEAL.] R. M. SIMS.
Secretary of State.

Mr. CLARKE, of Kentucky. In connection with the resolution which I have offered and the certificate just read, I ask to have printed in the CONGRESSIONAL RECORD, without reading at this time, the memorial and protest in the matter of the election of a member of the Forty-fifth Congress from the second congressional district of South Carolina.

There being no objection, it was so ordered. The memorial is as follows:

MEMORIAL AND PROTEST IN THE MATTER OF THE ELECTION OF MEMBER OF THE FORTY-FIFTH CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.

Memorial and protest of M. P. O'Connor and others of the people, on behalf of themselves and thirteen thousand and twenty-eight voters, against the right and title of Richard H. Cain to the seat.

To the honorable the members of the House of Representatives of the United States, in the Forty-fifth Congress assembled:

On the 7th of November, 1876, in conformity with the laws of this State and of the United States, an election was held in the counties of Charleston, Clarendon, and Orangeburgh, composing the second congressional district of South Carolina, for a member of the Forty-fifth Congress from said district.

There were two candidates for this office in the field—Richard H. Cain, the republican candidate, and M. P. O'Connor, the democratic candidate. The machinery for conducting the election was made up by the appointment by the governor of three commissioners of election in each of the aforesaid counties, two of each class being chosen from the republican party, and one from the democratic party. These commissioners then appointed three managers of election to each polling-precinct in their respective counties; two of each class of managers being taken from the republican party, and one in each from the democratic party. Besides these a number of United States deputy marshals and supervisors of election, composed of a two-third majority of republicans, were appointed; and in addition a number of deputy sheriffs were appointed by the sheriffs of Charleston and Orangeburgh Counties, exclusively republican in their politics. In the appointment of all these officials, from the county commissioners of election down, the selection was so biased as to give an undue advantage and ascendency to the republican party, and was designed to affect the fair result of said election.

In presenting the state of the vote cast in these three counties, constituting the second district, we will adopt in our enumeration, for convenience and the facility of public reference, the vote cast for governor, inasmuch as the variance in the votes cast for governor and those cast for member of Congress is so very trifling that for this purpose, and for eliciting the truth, we can safely assume them to be the same.

By reference to the table of votes to be found at page 116, part 2, congressional report upon the election in South Carolina, we find that the whole number of votes polled in Charleston County amounted to 23,841, of which we will assume (for the discrepancy is but the smallest fraction, and too trifling) that Richard H. Cain received 15,032, and M. P. O'Connor 8,809.

In Orangeburgh County 7,339 votes were polled; of which R. H. Cain received 4,469, and M. P. O'Connor 2,870.

In Clarendon County 3,317 votes were polled; of which R. H. Cain received 1,881, and M. P. O'Connor 1,436.

The total vote for R. H. Cain in the three counties summing up 21,382, and the total for M. P. O'Connor 13,115; with a majority, according to these tables, of 8,267 in favor of R. H. Cain.

The primary returns from which this summary is taken were made by the managers of polling-precincts to the county commissioners of election, and by them aggregated and doctored in the interest of the republican party, and forwarded to the board of State canvassers, sitting in Columbia. The members of this board were candidates for State offices on the same general ticket with R. H. Cain, the republican candidate for member of Congress; and the members of the board, who certified their own election along with that of Cain, have been ousted of their State offices by the judgment of the supreme court of the State of South Carolina.

This last board met in secret; conducted their proceedings in a manner to exclude all investigation or scrutiny of their conduct; usurped and exercised functions that did not belong to their office; first ignored and then set at defiance the authority and mandate of the supreme court of the State; were attached for contempt of the authority of the court, fined and imprisoned; and escaping punishment through the surreptitious and malign intervention of another tribunal, have never to this day purged themselves, but now stand convicted and unpurged of their crime.

H. E. Hayne, who was then secretary of state, and a member of this returning board, but now a fugitive from justice, issued to Richard H. Cain a certificate certifying his election as member of the Forty-fifth Congress from the second congressional district of South Carolina.

This certificate is false in this, that Richard H. Cain did not receive a majority of the legal votes cast in said election; that his alleged majority is fictitious and fraudulent by virtue of the illegal votes which were cast in said election in his favor, largely in excess of the legitimate vote of the three counties of the second congressional district, and in excess of his alleged majority; and because his competitor, M. P. O'Connor, did, in fact and in truth, receive a majority of the legal votes cast in said election, which entitles him to the seat.

To determine the legal vote of the congressional district we have various data to guide us in our inquiry. Taking the population of the three counties as a basis, and applying the recognized ratio of one-sixth, which the voting population bears to the whole, we are furnished with one method of solution.

According to the tabulated statements of votes in the various States of the Union, as reported in every general election held in the States, the voting strength of a community has never, in normal times, exceeded one in every six of population; and has not always equaled this ratio.

Now, the actual population of Charleston County, according to the United States census of 1870, amounted to 88,863, and the voting population to 18,559; of Orangeburgh County to 16,865, and the voting population to 3,528; and of Clarendon County to 14,038, and the voting population to 2,925. The aggregate population of these three counties, according to the census of 1870, as there laid down, amounted to 119,766, and the aggregate voting strength to 25,012. But if we take one-sixth of the aggregate population as the voting strength of these three counties, we have as a result 19,794, constituting the entire vote; and if we increase the ratio to one-fifth, we have 23,953 as the full vote. Now, the whole vote cast in these three counties at the election in November, 1876, amounted, upon the face of the returns and the declaration of the board of State canvassers, to 34,497, in the proportion of one vote to each 3½ of population. Now, subtract from this one-fifth, 23,953, the given ratio of the voting to the whole population, we have left 10,544 votes over and above the legitimate vote of these three counties; and, taking another test, if we subtract from the entire vote cast, 34,497, the aggregate vote of the three counties according to the United States census of 1870, which has been stated to amount to 25,012, we have left 9,485 in excess of the legitimate vote.

Now, we will separate the counties for the purpose of ascertaining the legitimate vote in each, and the excess cast in each in 1876:

In Charleston, population		88,863
Vote in the ratio of one-fifth of population	17,772	
Vote cast in 1876	23,841	
Excess over legal vote	6,069	

In Orangeburgh, population		16,865
Vote in the ratio of one-fifth of population	3,373	
Vote cast in 1876	7,339	
Excess over legal vote	3,966	
In Clarendon, population		14,038
Vote in the ratio of one-fifth of population	2,807	
Vote cast in 1876	3,317	
Excess over legal vote	510	
Total population recapitulated		119,766
Total vote cast in 1876	34,497	
Vote in ratio of one-fifth of population	22,953	
Excess over legal vote	11,544	

And testing it according to the voting strength, by the United States census of 1870, we have as follows:

Charleston, voting strength		18,559
Vote cast in 1876		23,841
Excess over legal vote		5,282
Orangeburgh, voting strength		3,528
Vote cast in 1876		7,339
Excess over legal vote		4,811
Clarendon, voting strength		2,925
Vote cast in 1876		2,807
Excess over legal vote		118

Bearing in mind constantly throughout our inquiry that these three counties and in fact the whole State, have been under the most complete domination and sway of the radicals from 1868 down to 1876, let us see how this comparison is borne out by the registration and the votes cast in the successive general elections from 1868 down to the last general election.

The registration of voters in Charleston in 1868, when the widest latitude was allowed by the registrars to all offering to register, gave to Charleston 18,235, Orangeburgh 5,025, and Clarendon 2,320. Considerable discount should be allowed for the anxiety of the republican managers to swell the registration as large as possible. In the presidential contest of 1868 the whole vote polled in Charleston was 17,536, in Orangeburgh 3,055, in Clarendon 2,220. In the presidential contest of 1872 the whole number of votes cast in Charleston was 13,500, in Orangeburgh 3,384, in Clarendon 1,431. Now, if an average should be taken of the votes cast in the different general elections between 1868 and 1876 in those counties where the radical party had unopposed and unobstructed sway, the result will be found to tally closely with the vote allowed these counties in the ratio of one-fifth to their entire population. The vast excess took place in 1876, by fraudulent and illegal voting, when the republican party was struggling for life, and to avert the downfall which had been foretold and expected by some of its sanguine followers.

At the general election held in 1874, there were two republican rival candidates for member of the Forty-fourth Congress, namely: C. W. Buttz and E. W. M. Mackey. E. W. M. Mackey received the certificate of his election from the secretary of state, based upon the returns of the board of State canvassers. Buttz contested Mackey's seat, and the committee of the House of Congress, to whom the matter was referred, after a full, minute, and patient investigation, reported that the frauds and irregularities of said election were so numerous and wide-spread as to vitiate the whole election, and recommended that it should be declared null and void, and the seat held by Mackey made vacant. This report of the committee was confirmed upon a full vote taken in the House, and a new election for the unexpired term was ordered. It will be useful in this investigation to have recourse to certain facts that are made to appear in the committee's report of kindred nature to the present issue. The main ground relied upon by the committee in their report in this case was the large and excessive vote thrown in the city of Charleston. The committee say: "The whole evidence clearly shows the character of the election in the city of Charleston, and must, we think, satisfy the House that such an election ought not to be sanctioned or tolerated. To allow the returns from such voting-precincts to be canvassed is to encourage fraud and corruption; and your committee have unanimously come to the conclusion that the whole vote of the city of Charleston must be rejected, as fraud was committed by or assented to by the managers of the election as well as by other parties, and it is impossible to ascertain how many legal votes were cast."

Now, let it be borne in mind that the vote cast in the city of Charleston in this election was 10,409 against 12,517 in 1876.

If the frauds and irregularities practiced in that election were monstrous, they pale into insignificance before the stupendous crimes committed against the freedom and purity of the elective franchise in 1876. The enormous and excessive vote which was polled in Charleston and Orangeburgh Counties last November cannot be accounted for, save upon the theory that the whole election machinery was engineered and manipulated by a party determined to bring about a result that would give Chamberlain so large a majority in this populous negro section as would counteract any majority for Hampton that might be given him in the upper counties of the State.

In order to swell the republican vote beyond its legal proportions and decrease the full strength of the democratic vote, not only was the election machinery craftily and fraudulently used, but intimidation and threats of intimidation upon a gigantic scale were resorted to, to force the colored people, whether so inclined or not, to vote the republican ticket, and to prevent them from voting the democratic ticket. Fraudulent repeating of republican voters, and voting minors of all ages between fourteen and twenty-one, was boldly and openly done. There was no hinderance to the perpetration of these frauds, for every license was given to the turbulent element among the blacks, by the State and municipal authorities in this locality, to overawe peaceful and law-abiding citizens into constrained submission to the most flagrant outrages. At page 12, report of congressional committee, part 1, the committee say: "Many cases of threats and actual violence were proven as coming from colored people to deter men of their own race from voting with the democrats. Women utterly refused to have any intercourse with men of their own race who voted against the republicans. One instance was proven of the actual desertion by a wife with the children of a husband because he made campaign speeches for the democrats." Maddened by the dread of defeat and the intoxicating counsels of their leaders, they held unrestricted sway in Charleston and the islands adjacent, and the country surrounding; and an open field was afforded for the stuffing of ballot-boxes, repeating, and the perpetration of other wrongs and enormities which their evil passions and the counsels of their leaders might prompt.

At page 23, congressional committee report, part 1, the committee say: "In the low country, both before and upon the day of the election, almost every kind of intimidation was resorted to in order to prevent negroes from voting the democratic ticket. Threats were first employed, and when they failed to produce the desired effect, the most cruel and barbarous measures were resorted to; negroes were stripped naked, beaten with whips and clubs, and in some cases cut with knives or razors; their only offense being that they had resolved to vote the democratic ticket. The negroes, maddened by the report circulated by unscrupulous party leaders, that if the democratic party should be successful in electing its candidates they would again be reduced to slavery, were like so many ferocious wild beasts. At some of the voting-precincts the voters were nearly all negroes. Upon election day they assembled at the polls armed with shot-guns, rifles, muskets, swords, knives, bayonets on sticks, and almost every other conceivable weapon, shouting, cursing, and threatening, swearing that they would kill any damned democratic nigger that offered to vote. As the negro approached the polls he would be set upon by these armed men. If he had a democratic ticket in his hand it was taken from him, a republican ticket substituted, and the voter marched up to the ballot-box with clubs brandished over his head, and compelled to deposit his ticket in the presence of his assailants. It was by such means that the voice of the people was stifled and large majorities rolled up for the men who had brought ruin and disaster upon every business interest in South Carolina, impoverished her people, made her treasury bankrupt, banished from the faces of her children the smile of hope, and left in its stead a settled gloom and despair."

Large reinforcements of United States troops were sent into the State upon the call of Governor Chamberlain, a short time previous to the election, for the ostensible purpose of preserving the peace and preventing violence growing out of the political issues to be passed upon by the people at the election. These same troops were used to overawe the colored people, and prevent them from voting the democratic ticket. Their presence in the State had the effect of encouraging the insolence of the radical blacks, making them more audacious in their designs and impressing them with the belief that they had come in the interest of the republican party, to serve as a shield and protection to the radical blacks in any tumult they might stir up in the election.

At page 12, congressional report, the committee say: "In addition to the Army, the State was crowded with United States deputy marshals and supervisors of election. Fifteen hundred of these men were stationed on election day at the various precincts in the State. Many acted as electioneering agents of the republican party. Many of these could not read their own commission nor the printed instructions issued by the Attorney-General. They were entirely unfitted to be charged with preserving the peace of the community at a time of so much excitement." In conjunction with these forces, a host of deputy sheriffs were appointed by the sheriff of Charleston County, to act as ralliers and whippers in of the republican party, and as intimidators. The whole influence of the State government and its officials and of all the United States officeholders were concentrated and freely used for some weeks before the election, to carry the election, foul or fair, for the republican party.

Against these combined efforts of tyranny and wrong, the only safeguard and protection left for the white people and democrats depended upon the rifle clubs that were organized in Charleston. These clubs were originally formed for social purposes, but were fostered by Governor Chamberlain. Some of them were armed by the State through him, and were called the militia of citizen soldiery of the State. They were drilled by their officers to afford protection to the negroes who desired to act and vote with them, and their individual members held themselves in readiness to act in case of any great or sudden emergency, or when the public peace or safety was imperiled. In the latter part of September or the beginning of October, Governor Chamberlain issued a proclamation commanding these rifle clubs to disband, and there can be no doubt, in the language of the committee, that "the letter of his order was complied with." Thus disarmed and powerless to repel aggression, the democrats were placed at the mercy of an angry and lawless mob, infuriated to acts that would strike terror into the colored people and prevent them from voting the democratic ticket.

It was under this black and malignant reign, with tumult and strife in the very air, and bloody-handed riot ready to spring from its lair and rend the vitals of society, that the political canvass of 1876 was conducted, and the election of the 7th of November was held in Charleston and Orangeburgh Counties. Such an election was a mockery and a snare.

At this distance of time from the date of the occurrence it makes the blood boil over the recollections of the taunts, indignities, and outrages that were heaped upon unoffending citizens at the polls in Charleston. The city of Charleston on the day of election was at the mercy of a brutal and licentious mob, and her patient and law-abiding people saved from an outburst of insurrectionary frenzy and crime simply by the fortitude of their endurance and submission. At two o'clock a. m., the morning of the election, bands of black radicals, with fife and drum, paraded the streets of the city, making the night hideous with their barbarous yells and at this dead hour summoning with loud demonstrations at each citizen's gate the minions of their party to swell the ranks of the boisterous legions who were preparing to do the evil work of that election day. Mischief was then afoot, and it is not surprising that their devilish machinations should have culminated in the scenes of riot and bloodshed which a few days after disgraced the streets of Charleston. In the language of the committee, "Clearly an election held under such circumstances should not stand for a moment." To uphold it would be at war with all sense of right and would shock any fair mind. An election to be valid must be free. No show of military power at an election to interfere with or in any way to control or influence it should be tolerated for a moment.

An election under such circumstances is worse than a fraud. To recognize the election under such circumstances would bring our institutions into disgrace and contempt. And every virtuous citizen of the Republic answers back the indignant denunciation of the committee, that the man who carries with him to the Forty-fifth Congress the certificate of the historically infamous returning board of 1876 should not be allowed to ascend the steps or profane with his tread the pavements of the Capitol. So impressed, yea, astounded, were the house of representatives of the General Assembly of this State by the enormities of the frauds and irregularities which were done in Charleston at the election, that, after a most careful and impartial investigation of the whole subject in the case of the protest against the Charleston delegation by the committee specially appointed for this purpose, it was resolved by an almost unanimous vote to exclude the Charleston delegation, and their seats were declared vacant and a new election ordered, which has been held and a new set of Representatives been chosen.

These are the facts sifted out of a vast mass of testimony upon which protestants claim:

1st. That the certificate of election as a member of the Forty-fifth Congress which R. H. Cain holds is false and fraudulent.

2d. That M. P. O'Connor did, in truth, receive a majority of the legal votes cast in said election; and this being made to appear from the facts stated, if the House should determine that a valid election has been held, he is entitled to take the seat as member from the second district of South Carolina in the Forty-fifth Congress.

In support of these propositions your memorialists claim that, according to the United States census of 1870, without regard to the other tables cited upon which to base an enumeration, the legal vote of the counties of Charleston, Orangeburgh, and Clarendon, cannot exceed the maximum of 25,012 votes; and that the excess of votes cast over this number should be subtracted from the total vote shown by the returns to have been given to R. H. Cain. This subtraction from his vote should be made because it has been shown, and the report to Congress establishes it, that all the illegal votes were cast by the republican party. The field was clear, and they had the opportunity to cast them and to diminish the vote that would have been cast for the democratic candidate by preventing many who were inclined to vote for him from doing so. The vote in excess of the legal vote, according to the United States census of 1870, has been shown by figures and statistics to amount to 9,485: deduct this quantity from 34,497 (the total vote in the three

counties) would leave 25,012, of which M. P. O'Connor actually received 13,028, leaving him a clear majority of over 500 votes. The vote that he received was genuine and regular, and cannot be and has not been impeached. All that did vote for him were duly qualified to vote, and, weighed in these scales, there is little doubt that the free, fair, and honest expression of the community has been spoken in his favor; and his election was the will of the majority of the legal voters in the three counties of Charleston, Orangeburgh, and Clarendon, declared through the ballot-box.

But if the House should come to the conclusion not to seat Mr. O'Connor, in that event we protest as invalid the election held for member of Congress from the second congressional district of South Carolina; and in behalf of the laws which have been trampled upon, and order which has been overthrown in that election, and for the vindication of the freedom and purity of the elective franchise, and for the honor of American institutions, we demand and protest that the said election be declared null and void.

M. P. O'CONNOR,
B. H. RUTLEDGE,
F. W. DAWSON,
G. LAMB BUIST,
R. SIEGLING,
JOHN H. DEVEREUX,
EDWARD LAFITTE,
R. B. RHETT,
THOMAS R. McGAHAN,
And others.

Mr. CLARKE, of Kentucky. I now yield to the gentleman from Ohio, [Mr. SOUTHARD,] after which it is my intention to call the previous question.

Mr. SOUTHARD. I rise to favor the resolution offered by the gentleman from Kentucky, [Mr. CLARKE,] for the reason, in addition to what was said in the discussion of the case just disposed of, that the election was held in South Carolina under the most extraordinary circumstances. Whether the point I shall make goes to the validity of the election itself, so as to be considered by the Committee of Elections or by the House at this time, I will leave to the judgment of the House.

It is a notorious fact that the election in South Carolina was held at a time when that State was under the ban of insurrection, as proclaimed by the President of the United States on the 17th of October last, and under military occupation. Military occupation of that State was taken even earlier than October last and was continued down to April of this year. I say the election was held under the proclamation of the President that the State was in insurrection; and if in insurrection it was not in a condition to elect anybody, and a certification of the vote under these circumstances is a mockery. For these reasons and in order that the matter may be fully investigated, I favor the resolution offered by my friend from Kentucky, [Mr. CLARKE.]

Mr. CLARKE, of Kentucky. I yield to the gentleman from Maine, [Mr. HALE,] who desires to offer a substitute for my resolution.

Mr. HALE. I send up to the Clerk's desk a substitute for the resolution now pending. I do not propose to debate it at all, for I believe the action of the House already taken in another case settles the question involved in this case.

The Clerk read as follows:

Resolved, That Richard H. Cain be now sworn in as a Representative in this Congress from the second district of the State of South Carolina.

Mr. CLARKE, of Kentucky. I will now yield a few minutes to the gentleman from Texas, [Mr. REAGAN.]

Mr. REAGAN. I propose to make a single point upon the question before the House, because I think this House made a mistake in its action upon the last case by failing to comprehend the precise rules which should govern these cases. It is laid down that the certificate of election first issued to a person claiming a seat in this House, if regular in form, constitutes a *prima facie* right to the seat; but it is also laid down in the law of election that where a second certificate is issued showing that the election is not legal the first certificate does not create a *prima facie* case; that is, where the first certificate creates a *prima facie* case a second certificate from the same officer, certifying in the same capacity, gives this House to understand, as in this case, that the first certificate was issued in violation of law and in defiance of a writ of prohibition.

Now, if in this case the first certificate was so issued and that fact comes to us from an officer authorized to certify the fact, then we have before us that which shows that no *prima facie* case has been made; and, if we adhere to principle, that would prevent us from recognizing this as a *prima facie* case. It seems to be held by some here that, because the first certificate shows an election and the information of the unlawful issuance of that certificate comes from a second certificate, we must disregard that second certificate. I invoke the attention of the House to the fact that both of these certificates come from the secretary of state of South Carolina. It is not sufficient to say that the one comes from one political partisan and the other from another political partisan. Each comes from the legal authority, the secretary of state, under the great seal of the State, the one certificate making a *prima facie* case and the other disclosing to us the fact that the first was issued in defiance of a writ of prohibition served upon the returning officers by the supreme court of the State of South Carolina. That being so, it seems to me that the case ought to be referred to the Committee of Elections to determine the *prima facie* case.

I regret that I have not the cases now before me, but I have read them within the last two or three days, several cases decided by this House within the last ten or fifteen years, in which the question of *prima facie* right along with the contest has been referred to the Committee of Elections. I apprehend that some of our friends here are laboring under a mistake from not having investigated those cases, and suppose that there is always a *prima facie* case. Our reports of contested-election cases are full of instances where the question of contest and also of *prima facie* right have been referred to the Committee of Elections. I will read an authority which will be respected by this House as pretty high authority upon this point. I read section 225 of American Law of Elections, by our late colleague and the present Secretary of War, Mr. McCrary:

While it is, as we have seen, true that, where a certificate of election is confined to a statement that the person to whom it is given is duly elected, or words to that effect, it is *prima facie* evidence that such person is entitled to the office, it is also true that where it recites the facts upon which the certifying officer relies as his justification for issuing it, and where, from those facts, it clearly appears that the person named was not elected, the certificate destroys itself.—*Hartt* vs. *Harvey* 32 Barb., 55.

This, I submit, is an authority precisely in point. It refers to a case where the certificate discloses facts which vitiate it. I presume that the same principle would apply when two certificates of equal authority come from the same officer. Now, in this case, if we can determine from the case made by the two certificates of the secretary of state, without resorting to proof *aliunde*, that there was not a lawful election—if the case as certified by the secretary of state shows without proof *aliunde* that the certificate was issued against law, in violation of law, in contravention of a prohibition issued by the supreme court of South Carolina, then there certainly cannot be, either in law or principle, any difficulty in deciding that this case should go to the Committee of Elections in order that they may determine, preliminarily, who is entitled to this seat.

Mr. CLARKE, of Kentucky. I yield five minutes to the gentleman from New York, [Mr. MAYHAM.]

Mr. MAYHAM. Mr. Speaker, as has been suggested by the gentleman from Texas [Mr. REAGAN] who preceded me, it seems to me that the House is running into an error in assuming that here is a clear *prima facie* case. In the New Jersey case, to which the distinguished gentleman from Massachusetts [Mr. BANKS] has referred, the Governor after issuing one certificate impeached that certificate by issuing another. Applying that rule to this case, we would have a right to say that here no *prima facie* case has been made. It is true that the gentleman from Massachusetts undertakes to draw a distinction between two different secretaries of state—between two different individuals who have held that office. But I apprehend that the House cannot be mistaken upon that subject. It is the secretary of state as an officer, not as an individual, who certifies; and can it be said that after one certificate has been made in favor of one candidate, and the same officer, acting under the influence of investigation more mature and more deliberate, has certified in favor of another candidate, the *prima facie* case is in favor of the one who holds the first certificate? It seems to me not. What is the effect, then? Without knowing which of these gentlemen is entitled upon the *prima facie* case to a seat here, shall we assume to seat one of them when the other, so far as the official certificate is concerned, has as good a *prima facie* right as the one whom we assume to seat?

How shall we arrive at a correct conclusion or approximate a correct conclusion? By referring this whole subject of the *prima facie* right to the Committee of Elections. They can investigate this question; they can arrive at a correct determination, or at least approximate a correct determination; while if we undertake to decide the question now, we have before us two certificates without really knowing the merits of either, and must pass upon them without investigation. I submit, therefore, that the only safe course for us to pursue, the only proceeding in perfect harmony with the decision in the New Jersey case to which the gentleman from Massachusetts has alluded, is to refer this case to the Committee of Elections for a determination of the *prima facie* case.

Mr. CLARKE, of Kentucky. I now demand the previous question.

Mr. COX, of New York. I call for the yeas and nays.

Mr. MILLS. This is a matter of so much importance that I hope some one may be heard on the opposite side of the question. I appeal to the gentleman from Kentucky to yield to me for a few moments.

The SPEAKER. The gentleman can secure the floor by inducing the House to vote down the previous question.

Mr. MILLS. I do not know whether we can do that; and I would like to be heard upon the question.

The SPEAKER. Does the gentleman from Kentucky yield to the gentleman from Texas, [Mr. MILLS]?

Mr. CLARKE, of Kentucky. I yield five minutes.

Mr. MILLS. Mr. Speaker, I state as an incontrovertible legal proposition that where the certificate, upon its face, is in conformity with law, there is no power anywhere to revise that certificate except in this House; and that in all cases where the question as to the *prima facie* right has been referred to a committee for decision it has been, in every solitary instance, where the certificate was irregular.

Now, sir, in the case of Simpson *vs.* Wallace, from the State of South Carolina, reported in the same book from which my colleague [Mr. REAGAN] read, the board authorized by law to canvass the returns attempted to revise those returns and correct an error; and this House decided that it could not be done; that the certificate being in conformity with law, a clear, unequivocal statement on its face, in compliance with law, entitled the party holding it, and entitled the constituency he claimed to represent, to the respect of this House.

Why, sir, it is a blow at the rights of every State to deny to any man holding such a certificate a voice in the organization of the House. It is an attempt to strike down the sacred right of representation; and I will let my arm be stricken from my body before I will relinquish this right of the American people that lies at the very foundation of their civil liberty. If you can deprive this man of his right to take a seat here on his *prima facie* case, you can deprive of their rights his two democratic colleagues who are in the same position. What difference can you make, what distinction can you draw between him and the gentlemen who sit on this side of the House who came here accredited by the same authority? This fact is so patent, so conclusive, that no gentleman on this floor dare to question it. Yet we are told that a *prima facie* case, regular, duly legal, may be referred to a committee.

Mr. MAYHAM. Are there two certificates in this case?

Mr. MILLS. I understand their names are all in the same certificate. But let me say to the gentleman from New York that we cannot go behind the certificate. The door is closed on the first certificate and the power to revise resides nowhere but here. It makes no difference that there is fraud, that there is violence, that there is intimidation. I care not what may be the objection to the first certificate, if it is in due form of law, and that is determined by the authority of the great seal of the State, then the certificate is entitled to command the respect of this House, and gives the right to the person bearing that certificate to a seat in the organization of this House.

Mr. SPARKS. Will the gentleman from Texas allow me to interrupt him for one moment?

Mr. MILLS. Certainly.

Mr. SPARKS. If the right to revise is in this House, has not the House, then, the right to use all its powers in that direction? Has it not the right to obtain all the light and information it can, by referring the question to the Committee on Elections, and, on the report of that committee, acting advisedly?

Mr. MILLS. Not a *prima facie* case. *Prima facie* means presumption. The gentleman from Illinois is too good a lawyer to ask me such a question as that. Presumption sits by the fireside of every man in this land, to protect his life, his liberty, and his property. Every act of a sworn officer carries with it the presumption of correctness. This differs from the case where the certificate is not in due form, and gentlemen ought to draw the distinction between this and a case which is not in compliance with law upon its face. A case which is not in compliance with law on its face, or a certificate which recites a fact which shows that it is illegal, does not present a *prima facie* case. If it recites the fact that the election was held on a day prohibited by law, it is a nullity, and stands in the same position as a case where there is no certificate at all. Where it recites substantial compliance with the law, then it is conclusive, and the House must permit the member bearing such a certificate to participate in the organization of the House.

Mr. CLARKE, of Kentucky. If there be no objection, I will now call the previous question.

Mr. CAIN. I ask the gentleman from Kentucky to yield to me for a moment.

Mr. CLARKE, of Kentucky. Certainly.

Mr. CAIN. I wish to remark, Mr. Speaker, that there is no difference in the cases presented before this House from South Carolina. There is no difference in the certificates of the five members coming from the State of South Carolina, which have been presented to this House. The same secretary of state, under the same great seal of the State, gave to me, to Mr. Rainey, to Mr. SMALLS, to Mr. AIKEN, and to Mr. EVANS, the same certificate of election. We stand, therefore, upon the same basis, claiming the same right.

I want to say this, for if the election be not correct it is no fault of mine. If the certificate be not correct, it is, nevertheless, in accordance with law and precisely like the others. The laws of South Carolina prescribe that the secretary of state shall issue the certificate, and that certificate I have presented. A mistake possibly was made in the fact that the certificate given to me was given during the time when the secretary of state was impeached. There is no such thing as calling in question the election of the secretary of state so far as that certificate is concerned, for it was given after that question was settled, and, therefore, it must be held to be valid.

Again I received, as has been read from the desk, the certificate of the supreme court certifying to my election. The cases are the same. All I ask is that the 15,267 voters who gave me the majority in my district shall have fair representation. I ask that the right of franchise belonging to those I represent shall be secured. I ask the same right in the administration on the one side as upon the other. We only ask equal justice; nothing more than a fair chance in the race of life.

Mr. CLARKE, of Kentucky. I now yield for a few moments to the gentleman from Tennessee.

Mr. BRIGHT. Mr. Speaker, I shall vote in favor of the resolution, and I shall vote that way for the reason that I do not believe this makes what is called a *prima facie* case. I admit the force of the rule in a *prima facie* case, but I maintain that the case now before the House does not fall within the rule. The inquiry is presented, what is a *prima facie* case? The gentleman from Texas says it is a presumption. It is the first presumption which is raised in a case, but wherever there is a secondary presumption the *prima facie* case yields to that secondary presumption. When the secondary presumption obtains, one presumption cancels the other. This is not a *prima facie* case, but it is a dual case presented to this House, and I cannot see how it is that any man acting upon presumption can settle the question satisfactorily which one of these certificates reflects the great fact which is to prevail in this House, which one of these contestants has been elected by the people of South Carolina. That is the question; there is the great tap-root of State rights and popular rights; that is reflected by the will of the people; and while we stand here to adjudge these questions there is an important duty which rises before us as Representatives and falls within our constitutional obligation, that no person shall participate as a Representative here in the legislation of the country until he has a *prima facie* right to act.

But when the same authority from the same State comes with two certificates and says to the Representatives here that you must accept the one *prima facie* and reject the other because the adoption of one necessarily results in the exclusion of the other, I cannot feel the force of the argument that has been made. I think that it is due to the Representatives of this body, to the people of South Carolina, and to the popular rights of all the people of the country, that this question should be referred, when the certificate comes in a dual form, that the fact may be determined which one actually reflects the will of the people of South Carolina.

In reply, Mr. Speaker, to the suggestion which has been made that the members from South Carolina all stand upon the same platform, all hold the same certificates, it is my understanding that one set of these Representatives hold the certificates of one secretary and the other set hold the certificates of both forms of government, whether *de jure* or *de facto;* and as a matter of course the cases are distinguishable, and should be distinguished by the House. These being the reasons which are operating upon my mind, I yield the floor, claiming the right to vote in accordance with the view which I have now expressed.

Mr. CLARKE, of Kentucky. I demand the previous question.

The previous question was seconded and the main question ordered.

The SPEAKER. The question is first on the substitute offered by the gentleman from Maine, [Mr. HALE.]

Mr. CLARKE, of Kentucky. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. ELAM. I desire to say that I feel some delicacy in voting upon this question.

The SPEAKER. That is a question for gentlemen to determine themselves.

Mr. HALE. Let the substitute be read.

Mr. BUCKNER. I ask that the original resolution may also be read.

The resolution and substitute were read.

The question being taken on agreeing to the substitute, there were—yeas 181, nays 89, not voting 19; as follows:

YEAS—Messrs. Aldrich, Bacon, Bagley, John H. Baker, William H. Baker, Ballou, Banks, Banning, Bayne, Beebe, Bisbee, Blair, Bliss, Bouck, Boyd, Bragg, Brentano, Brewer, Briggs, Brogden, Browne, Buckner, Bundy, Burchard, Burdick, Butler, Calkins, Camp, Campbell, Candler, Cannon, Caswell, Chittenden, Claflin, Alvah A. Clark, Rush Clark, Cole, Conger, Jacob D. Cox, Crapo, Cummings, Cutler, Danford, Horace Davis, Deering, Denison, Douglas, Dunnell, Dwight, Eames, Ellis, Ellsworth, Errett, I. Newton Evans, James L. Evans, Felton, Field, Foster, Freeman, Frye, Fuller, Gardner, Garfield, Glover, Gunter, Hale, Hanna, Hardenbergh, Harmer, Benjamin W. Harris, Henry R. Harris, Harrison, Hart, Hartridge, Hatcher, Hays, Hazelton, Hendee, Henderson, Hiscock, House, Hubbell, Hunter, Humphrey, Hungerford, Ittner, James, John S. Jones, Joyce, Keifer, Keightley, Kelley, Ketcham, Killinger, Landers, Lapham, Lathrop, Leonard, Lindsey, Loring, Lynde, Marsh, McCook, McGowan, McKinley, McMahon, Mills, Mitchell, Monroe, Morgan, Morse, Neal, Norcross, Oliver, O'Neill, Overton, Page, Patterson, Peddie, Phelps, Phillips, Pollard, Potter, Pound, Powers, Price, Pugh, Rainey, Randolph, Rea, Reed, Rice, Robbins, George D. Robinson, Milton S. Robinson, Ryan, Sampson, Sapp, Sayler, Schleicher, Sexton, Shallenberger, Sinnickson, Slemons, Smalls, A. Herr Smith, Starin, Stenger, Stewart, John W. Stone, Joseph C. Stone, Strait, Thompson, Thornburgh, Throckmorton, Tipton, Amos Townsend, Martin I. Townsend, Turney, Vance, Van Vorhes, Waddell, Wait, Walsh, Ward, Warner, Watson, Welch, Harry White, Michael D. White, Willets, Alpheus S. Williams, Andrew Williams, Charles G. Williams, James Williams, Richard Williams, Benjamin A. Willis, Wood, Wren, Wright, and Yeates—181.

NAYS—Messrs. Aiken, Atkins, Bell, Benedict, Bicknell, Blackburn, Blount, Boone, Bridges, Bright, Cabell, John W. Caldwell, W. P. Caldwell, Carlisle, Chalmers, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cobb, Collins, Cook, Covert, Samuel S. Cox, Cravens, Crittenden, Culberson, Davidson, Joseph J. Davis, Dibrell, Dickey, Durham, Eden, Eickhoff, John H. Evans, Ewing, Finley, Forney, Franklin, Garth, Giddings, Hamilton, John T. Harris, Hartzell, Henry, Hewitt, Herbert, Hooker, Hunton, Frank Jones, Kenna, Kimmell, Knapp, Knott, Ligon, Lockwood, Luttrell, Mackey, Maish, Manning, Martin, Mayham, McKenzie, Money, Morrison, Muldrow, Muller, Pridemore, Quinn, Reagan, Reilly, Rice, Riddle, Ross, Scales, Shelley, William E. Smith, Southard, Sparks, Springer, Steele, Swann, Townshend, Turner, Veeder, Walker, Whitthorne, Jere N. Williams, Albert S. Willis, and Wilson—89.

NOT VOTING—Messrs. Bland, Cain, Darrall, Elam, Fort, Gause, Gibson, Goode, Haskell, Henkle, James Taylor Jones, Jorgensen, Pacheco, Roberts, Robertson, Singleton, Stephens, Tucker, and Young—19.

So the substitute was agreed to.

During the call of the roll the following announcements were made:

Mr. FORNEY. My colleague from Alabama [Mr. JONES] is absent on account of sickness. If he were present I presume he would vote "no."

Mr. HOUSE. My colleague from Tennessee [Mr. YOUNG] is unavoidably detained from the House.

Mr. FORT. I am paired with Mr. ROBERTS, of Maryland, who is

absent on account of sickness. If he were present, he would vote "no," and I should vote "ay."

The result of the vote was then announced as above recorded.

The question being taken on the resolution as amended, it was adopted.

The SPEAKER. The gentleman from South Carolina, if present, will come forward and take the oath.

Mr. CAIN appeared, and qualified by taking the oath prescribed by the act of July, 1862.

Mr. CLARKE, of Kentucky. I present certain papers touching the contested election for the second Congressional district of South Carolina on which the House has just taken action, and move that they be referred to the Committee of Elections, when appointed, together with the certificate of election.

The motion was agreed to.

MESSAGE FROM THE PRESIDENT.

The SPEAKER. The Chair presents to the House a message received from the President of the United States, and directs the Clerk to read it.

[The message will be found in the proceedings of the Senate.]

Mr. WOOD. I move that the message of the President be referred to the Committee of the Whole House on the State of the Union, and that the usual number of copies be printed for the use of the House.

The motion was agreed to.

RULES OF THE HOUSE.

Mr. WOOD. I desire to offer a resolution.

The SPEAKER. On what subject?

Mr. WOOD. In regard to the rules of the House and a Committee on Rules.

I send the resolution to the Clerk's desk.

The Clerk read, as follows:

Resolved, That the rules of the House of Representatives of the Forty-fourth Congress shall be the rules of the House of Representatives until otherwise ordered.

Resolved further, That a committee of five, to consist of the Speaker and four members to be named by him, be appointed, to whom shall be referred the rules of the House, and who shall be authorized to report at any time such amendments on the revision of the same as they may think proper.

The resolution was adopted.

Mr. WOOD 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.

REPRESENTATIVE FROM LOUISIANA, THIRD DISTRICT.

The SPEAKER. The next case is that of C. B. Darrall, of the third district of Louisiana.

Mr. GIBSON. I objected yesterday to the swearing in of Mr. Darrall in order that I might make to the House a statement and offer a resolution. On yesterday, just before the Clerk began to call the roll of the House, a member from the State of Louisiana handed me a certificate from the governor of that State in effect revoking the certificate which he had originally issued to Mr. Darrall and declaring this gentleman to be elected from the third congressional district of the State of Louisiana. That certificate was issued to Joseph H. Acklen as the Representative elected from the third congressional district of Louisiana. This second certificate was issued by the lieutenant-governor of Louisiana in the temporary absence of the governor, and I ask that it be read to the House, and also that the resolution which I send up shall be read.

The SPEAKER. The resolution will first be read.

The Clerk read the resolution, as follows:

Resolved, That Mr. Darrall, of the third district of Louisiana, be sworn in, and that the credentials of Mr. J. H. Acklen, of said district, with the papers thereunto attached, be referred to the Committee of Elections, when appointed, with instructions to report upon his right to a seat in this House from said district.

Mr. GARFIELD. Certainly there is no objection to that.

Mr. GIBSON. Then I will ask for the adoption of the resolution and that the papers which I send up be printed in the RECORD.

The question was taken upon the resolution, and it was agreed to.

Mr. GIBSON 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.

Mr. DARRALL then appeared and qualified by taking the oath prescribed by the act of July, 1862.

No objection being made, the following papers were ordered to be printed in the RECORD:

UNITED STATES OF AMERICA, STATE OF LOUISIANA,
Executive Department.

This is to certify that, from a corrected statement of a general election began and held in the State of Louisiana, and in the third congressional district of said State, on the 7th of November, 1876, it being the first Tuesday after the first Monday of said month, and the day prescribed by the laws of the United States, and of the said State of Louisiana, for the election of Representatives in Congress from the said State, C. B. Darrall and Joseph H. Acklen appear, from the returns of said election filed in the office of the secretary of state of said State, to have been the only persons voted for in the third congressional district of said State for Representative in the Forty-fifth Congress of the United States from said State; and it further appears from the said corrected statement of the secretary of state, hereto annexed, that Joseph H. Acklen having received a majority of the votes cast for Representative from the third congressional district in said State of Louisiana, in the Forty-fifth Congress of the United States, at said election has been duly, lawfully, and regularly elected to represent said third congressional district of said State in the aforesaid Congress of the United States in accordance with the laws of the United States and of this State.

Given under my signature and the seal of the State of Louisiana at the city of New Orleans this 12th day of October, A. D. 1877.

LOUIS A. WILTZ,
Lieutenant-Governor and Acting Governor of Louisiana.

We, Louis Alfred Wiltz, lieutenant-governor and president of the senate, acting governor of the State of Louisiana, and Will. A. Strong, secretary of state, do hereby certify that the above and foregoing declaration of the result of the election begun and held in the third congressional district of the State of Louisiana, on the 7th day of November, A. D. 1876, and more fully explained in the annexed certificate, is a true copy of the original certificate as recorded in the office of the secretary of state and signed by the acting governor.

Witness our hands and the seal of the State of Louisiana at the city of New Orleans this 12th day of October, A. D. 1877.

[SEAL.] LOUIS A. WILTZ,
Lieutenant-Governor and Acting Governor of the State of Louisiana.

[SEAL.] WILL. A. STRONG,
Secretary of State.

Consolidated statement of the aggregate vote of the parishes constituting the third congressional district of the State of Louisiana at an election held on the 7th day of November, 1876, under a writ of election dated September 16, 1876, for Representatives in the Forty-fifth Congress of the United States, together with the recount of the vote of the parish of Iberville and the report of the board of canvassers in relation to the parish of Saint Martin, in the third congressional district.

Names of parishes.	C. B. Darrall.	Joseph H Acklen.
	Votes.	*Votes.*
Ascension	2,059	1,2 5
Assumption	1,692	1,679
Terre Bonne	1,966	1,393
Saint Mary	2,385	1,423
Iberia	1,455	1,242
La Fayette	661	1,157
Vermillion	228	955
Calcasieu	91	1,291
Cameron	69	225
La Fourché*	2,015	2,036
Saint Martin†	.....	.....
Iberville‡	.....	.....
	12,621	12,666

*According to the decision of the supreme court of this State, in the contested-election case of Webre *vs.* Wilton, decided at Monroe, Louisiana, a copy of which is hereto annexed, Webre's (democrat) majority is ascertained and determined at 98 votes majority.

†This parish was rejected by the board of canvassers, whose report is hereto attached, the returns of said parish having been tampered with while in republican hands. The parish gave a democratic majority in 1874, as by reference to the report of the committee on elections and qualifications of the house of representatives. (See page 27 of the journal of the house of 1875, hereto attached.)

‡The amount of votes for member of Congress in this parish before Hon. James Crowell, parish judge of said parish, as shown by the report of the board of experts, now on file in this office, a certified copy of which is hereto annexed, shows the vote for member of Congress to be as follows: For Joseph H. Acklen 1,595 votes, and C. B. Darrall 1,253 votes; while the return made by the supervisor of registration for said parish gave Joseph H. Acklen 1,078 votes, and C. B. Darrall 2,070 votes. If the parish of Iberville is not included in the addition of votes, there being two different returns of the vote for member of Congress for the third congressional district of this State on file in this office, then the vote of Joseph H. Acklen is 12,666, and that of C. B. Darrall is 12,621, or a majority of forty-five votes in favor of Joseph H. Acklen. If the vote of Iberville parish, as shown by the return of the parish judge and board of experts, is added to the above, then the vote stands as follows: For Joseph H. Acklen 14,261, and C. B. Darrall 13,874.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that the above and foregoing consolidated statement of the vote is a true extract from the original returns made by the supervisors of registration of the election held in the above-named parishes for congressional, State, and parochial officers of this State on the 7th day of November, 1876.

Witness my hand and the seal of the State of Louisiana, at the city of New Orleans, this 8th day of October, A. D. 1877.

[SEAL.] WILL. A. STRONG,
Secretary of State.

SUPPLEMENT OF THE SENTINEL, AUGUST 18, 1877.

A SUPPLEMENT.—We are enabled to publish into this issue the full text of the decision of the supreme court in the contested-election case of Webre *vs.* Wilton. With the exception of a few omissions, caused by the imperfect copy furnished us, it is *verbatim*.

Supreme court of the State of Louisiana. L. A. Webre vs. No. 769 William Wilton. Appeal from the fifteenth district court for the parish of La Fourche, Taylor Beattie, judge. Clay Knobloch, J. S. Billiu, Isaiah D. Moore, of counsel for plaintiff. John Ray, J. Q. A. Baker, John T. Ludeling, of counsel for defendant.

Mr. Justice Egan delivered the opinion and decree of the court in the words and figures following, to wit:

This is a contest for office. The plaintiff claims to have received a majority of the votes cast for the office of sheriff of the parish of La Fourche at the general election in November last, and that he was legally elected sheriff at said election; but that notwithstanding his opponent, the present defendant, was defeated at the polls, he fears and alleges that he will be returned elected and put in possession and enjoyment of the office and emoluments through fraud and other ill practices on the part of the supervisor of registration, the commissioners of election, and other officers and persons. There are numerous other allegations, and the frauds and illegalities are set out in numerous specifications, some of which are general and some more minute and particular. Among them are that the supervisor, a republican, opposed in politics to petitioner and his party, failed to give public and general notice of the polling-places and the names of commissioners; that he failed to appoint democratic commissioners at any of the voting-places as required by law, although professing to so intend to have done so; that he informed the republicans of the location of the voting-places several days before the election and concealed them from the democrats until twenty-four hours before the election, too late to

notify the people in the country in a parish ninety miles long and many parts of which were otherwise accessible slowly and with difficulty; that he issued false and fraudulent certificates of registration, upon which persons voted at the election; that he repeatedly promised, and as often failed, to strike from the registration-list, when called upon to do so, the names of voters who had died, who had removed from the parish, who were convicts, minors, or otherwise not qualified to vote; that votes were polled under the names and numbers of such dead or removed voters by other persons in sufficient numbers, together with the other frauds and illegalities charged, to change the count of vote to his prejudice; that the supervisor did not provide tally-sheets, sealing-wax, writing material, &c., necessary for the use of the commissioners at democratic polls, and did not even send ballot-boxes to others, of which failure and fault he attempted to, and did subsequently, take advantage to the prejudice of the petitioner; that he failed to appoint any polling-place in one of the justice's wards as required by law, where there were at least forty or fifty democratic votes, of which petitioner was deprived in the election thereby; that one poll (17) was not held at the place fixed by law and the supervisor, but at a place one and a half or two miles distant, in a private place, a negro quarter remote from the public road, and without notice to the democrats or even to those of them residing on the plantation, or even to the proprietor; that the election at that poll 17 was begun before daylight in the morning, was conducted exclusively by republican commissioners and against the protest of the United States supervisor of registration, and of democratic voters who, after the election had been going on for some time, discovered by accident where it was being conducted, but refused to vote at an illegal voting-place for fear of losing their votes; that said poll 17 as returned was exclusively republican, and was returned and counted as such and in favor of the defendant and against the plaintiff, to the number of 86 votes; that a large number of colored voters who desired to vote, and would have voted for petitioner and the democratic ticket, were prevented from doing so by intimidation and fraud; that there were many other acts of fraud and illegality on the part of the supervisor, the commissioners of election, and other republicans, whereby it was attempted to defeat the will of the people and the election of petitioner, and to declare his opponent elected when not so in fact; that the supervisor illegally and fraudulently rejected and refused to compile or count the votes from two polling-places, (Nos. 2 and 10,) at both of which the election was conducted fairly and peacefully, and at which petitioner and the democratic ticket received a large majority of the votes polled, sufficient if counted to have given the return of election in his favor and against the defendant; and finally, that, by means of the several frauds, illegalities, and irregularities charged, petitioner and the democratic ticket generally will be illegally deprived of a majority in the count and compilation of return of the votes of the parish of La Fourche, which, as he alleges was and always had been a democratic parish and by a large majority, and was so at the late election.

It is proved that after conference with republican leaders at which he was asked if he could carry the parish for the republicans, and he replied that he would do what he could, one Ledet, a republican, was appointed supervisor of registration in the place of Panalle, an honest colored republican, who was called upon to resign under pretexts the falsity of which is shown. From the moment of his appointment Ledet lent himself to the fraudulent purposes of his party and of those to whom he owed his appointment, and in every way possible endeavored to prevent a fair election in the parish and the polling of the full democratic vote instead of discharging his duty under the law as a public officer. The record is full of details of the most unblushing usurpations, frauds, deceits, and other ill-practices and illegal acts resorted to by the republican supervisor and his associates and advisers in order to carry the parish in favor of the republican ticket and against the democratic ticket and the plaintiff, and to make count and compilation and return of the votes in the same way. These things had grown so common and were habitually practiced with such immunity under the recent rule in Louisiana that they excite no surprise in the mind of any one familiar with the history and conduct of elections in this State for the last few years. Such practices on the part of those charged with the conduct of elections have latterly been a stepping-stone to preferment and fortune instead of consigning their authors to a just punishment. Under pretext of preserving the purity and freedom of elections the whole machinery for their management had become converted into a means of defeating the popular will instead of carrying it out, and as a means of keeping in place and power a set of corrupt men, whose sole object was personal advancement by any and all means however vile, and not the public good. The district judge has exhibited his learning and research to show the enormity of the offenses committed by those who sought to guard against these frauds and ill-practices and to detect and expose them when committed. The acts themselves which provoked this espionage, and their authors, have been passed over by him in silence. They seem to have provoked from him neither censure nor remark.

It may be very true, as remarked by him, that the ballot should be kept sacred and secret. That such is the general design of the law is beyond question, but while severely censuring those citizens of standing and character (as shown by the evidence) who were engaged in the enforced effort to prevent or expose fraud, illegal voting and practices, it seems entirely to have escaped the district judge that the means of removing from the ballot the veil of secrecy was afforded by those who, for their own purposes and in order to prevent freedom and independence in voting, had placed such marks upon their tickets and those of their political friends, and had made them so distinguishable, that not only was it impossible for the ignorant and easily intimidated colored voter to escape detection if he attempted to vote for his white democratic friends in whose capacity and fair-dealing he had confidence, but that the most ordinary observer could readily distinguish the character of the ballots and political complexion. Those who voted such tickets did so with a full knowledge of the object, and must be considered as having given their consent to the exposure of their votes so that by all authority no objection could attach to proof of the vote. That an independent record of the names of voters should have been kept by the United States supervisor was simply the performance of a legal duty; and if that record could be made a check, as it was designed to be, upon corrupt officials whose habitual practice it was to use, as in this case, the police regulations for the conduct of elections as a means of defeating their ends, it is hardly a warrant for the severity of the censure in which it pleased the district judge to indulge in his opinion in this case.

There are not wanting among the utterances of those eminent judges and authors quoted by the district judge others to the effect that the whole object of all laws regulating elections is, under an American system, to secure the great end of carrying out the popular will; and the fact that contests for office are provided for by law presupposes what has always been practiced in such cases, an inquiry and the introduction of evidence as to who rightfully obtained or would have obtained at a legal, fair, and peaceful election a majority of the votes. (Section 12 A, 289, 366; 13 A, 301; 27 A, 507.)

How can this be done without proving by any legal evidence for whom the suffragans cast their votes? A fundamental principle of American and Louisiana law is that it is the casting of the votes or ballots unimpeded by force or fraud which determines with us the result of elections; the laws—the police regulations which are or should be always framed to secure fair elections and a fair polling count and report of the votes—are merely subsidiary to that end; and that while they should be observed and carried out, they are of themselves of far less importance than the end to be attained. It is in the power of no officer or set of officers to substitute their own will for the votes and will of the people, and wherever this has been done it is the duty of the courts, when properly appealed to, not only to enter upon the inquiry but to award the right, and, if need be, to punish the guilty.

In Auld *vs.* Walton, 12 A, 139, the language of the court is: "The sovereign in this land is the people, and the ballot is the expression of the sovereign will. The audacious criminal who lays the hand of violence (and we may add fraud) upon the ballot-box, in effect usurps the sovereignty of the country. Whenever, therefore, a case of such attempted usurpation is presented to the tribunals charged with the jurisdiction of contested elections they should avail themselves of every legal recourse in their reach to ascertain whether the popular will has been expressed through the ballot-box; and, if so, what it has decreed."

There is an essential difference between the act of voting and the police provisions to secure the evidence of the act. The principle that if the votes be deposited the object of the election is attained, and its validity cannot be affected by the non-observance of the directory provisions of the law, has been often disregarded in Louisiana of late years, as it was in this instance; not that the principles are not well settled in her jurisprudence and in that of our sister States, for they have been recognized and announced by the courts not only as constituted before the war but by our immediate predecessors in the case of Burton *vs.* Hicks, 27 A. 507; Sections 9 A, 577; 10, 732; 13 A, 301; and N. S. 67, 1413—(250 Cooley's Const. Lim., 618.) The same author says, page 625, "It is to be constantly borne in mind that the point of inquiry is the will of the electors as manifested by their ballots." The various provisions of the statute under which the election of November last was held, however often they have been misinterpreted or disregarded, were, by their terms and declared intent, simply designed to protect and keep free the ballot and secure its legitimate results.

On the subject of the conduct of elections Judge Cooley says, (Const. Lim., p. 617 and 618:) "Election statutes are to be tested like other statutes, but with a leaning to liberality in view of the great public purposes which they accomplish; and except where they specially provide that a thing shall be done in the manner indicated, *and not otherwise*, their provisions designed merely for the information and guidance of the officers must be regarded as directory only; and the election will not be defeated by a failure to comply with them provided the irregularity has not hindered any who were entitled from exercising the right of suffrage or rendered doubtful the evidences from which the result was to be declared."

Again the author says, p. 618, referring to the leading case of People *vs.* Cook, 14 Barb., 269: "It was said in the same case that any irregularity in conducting an election which does not deprive a legal voter of his vote *or admit* a disqualified voter to vote or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive benefit from it, should be overlooked in a proceeding to try the right to an office depending on such election." Of this the author says: "This rule is an eminently proper one, and it furnishes a very satisfactory test as to what is essential and what is not in election laws." In note 1, p. 618, Cooley says: "In *ex parte* Heath *vs.* Hill, 42, it was held that where the statute required the inspector to certify the result of the election *on the next day thereafter*, or sooner, the certificate made the second day thereafter *was sufficient*," the statute as to time being directory merely. By this we understand the time in making up and returning the votes and complying with other directory provisions of the law, and not the time at which the election shall be held. Let us apply these principles to the facts of the case at bar. We have already referred in general terms to the evidence of acts of omission and commission on the part of the officers of election, and more especially the supervisor, which in the light of his declarations and conduct upon and after the election, and his evidence on the trial of this case, cannot but be received as done with fraudulent intent to carry or declare the result of the election adversely to plaintiff and the democratic ticket generally. He admits a white majority of at least two hundred in the parish, and there is evidence that he stated after the election that Judge Beattie was the only republican elected in the parish. He permitted or procured another person to write up his tabulated return, and then indifferently signed it, giving the election against plaintiff and the democratic ticket. It is proved that there was no polling-place established in the eighth justice's ward; that there was no box or other means of holding an election at poll 1, a white or democratic poll, and that voters came and went away without voting, or the opportunity to vote, although two commissioners, the United States supervisor stated, went there at five in the morning and remained till six in the evening; that the supervisor did not sign or send out the appointments of democratic commissioners; that he promised repeatedly, and as often failed, to strike from the registry the names of dead persons, men removed from the parish, persons rendered infamous by reason of conviction for crime, minors, &c., others not legal voters, and that a number of persons voted under these names and numbers for the republican candidates; that others voted twice; that others voted under names and numbers not their own; that sufficient notice of the polling-place was not given to the democrats and was given to the republicans; that the democrats were refused their proper and legal representation in the appointment of commissioners of election; and that poll No. 17, at which the republican candidates, including the defendant, got the entire vote, 86 in number, was removed surreptitiously and without the knowledge of the democrats to a place other than that which the supervisor had appointed at their instance, and which was suitable and public, and the poll was actually opened and the election held at a place distant at least one mile from the proper one, against the protest of a few democrats who discovered the fact after the election had been proceeded with for a considerable length of time and many votes had been received—all these and many other details which we cannot enumerate, and the refusal to receive and count polls 2 and 10 without sufficient legal reason, are, we think, sufficiently shown by the evidence in the record.

Return for poll 2 was received but not counted, because not received within twenty-four hours after the election. There is not a particle of evidence in the record to show that the returns from this poll were other than an accurate report of the ballots cast or that the election at that box was not perfectly peaceful and fair; on the contrary, it is shown affirmatively that it was so, and the district judge so states in his opinion. This poll gave the plaintiff 139 votes and the defendant 103, being a majority of 36 for plaintiff. Under the authorities cited, this box should have been and must now be counted, and so thought the district judge. Poll No. 10 was held forty miles away from the court-house. The commissioners' count (and there were here as elsewhere none but republicans) was completed, according to the testimony of one of them, Hutton E. O'Sullivan, United States supervisor, and of Joseph Lagarde, about eleven or twelve o'clock at night. O'Sullivan testifies that he then "told Fuestal that he must, as State commissioner, take the box to Thibodaux." He positively refused to do so, saying that he had no means of transportation. The same excuse was given by the other commissioners.

Lagarde swears that after the votes were counted he and O'Sullivan started off; "they hallood at us when we got at the door, to state that we had to bring the box." Mr. O'Sullivan answered them he would not take it unless some of the commissioners would come with him.

Mr. Fuestal said he had passed the night before (he was one of the commissioners) to find out where the poll was, and that he would not pass another night.

The other commissioner, Hutton, said the same thing, and they decided to send a constable with us, who was there. I offered one of them my place in the buggy with Mr. O'Sullivan, and I would stay down there. They told me they would not come. Hutton, one of the republican commissioners, testifies: "The votes were counted and the box was sealed, and the box was delivered to the constable and Mr. O'Sullivan. I delivered the box to the republican constable (the name he gives as Levi White) and to Mr. O'Sullivan. The reason why we commissioners did not come up is because we had no conveyance to come up, and again I say the election went on peaceably." "My signature to poll 10 is genuine. Mr. Fuestal also signed it in my presence. Levy White and Lindsey Ingram also signed it in my presence." In answer to a question by the court, this witness says: "The

statement which I signed said Mr. Webre received 171 votes; that is about correct." The same witness said "Mr. Wilton received 44, 54, or 64 votes, I do not recollect. The vote for the other contestants was about the same. According to the best of my recollection, the democratic majority at that box was about 125 majority." The written returns in evidence, the correctness of which is testified to by the other witnesses, and which were compared with the tally-sheets and ballots by experts appointed in the court below, show the vote at this box 10 to have been, for Webre 171, for Wilton 44, being a majority for plaintiff of 127 votes: thus showing how nearly it corresponded with the memory and statement of the republican commissioners and witness for the defense, Hutton.

The genuineness of the return and of the signatures of the three republican commissioners to it is also shown by other witnesses, and there is no evidence that it was not correctly made; on the contrary it is confirmed, as we have stated, by the report of experts, and it is further proved that the box was placed in the buggy of O'Sullivan at eleven or twelve o'clock at night; that they traveled all night to get to Thibodaux, only stopping a short time to get some refreshments on the way, and that the box was never out of custody of the republican constable till they arrived and offered to deliver it to Ledet, the republican supervisor, about eight o'clock or eight o'clock and thirty minutes the next morning after the election. Ledet refused to receive the box because, as he said at the time, it was not brought in by the commissioners and it did not contain the returns. (See testimony of O'Sullivan and Lagarde, the latter of whom says the box was then placed in the hands of the clerk of the court.) O'Sullivan says that he suspected that something was going to be attempted at this poll from the fact that the supervisor had not supplied writing material, wax, &c., and that about eight o'clock and thirty minutes on the morning of the election a young colored man, who said he was one of the constables for that poll, arrived with an empty box at the polling-place. Lagarde swears that this second box remained there all day, and O'Sullivan swears that the supervisors and the refusal of the commissioners to carry up the box made him determine that he would see it was properly returned. His vigilance alone, no doubt, defeated the purpose of the Supervisor Ledet and of the republican commissioners, that either that another box should be substituted for the true one or that no return should be made from this strong democratic box. The fact that they found themselves unable to make this substitution no doubt determined them not to return the box at all; and when Ledet found, notwithstanding all their prearrangements to the contrary, that the true returns had been brought up under the eye of O'Sullivan, the United States supervisor, he determined not to receive them. This is the most reasonable conclusion from the evidence. We omitted to state that a witness, Schmidt, and another detail a conversation among some of the republican officials and others, in the clerk's office, in which apprehension was expressed that box 10 would beat the republicans, except Beattie, and the subject of fixing the box to prevent that result was canvassed among them.

The district judge thought that this box 10 should be counted, and so think we. That as we have seen gives the plaintiff 171 votes and the defendant 44, a majority for plaintiff of 127 votes. By the return of the supervisor without boxes 2 and 10 the defendant received a total of 1,872 votes and plaintiff of 1,685; add the votes of the rejected polls and the total vote of the defendant stands 2,019 and of the plaintiff 1,995, leaving a majority for the defendant upon a count of all the polls at which elections were held of 24 votes in the parish. In this computation we agree with the district judge also. He made a further deduction of 6 votes which he thought it was proved that plaintiff had lost in ward 8 owing to no poll being opened there, and one minor and one convict who had voted illegally, making 8. This, according to the district judge, reduced defendant's majority to 16. The plaintiff claims, we think correctly, that at least 36 illegal and fraudulent votes were received for the republican ticket, including the defendant, at different polls. We were satisfied there were a sufficient number to change the result. This fact is proved by several respectable witnesses by the names and numbers under which persons voted fraudulently, and is supported by the general tenor of the testimony. The district judge thought it was not shown with sufficient clearness. The tabulated statements and direct testimony of witnesses, all of which are very minute and circumstantial, afford the best evidence possible in a case of so flagrant fraud, and we think it sufficient. These were composed of one minor, one convict, some who did not live in the parish, some who had not been sufficiently long in the State to acquire the right to vote, some who had voted twice, some who had voted under false or duplicate certificates, and some who had voted under the names and numbers of other persons, some of whom are proved to have been dead at the time. These facts, taken in connection with the refusal of the supervisor to erase from the registry names which had no proper place there.

The district judge quotes the authority of Auld *vs.* Walton, 12 A. 141, for the position that the decision of the register of voters is a kind of judgment, and that the commissioners could not go behind his certificate. Even if that be correct, upon which we express no opinion, in the next paragraph of the opinion in the same case the court says further, "we do not hold, however, judgments of that tribunal to be without appeal."

"The ninth section of the act referring to the act to provide a registry for the parish of Orleans provides a mode of redress by suit against the register for an applicant to whom the register shall refuse a certificate. Any other validity of the certificate and the sufficiency of the proof upon which it rests may in all cases be examined upon a contest of election by the tribunals seized of the jurisdiction of such contest" go far to make good this element in the plaintiff's case, which if established would of itself, without going further, give him a majority of the legal votes cast, and the only cases which should therefore be connected. Taken in connection with the well-known fact that at the last election there was universal interest and effort on the part of the democrats all over the State, the fact shown in evidence that there was a registered white or democratic majority in the parish of about two hundred voters, and the fact shown by the testimony, among which is that of Sternberg, himself a republican, that the parish of La Fourche has given democratic majorities ever since the election of April, 1868, and that on the trial of this case the republican supervisor, Ledet, himself admitted while on the stand that he had said to Judge Beattie that "if Darrall [the republican candidate for Congress] did not give me [him] a place in the custom-house, I would come out and tell what advantages we republicans had taken in parish of La Fourche," and it will be impossible, in the light of the other facts of similar character, for any impartial mind to arrive at any other conclusion than that either the election in the parish of La Fourche in November last was really carried by the plaintiff and for the democratic ticket, and a false return made, or that, owing to fraud and other illegalities on the part of the republicans, and especially of the officers conducting the election, there was no legal and valid election.

We will now consider the facts connected with the election at poll 17, which gave to the defendant and to the republican ticket, as returned, 86 votes, and none to the democrats, which plaintiff claims should be altogether rejected for several reasons, among which is that it was not held at the place fixed by law and the supervisor, and that, without warrant of law, and with intent to defraud the plaintiff, the election was held at a place away from the public road and distant some two miles from that fixed by law and the supervisor.

The district judge testifies that "two days before the election the plaintiff Webre showed him that at several places the polls had been fixed at quarters back from the public road. I wished that they should be placed upon the public road. Mr. Ledet demurred, saying it was too late to change, and that the change would give the democrats the advantage. I told him that was a matter of opinion, on which I differed with both the democratic and republican managers, but that it did not look right, and that the change must and should be made. I recollect that one of the polls was fixed for the quarters or sugar-house on the Dixie plantation, belonging to my wife. I insisted that this should be changed to the warehouse on the public road. Mr. Ledet agreed to make these changes on the Sunday preceding the election, in the afternoon. I understood that the changes had been made." Other witnesses testify that they were made, at least as to poll 17, and a list of polling-places which appears in the record, and which the evidence shows was published after the change fixed the place for holding the election at poll 17 at the warehouse on the public road, which is proved to be at a distance of not less than one mile from the place where the election was held. It is proved that shortly before the time of opening the polls Mr. Billiu, United States supervisor, Mr. Gilmore, and Mr. Allen, the proprietor of the warehouse and of the plantation, went to the warehouse.

Allen testifies: "I was at home on the Rienzi plantation on the day of the last election, in November, 1876. I understood that the poll was to be held at my warehouse on the front of my plantation. I got up very early in the morning (I understood that the poll was to be opened at six o'clock) for the purpose of opening the warehouse, or the pump-mill, which is just adjoining, at a distance of about thirty yards from the warehouse. When I went there there were no persons there. I waited an hour, I suppose, and finally Mr. Gilmore arrived, who I understood was one of the commissioners, to hold the election. We two waited for a while, and Mr. Gilmore rode to the quarters to see if he could hear anything of the election. He reported to me that they were holding the election in the quarters. I then went down and protested against the election being held there. After my protest they kept on holding the election there. I had no idea that the poll was to be held at the quarters; it was a perfect surprise to me."

Gilmore says: "I got up very early in the morning, before the time for opening the poll, and went up to the place where notice of election said the poll of election was to be opened, at the warehouse of Mr. R. A. Allen. I there met Mr. Billiu, United States commissioner, I believe. We remained some time, until after the hour when the poll ought to have been opened, and I then borrowed Mr. Billiu's horse and rode on to the other precinct to see if anything wrong had happened. Mr. Billiu was to remain to see if any one was going to come and open the poll. I then returned and found Mr. Billiu gone. In a short time I saw Mr. Allen, who was looking for the poll. After requesting Mr. Allen to remain there I went toward the quarters, to see if I could find Mr. Billiu. When I got there I found them holding the election in one of the houses in the quarter, and Mr. Billiu was there. I told the parties holding the election that notice was stuck up that the election was to be held at the warehouse on the public road. I objected to the poll being held there, and filed a written protest with the commissioner. He answered 'that they were instructed to hold the election in the quarters, and that they were going to hold it there.'"

The witness says he then left, and went elsewhere and voted, but that he was put to inconvenience to do so, and that there were some democrats who would not go to the same inconvenience to vote.

Richard Burton says: "I am manager of the Allen plantation. The poll was located at an unusual place, some distance from the public road, where the general public, passing back and forth on the public road, could not see it. The establishment of the poll at that spot was done so clandestinely that the white democrats residing on the plantation knew nothing of it until on the day of election."

M. W. Billiu says: "Was democratic supervisor at poll 17. Repaired to the warehouse, where it should have been held, in front of the public road; waited till after six o'clock, the time for opening the poll. I learned by chance that it had been opened at the quarters on the Allen plantation, about one mile from the public road. I went down there, and found the poll opened and the voting going on under the supervision of three republican commissioners, one white and two colored. I demanded of the white commissioner what he meant by such arbitrary and unjust proceedings, and was answered that he was acting under instructions. I remonstrated with him, and that night entered a written protest against the reception of the box from that poll by the supervisor of election, Mr. Ledet." This protest is in evidence. He further states "that poll 17, as shown on the printed poster, is located at Allen's warehouse. It is like all the other posters I saw posted. It is a correct list as published and posted by M. A. Ledet, supervisor."

Lucern Bailes sworn, says: "I am a colored man, aged fifty years. I am a carpenter and wheelwright. Have been working for forty years on Mr. R. A. Allen's plantation; was on that plantation on the day of election. The poll was opened in a room in the quarters once occupied by Buck Payne. I do not know at what hour of the night the poll was opened, but when I was called up I went to the poll, that morning, and believe the poll was opened before six o'clock. I could not at that time recognize a man the length of the room, it being so dark."

William Black sworn: "Am a colored man, forty-odd years old. Have been working on Mr. Allen's place since I could as a laborer; was on the plantation the day of last election. I could not tell what time I got up. I got up before day. The poll was held in a house called Buck Payne, in the quarters. When I found that the box was there I could only discern daybreak. I did not know until that morning that the poll was to be held at the quarters. I thought it was going to be held in front gate at the warehouse on the public road."

Without proceeding further with this already lengthy review of testimony, it is enough to say that the record can make no other impression upon any impartial mind than that this poll was not only held at a private place, not the polling-place fixed or published according to law, and too remote from it to be pretended to be a substantial compliance with the law, which is intended for the convenience of all voters, but also that this change was made surreptitiously and with a view to defraud in the interest of the defendant and his political friends and against that of the plaintiff and his political friends. Cooley's Const. and Im., page 610, says: "Time and place, however, are of the substance of every election, and a failure to comply with the law in these particulars is not generally to be treated as a mere irregularity." In note on same page he cites Commonwealth *vs.* County Comrs., 5 Rawle, 75, to the effect that an election adjourned without warrant to another place, as well as an election held without the officers required by law is void. We are also referred by plaintiff's counsel to an authority not in our reach at this place of session, McCrary on Elections, page 86, No. 115, where the counsel say it was held "that adjourning a poll from a school-house to a vacant lot half a mile off is void." And other cases are said to be there cited in support of this position. We regret that we have not now access to them and other authorities bearing upon this important question.* The reason of the rule invoked is, however, very manifest, and the circumstances attending the removal of poll 17 from the place fixed by law to another and unauthorized place make it the more manifest. The object of the change is proved to have been to take unlawful advantage of political adversaries, in other words to defraud the law and prevent a fair, full, and independent expression of the popular will. Courts cannot lend their aid to such a purpose. It was no more legal to hold an election where it was held and returned, as that from poll 17, than it was to hold it at any other time than that fixed by law. It is well settled that cannot be done. There was no election held at poll 17 in the parish of La Fourche on the 7th of November last. We have been unable to find and have been referred to no case where votes cast under similar circumstances have been counted to determine an election. Our conclusion, therefore, is, that what purports to be the return of this poll should not be counted or considered in determining the result of the election. This of itself is sufficient to give to the plaintiff Webre a clear majority of the

*Brightly, in his Collection of Leading Cases on the Law of Elections in the United States, says, at page 251: "In Chadwick *vs.* Melvin, (unreported,) the supreme court of Pennsylvania decided at the March term, 1871, that an election held without necessity at a different place from that designated by law is of no validity."

votes, and when considered in connection with the evidence of illegal and fraudulent votes received by his opponent, and which must be considered as not cast, and with the cutting off of votes from the plaintiff to which he was entitled, and what he would have received had the election been legally and fairly conducted, make it impossible that the defendant should retain the office in any event; and in view of all the facts of the case we are of opinion that, upon a fair and legal count of all votes given, the plaintiff received a majority.

It is also shown by republican testimony that there was much intimidation of the colored voters by republicans, and none of any class by democrats.

The supervisor, Ledet, himself swore on the trial that he did not establish any voting precinct in the eighth justice's ward, as required by law; that the people there had always been democrats to his knowledge; that it deprived of their full vote the party, and the contestants had lost thirty or forty votes; "that many of them were poor people, who had no means or facilities to travel to other polls to vote." He says further: "There is a majority of whites of about two hundred in the parish, and I think, if we had not taken the advantages that we have, that the parish would have gone democratic." We think, on the whole case, that the evidence does establish that the illegal acts and matters complained of by the plaintiff did materially affect the result of the election, and that that result was not truly declared by those whose duty it was to do so.

The district judge thought the petition was not specific enough in its allegations. The evidence has supplied any defect of allegation. We have been consoled in the protracted examination and review of this record of official corruption and deliberate fraud upon the most sacred rights of the people by the reflection that this case may serve as a warning for the future to the same people to guard more sacredly than ever the palladium of their liberties, and with that view to provide, if need be, by law, and also by the elevation of public morals, against the possibility of the repetition of such acts.

It may also serve to teach the immediate wrong-doers, and all who have sought to profit by their acts, that there is still left a means of redress, and a portal on which is written "*Procul, O procul este, profani.*"

It is therefore ordered, adjudged, and decreed that the judgment of the lower court be annulled, avoided, and reversed, and that plaintiff, L. A. Webre, be, and he is hereby, declared to have been duly elected sheriff of the parish of La Fourche, at the general election on the 7th of November last, 1876, and that he is entitled to the fees and emoluments of said office. It is further ordered and decreed that said plaintiff, Webre, be inducted into his said office, and that the defendant and appellee pay the costs of both courts.

We append, as part of this opinion and decree, a computation of the vote according to the views announced therein.

	Votes.	
According to the supervisor's return, defendant, Wilton, received		1,872
Deduct for poll 17	86	
For other illegal votes	36	
		122
Leaves		1,750
Add vote at poll 2		103
Add vote at poll 10		44
Makes a total of		1,897
According to the supervisor's return, plaintiff, Webre, received		1,685
Add vote at poll 3		139
Add vote at poll 10		171
Make a total for Webre of		1,995
Deduct Wilton's vote		1,897
Leaves Webre a majority of		98

without reference to the votes computed for him from ward 8 by the district judge or any greater number proved.

On application for rehearing, Mr. Chief-Justice Manning delivered the opinion and decree of the court in the words and figures following, to wit:

It is rightly remarked by the counsel for the defendant, in his brief supporting the application for a rehearing, "the great underlying principle in all contested-election cases is to ascertain the will of the majority. The problem is to secure, first, to the voter a free and untrammeled vote and, secondly, a correct record and return of the vote; and that in all cases it is incumbent on the contestant to show that the acts of which he complains changed the result."

And we will add, if the acts of which a contestant complains do not change the result, courts will not intervene, though the conduct of the one or the other may be tainted by fraud or vitiated by violence. For of what concern is it to judicial tribunals to learn what bad and illegal acts either candidate may have been guilty of, if one received so large a majority over the other that he is elected, notwithstanding the deduction from his poll of all the votes that should not have been received nor counted?

But when the case is otherwise—when the object and purpose of the officials who have the machinery of elections in charge is shown by testimony to have been not the ascertainment of the will of the majority, but the perversion of the expression of that will; not a correct record and return of the vote, but such a return as accomplished a predetermined result; not an untrammeled vote, but so to trammel it by cunning devices that the suffragan has been deceived or misled—then it is the highest office and the most imperative duty of a court to vindicate the purity and inviolability of the ballot, and to take care that the Republic, whose corner-stone is the vote of the citizen, shall receive no harm.

For the fundamental principle of every representative government is that it is not the return but the election that entitles a party to an office. Hence it has been uniformly held that the official return of an election is only *prima facie* evidence of its legality and correctness, and that court can go behind it to ascertain the true state of the vote.

If this were not so, why should the intricate forms for registration be prescribed, or why the necessity of the voter personally offering his vote, or offering it at all, if a power is vested anywhere to disregard everything that had been done at the ballot-box, and elect at the returning-board?

The act of casting a vote is not to the citizen an empty form. It is the lever by which the majority raises itself to the summit of the Government, and there controls, orders, executes. Ledet, as supervisor of registration for La Fourche Parish, made return of the election and impeached the truth of his return by his testimony on the trial.

We are reminded, in the brief for the hearing, of Lord Mansfield's declaration, that "it is of consequence to mankind that no man shall hang out false colors to deceive them by first affixing his signature to a paper and afterward giving his testimony to invalidate it."

But that great jurist would not have felt himself precluded by the enunciation of this wise maxim from receiving the testimony of a criminal who had become the state's witness against his fellows and in a civil action, where the public interests are involved, as in a contested-election suit, more than the interests of the individuals who are parties thereto, it is no infringement of that principle to hear from him who hung out the false colors the story of the manner in which they were fashioned and his intent in displaying them.

Nor did Ledet alone detail the circumstances preceding and attending the election. Other witnesses, who are reputable citizens, inform us that when notice was given of the election that was to be held no indication was made of the places where it would be held, nor was this, the necessary information, supplied publicly until twenty-four hours before the time for opening the polls.

This delay or omission might have been attributed perhaps to negligence or forgetfulness but for the fact, of which the evidence leaves no room for doubt, that information of the location of the polling-places was early given to one of the political parties and was withheld from the other.

The record shows that on the 6th of November the Supervisor Ledet published for the first time what he termed "a correct list of polling-places to be opened on the 7th throughout the parish for the convenience of the electors of La Fourche."

The acts complained of by the plaintiff, and which changed the result, are reviewed *in extenso* in the opinion read by my brother Egan; and we are constrained to say there is too apparent to be unobserved or disregarded a design to thwart rather than promote a fair expression of the popular will by the officers who supervised this election. And this design, the first indication of which is afforded by the omission to give publicity to essential preliminaries, is developed more audaciously as the election day approached, and culminated in excluding from the return two boxes which the judge of the lower court demonstrated should have been counted.

The return of the supervisor or registrar which excluded polls 2 and 10 thus:

Supervisor's return.

Wilton's vote	1,872
Webre's vote	1,685
Wilton's majority	187

The district judge properly regarded this return as evidence only that *prima facie* it was correct, but admitted testimony and testified himself of matters the object and effect of which was to impugn its correctness. He revised this official return, counted the votes of the two rejected polls, and also counted 6 votes for Webre which were not cast for him, but which the judge believed from the evidence would have been cast for him if the voters had not been prevented from voting.

He also deducted 2 votes from Wilton which he thought were improperly received.

District judge's count.

Webre's vote, by supervisor's return	1,685
Webre's vote at poll 2	139
Webre's vote at poll 10	171
Add vote he would have received	6
	2,001
Wilton's vote, by supervisor's return	1,872
Wilton's vote at poll 2	103
Wilton's vote at poll 10	44
	2,019
Deduct votes	2
	2,017
	2,001
Wilton's majority	16

We do not count for Webre any vote that was not actually cast for him, nor do we reject any vote for Wilton that was cast for him, except poll 17 and 36 votes which are part of a larger number that Webre alleged were improperly received. The lists made part of his petition comprised 109 names, of whom 11 voted on dead men's papers, 8 were convicts, 4 were persons who had removed from the parish, 23 voted twice on that day, and 63 voted on fraudulent certificates. The proof satisfied the lower court that 2 of this number should be rejected. It satisfies us that 36 of them should certainly be rejected.

The correct count.

Wilton, per supervisor's return		1,872
Wilton, per poll 2		103
Wilton, per poll 10		44
		2,019
Deduct poll 17	86	
Deduct fraudulent votes	36	
		122
		1,897
Webre, per supervisor's return	1,685	
Webre, per poll 2	139	
Webre, per poll 10	171	
		1,995
Webre's majority		98

The counsel for the defendant urges strenuously for a rehearing upon the erroneous rejection of poll 17. If we should concede to the defendant all the votes at that poll, and follow the example of the court *a qua* in counting those votes for Webre that he would have received at ward 8 if an election had been held there, it would not change the result. The court below counted for Webre 6 votes, as if they had been given him at that poll, though in fact no poll was opened there. But if we are to take that poll into account at all, the evidence establishes a larger number. One set of witnesses say that Webre would have received forty or fifty votes at that poll if it had been opened. The other set say he would have received thirty or forty votes if it had been opened. Give him the smallest number and count poll 17 for his adversary:

Wilton's vote at *supra* return		1,897
Add poll 17		86
		1,983
Webre's votes at *supra* return	1,995	
Add votes for box 8	30	
		2,025
Webre's majority		42

A careful review of our first opinion, and a re-examination of the record, leave upon our minds no doubt of the correctness of our former decree. Rehearing refused.

STATE OF LOUISIANA,
Third Congressional District, Parish of Iberville:

J. H. ACKLEN }
vs.
C. B. DARRALL. }

I, James Crowell, parish judge of the parish of Iberville, and a duly authorized officer under the Revised Statutes of the United States, before whom testimony, papers, ballots, or other evidence in cases of congressional contest shall be taken or produced, do hereby certify that before me, as such officer, came Colonel J. R. Acklen, in person, and C. B. Darrall, represented by his attorney, James R. Jolly, into whose credentials to so act I examined and found same satisfactory; that after the examination of the commissioners of election of the different polls as to the manner of counting the ballots at the close of said polls on election day, and it appearing that said count was made in bulk, and to the further examination of the seals on the ballot-boxes and signatures thereon by said commissioners, the same being found satisfactory and intact, and witnesses being produced who testified to having voted the republican ticket bearing the name of J. H. Acklen, as Congressman, printed thereon, and after listening to argument from counsel, going to show the fact that said republican votes so voted had not been counted for Colonel Acklen, but for his opponent, Mr. Darrall, and that a *subpœna duces tecum* should therefore issue to the clerk of the court to produce said ballot-boxes in open court, and that the court should appoint a board of experts of both political parties to recount said votes, I did, therefore, by the power in me vested, issue said *subpœna duces tecum* to the clerk, and did appoint the board of experts, and at the request of James R. Jolly, attorney for Mr. Darrall, did appoint him thereon, that the recount being acceded to by both parties should be final and binding upon all. That said board of experts were duly sworn by me to make a true recount of the votes and a sworn return thereof signed by all. That said return was made and signed and sworn to, and accepted by Colonel Acklen for himself and James R. Jolly, attorney for C. B. Darrall, and was, after being filed by me as evidence in this case, forwarded to Washington, as required by law.

That I hereby certify the following to be a true copy of said vote as taken, the blank votes being left out:

Poll.	Acklen.	Darrall.
1	150	139
2	340	86
3	219	189
4	34	105
5	158	79
6	223	99
7	79	96
8	59	55
9	250	122
10	33	193
11	45	90
	1,595	1,253

The majority for J. H. Acklen in this parish of Iberville being only shown by this recount to be 342.

Given under my hand and seal.

[L. S.] JAMES CROWELL.

STATE OF LOUISIANA,
Secretary of State's Office:

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify the above and foregoing to be a true copy of the original filed and deposited in my office.

Witness my signature and the seal of the State of Louisiana, at the city of New Orleans, this 8th day of October, 1877.

WILL. A. STRONG,
Secretary of State.

ROOMS BOARD OF CANVASSERS,
New Orleans, July 10, 1876.

SIR: At a meeting of the board of canvassers held this day the following resolution was unanimously adopted:

Present, Speaker Bush, presiding; Senators Robertson, Zacharie, and Allain.

"*Resolved*, That the board inform the governor that they have been unable to ascertain who were elected parochial officers in the parish of Saint Martin, the board having been unable to obtain a certified copy of the returns from the clerk of the district court of said parish until the 23d April, 1877, more than six months after the election, when O. Delahoussaye, jr., forwarded to the board what purported to be a consolidated statement of the vote cast in Saint Martin at the recent election; but the consolidated statement was accompanied by the statement of votes and tally-sheets from the different polls, thus leaving the board with no data to canvass the vote of said parish other than the partial returns from said parish found on file in the secretary of state's office, which last show evident signs of having been tampered with by some parties unknown to the board."

LOUIS BUSH,
Speaker House of Representatives presiding.

F. H. BARBOT,
Secretary.

To his Excellency FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

STATE OF LOUISIANA,
Office of the Secretary of State.

I, the undersigned, secretary of state, do hereby certify the above to be a true copy of the original on file and deposited in this office.

Witness my signature and the impress of the seal of the State of Louisiana, at the city of New Orleans, this 8th day of October, A. D. 1877.

[SEAL.] WILL. A. STRONG,
Secretary of State.

REPRESENTATIVE FROM LOUISIANA, FOURTH DISTRICT.

The SPEAKER. The next case in order is the case of Mr. Elam from the fourth district of Louisiana.

Mr. FRYE. If the House will pardon me a moment, I desire to be heard upon this case. I entered an objection yesterday to the oath being administered to Mr. Elam. His case, in my judgment, very materially differs from the cases upon which the House has already passed. Mr. Elam and Mr. Nash were competitors for the office of Representative in Congress from the fourth congressional district of the State of Louisiana in the election of 1876. The election took place on November 7, 1876. Returns were made to the then constituted returning board of the State of Louisiana.

Now, sir, I do not propose to defend nor to attack the returning board of the State of Louisiana; but I do propose to say that on November 7, 1876, the returning board of Louisiana was the only returning board under the laws of that State, and under the laws of that State the returns of the election must inevitably go to that returning board and to no other returning board, and that that returning board had complete, full, and ample jurisdiction over the returns made to them. Following the election of November 7, 1876, that board canvassed the returns from the fourth congressional district and made returns to the governor of the State of Louisiana, clearly declaring that Mr. Nash was elected to Congress from the fourth congressional district of Louisiana.

Now, sir, the governor of the State, when that return was made on the 9th day of November, was William Pitt Kellogg, and I think that no man will dispute his title as the then governor of the State of Louisiana. He had been recognized by the President of the United States, recognized by the Senate, recognized by this House over and over again. Mr. Nash was seated in the last House of Representatives on a certificate from Governor Kellogg. This House passed a resolution declaring Mr. Kellogg the governor of Louisiana, and this democratic House refused to ignore the title of Mr. Nash in the early days of the first session of the last Congress. These returns having been made by the returning board, the executive of the State of Louisiana under the law issued his certificate to Mr. Nash, declaring him to be the Representative for the sixth congressional district of Louisiana.

I am aware that the Clerk of the House says that that certificate was not in the form required by the statute of Louisiana; but the law says that the certificate should be in the form required by the laws of the State or of the United States, and this certificate is strictly in the form required by the laws of the United States.

Again, it is in the very form in which for six years up to the 4th of March last every member from the State of Louisiana has held his seat, not only *prima facie*, but during the decision of the contest by Congress.

Now, I am aware that Governor Nichols has also given a certificate in this case and has given it to the contestant of Mr. Nash, Mr. Elam—no, I believe I am mistaken as to the case upon which I am speaking; it is the case of the sixth, not the fourth district; Mr. Robertson is the contestant in that case. I am speaking of the case of Mr. Smith and Mr. Robertson, and what I say will apply equally to the case of Nash and Elam.

Now, I say that Mr. Elam had a certificate from Governor Nicholls. It was made under what circumstances? The returning board of the State of Louisiana had determined that Mr. Smith was elected. The returning board made that return to the then governor, Governor Kellogg, and he gave the certificate to Mr. Smith.

But Mr. Smith has also a certificate from a governor of Louisiana. As I understand the facts of the case—of course I am not speaking of my own knowledge—a returning board was created by the Legislature which did not convene until January, 1877. That Legislature perhaps had a right to create a returning board, but clearly they had no right under the laws of Louisiana, or any other laws, to create a returning board which would have jurisdiction over the election which took place on the 7th day of November, 1876. And yet that returning board, created subsequently to the election, took jurisdiction and made returns to Governor Nicholls, who was not inaugurated until long after the election—not until the second Monday of January, 1877; and on those returns Governor Nicholls has given Mr. Elam his certificate of election.

Now I say, first, that that Legislature had no power under the law to make a returning board and give it jurisdiction going back to the election held November 7, 1876. I say, second, that that returning board so created never had in its possession any of the original returns of the State of Louisiana until April, 1876, long after Governor Nicholls gave the certificate of election to Mr. Elam. I say that those original returns were in the hands of the so-called Packard government, or in the hands of the senate committee of the Packard legislature. And the returning board, in assuming to take jurisdiction of and passing upon those original returns, never had any original return from the whole State of Louisiana, and of course none from this fourth congressional district.

Now, how can it be possible that Governor Nicholls, taking his oath on the second Monday of January, 1877, had authority upon returns made to him by a returning board created long after the election of November 7, 1876—how can it be possible that under any law, under any authority or power, he could give to Mr. Elam a certificate of election which should entitle him *prima facie* to a seat in this House?

Sir, it seems to me entirely clear—no matter what you may say about the Louisiana returning board, no matter what you may say about the original title of Governor Kellogg to be the governor of the State of Louisiana, after all that has taken place within the last two years, after the recognition that has been given to Governor Kellogg, after the recognition that has been given to that returning board of Louisiana—it seems to me entirely clear that the Clerk of this House did not correctly and properly rule when he recognized the certificate of Governor Nicholls founded on this new returning board, and re-

fused to recognize the certificate of Governor Kellogg, who by everybody is admitted to have then been the acting governor of the State of Louisiana.

Mr. HOUSE. I would like to ask the gentleman a question.

Mr. FRYE. Certainly; I will yield.

Mr. HOUSE. I understand the gentleman to be now arguing the *prima facie* case.

Mr. FRYE. I am.

Mr. HOUSE. How does the gentleman arrive at the fact that the certificate given by Governor Nicholls is based on the count of the new returning board? Is the gentleman not speaking outside of the record?

Mr. FRYE. I understood from the statement of the Clerk himself, made yesterday to this House, that that was the case. Then, as I understand it, I have a right to take cognizance of the general history of events of the State of Louisiana, which certainly has been pretty well spread out before this country during the last six years. I say that in my opinion this certificate of Governor Nicholls ought to have no weight whatsoever to seat Mr. Elam in this House.

When it comes to a question of a contest before the Committee of Elections—and let me tell gentlemen of this House that a contest is to be had, because already the papers have been filed in the case upon which by mistake I started first to speak, and they may just as well go together because they present the same facts. Papers have been filed by Mr. Robertson in the other case, giving notification of contest to the one he supposed would be the sitting member, and evidence has been taken. Now, I have no question that in both cases those gentlemen believed that the *prima facie* right would be accorded to Mr. Smith and to Mr. Nash, and they prepared fully and completely for the contest before the Committee of Elections of this House, recognizing the fact that those two men would be seated under the certificate signed by Governor Kellogg. Holding these views, I offer the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That George L. Smith, having the *prima facie* right to a seat in this House, be now sworn in.

Mr. GIBSON. I move to lay that resolution on the table.

The SPEAKER. The Chair understands it to be offered as a substitute for the resolution of the gentleman from Louisiana, [Mr. GIBSON,] and if the motion to lay on the table should prevail it would carry both resolutions to the table.

Mr. GARFIELD. The better way is to have a direct vote on each resolution.

Mr. GIBSON. I have offered no resolution.

The SPEAKER. The Chair was under the impression that a resolution was offered in this case as in the other.

The question was taken upon the motion to lay on the table; and upon a division there were—ayes 130, noes 119.

So the resolution was laid on the table.

The SPEAKER. The gentleman from Louisiana [Mr. Elam] will now present himself to be sworn in.

Mr. LEONARD. I object to the gentleman being sworn in. The circumstance that the resolution just offered has been voted down does not give him a right to be sworn in.

The SPEAKER. The Chair deemed it his duty to ask the gentleman to come forward and be sworn in, the resolution in favor of the other gentleman having been voted down.

Mr. LEONARD. I object to his being sworn in.

The SPEAKER. The gentleman can offer any resolution on the subject which he desires.

Mr. LEONARD. Then I offer the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That the claims of J. B. Elam and George L. Smith to a seat in this House from the fourth congressional district of the State of Louisiana be referred to the Committee of Elections, with instructions to report without delay who is *prima facie* entitled to the seat.

Mr. POTTER. Have the certificates of the gentlemen whose names it is proposed to place on the roll in place of the names of Mr. Elam and Mr. Robertson been read?

The SPEAKER. They have not been read to-day, and the Chair is advised that they have never been read in the presence of the House.

Mr. POTTER. I think they should be read.

Mr. COX, of New York. I move to lay the resolution on the table.

Mr. LEONARD. I believe I have the floor, and the gentleman cannot make that motion now.

The SPEAKER. The Chair will recognize the gentleman from New York [Mr. Cox] in due time.

Mr. LEONARD. I now call for the reading of the certificates which have been filed in this case.

The SPEAKER. The certificates will be read.

The Clerk read as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, December 27, 1876.

Be it known that, at an election begun and held on the 7th day of November, A. D. 1876, for members of Congress, George L. Smith received 10,868 votes and J. B. Elam 9,674 votes.

Now, therefore, I, William Pitt Kellogg, governor of the State of Louisiana, do hereby certify that George L. Smith received a majority of the votes cast at said election and is duly and lawfully elected to represent the fourth congressional district of the State of Louisiana in the Forty-fifth Congress of the United States.

Given under my hand and the seal of the State this 27th day of December, 1876, and of the Independence of the United States the one hundred and first.

[SEAL.] W. P. KELLOGG.

By the governor:
P. G. DESLONDE,
Secretary of State.

UNITED STATES OF AMERICA,
Executive Department, State of Louisiana.

This is to certify that at a general election begun and held in the State of Louisiana, in the fourth congressional district of said State, on the 7th day of November, in the year of our Lord 1876, it being the first Tuesday after the first Monday of said month, and the day prescribed by the laws of the United States and the said State of Louisiana for the election of Representatives in Congress from the said State, J. B. Elam and George L. Smith appear from the returns of said election, filed in the office of the Secretary of State within and for said State, to have been the only persons voted for in the fourth congressional district of said State for Representative in the Forty-fifth Congress of the United States from said State; and that it further appears from said returns on file in said office that J. B. Elam received 12,126 votes and George L. Smith 11,540 votes for representative as aforesaid in said district, and that J. B. Elam, having received a majority of the votes cast for representative from the fourth district in said State of Louisiana in the Forty-fifth Congress of the United States at said election, has been duly, lawfully, and regularly elected to represent said fourth district of said State in the aforesaid Congress of the United States, in accordance with the laws of the United States and of the State of Louisiana.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

We, Francis T. Nicholls, governor of the State of Louisiana, and Oscar Arroyo, assistant secretary of state of said State, do hereby certify that the above and foregoing declaration of the result of the election begun and held in the fourth congressional district of the State of Louisiana, on the 7th day of November, 1876, is a true copy of the original certificate as recorded in the office of the secretary of state of Louisiana by the secretary of state, and signed by the governor.

Witness our hands and the seal of the State of Louisiana, at the city of New Orleans, this twenty-seventh day of February, 1877.

FRANCIS T. NICHOLLS,
[SEAL.] *Governor of the State of Louisiana.*
OSCAR ARROYO,
Assistant Secretary of State.

Mr. LEONARD. Mr. Speaker, in offering this resolution and in asking the House to consider it, I wish to say that it is not my purpose to re-open in any way the old Louisiana case. As between Mr. Packard and Mr. Nicholls, I may once have had some choice. But that contest is now settled. Mr. Nicholls is governor of Louisiana; and although I lost by his success a better place, perhaps, than he holds himself, yet it is now my duty to recognize and respect his authority. I do this fully and completely. But the question is not whether Mr. Nicholls is or is not governor of Louisiana, but whether he has a right to nullify and set aside those rights which accrued and became vested before his inauguration.

An election was held in the State of Louisiana on the 7th day of November, 1876. That election was for members of Congress, State officers, members of the Legislature, and presidential electors. It was held under an act entitled "An act to regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning-officers, and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives, and to enforce article 103 of the constitution." In order that the House may understand fully what the law was, how the election was conducted, how the returns were made, and how those returns were canvassed, I ask that sections one and two of the law may be read.

The Clerk read as follows:

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

SEC. 2. *Be it further enacted, &c.*, That five persons, to be elected by the senate from all political parties, shall be the returning-officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning-officers. The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court:

"I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning-officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election. So help me God."

Within ten days after the closing of the election said returning-officers shall meet in New Orleans to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the secretary of state. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open in the presence of the said returning-officers the statements of the commissioners of election, and the said returning-officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the secretary of state; and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The governor shall,

within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

Mr. LEONARD. Mr. Speaker, you have heard the law. Now, I make the assertion—and I ask to be corrected by any gentleman from Louisiana or elsewhere if I state what is untrue—that the election was held in accordance with this law; that the returns were made up by the commissioners and supervisors of election; that those returns went to this board of returning officers; that they had them in their possession; that they did canvass and compile those returns and did declare that George L. Smith had a majority of the votes for member of Congress in the fourth congressional district of Louisiana and was therefore elected.

Mr. ELLIS. I understand my colleague to desire to be corrected.

Mr. LEONARD. If I have made any mistake I beg the gentleman to correct me.

Mr. ELLIS. I understand my colleague to say that the board of returning officers compiled and canvassed those returns.

Mr. LEONARD. I made that statement.

Mr. ELLIS. The returns which came from the commissioners? It is a matter, Mr. Speaker, of history, as broadly known as this great country, that that board of returning officers did not canvass and compile the returns received from the commissioners——

Mr. LEONARD. I do not yield for a speech.

Mr. ELLIS. But, exercising arbitrary judicial power never given to them, they excluded what they pleased, admitted what they pleased, and made up returns to suit themselves.

Mr. LEONARD. I said I would yield for the correction of any mistakes, but for no other purpose.

Mr. GIBSON. I desire to reply to the gentleman's question.

Mr. LEONARD. I said if I made a mistake in any statement of fact I was willing to be corrected, but I did not say I was willing to have half a dozen speeches injected into mine.

Mr. GIBSON. I wish to correct the gentleman.

The SPEAKER. The gentleman from Louisiana is entitled to the floor, and will proceed without interruption unless he yields for that purpose.

Mr. GIBSON. I merely wished to reply to the gentleman's question.

Mr. LEONARD. If the gentleman asks a question, I will answer him categorically.

Mr. GIBSON. I do not wish to ask any question, but will answer the gentleman categorically, if he will receive an answer to the question which he himself put.

Mr. LEONARD. I did not hear the last remark.

Mr. GIBSON. The gentleman referred to his colleagues, and said he desired to be corrected in any statement he made if he was mistaken. I only desire to say now that he was mistaken.

Mr. LEONARD. If the gentleman wishes to correct an error or to ask me a question I will candidly answer him, but I wish to notify him beforehand that I do not desire him to make a speech under the guise of a question.

The SPEAKER. The gentleman has the floor and will proceed without interruption.

Mr. LEONARD. Whether this returning board canvassed these votes correctly or not I do not pretend to say. Perhaps they did and perhaps they did not. I was not there. I was not a member of that board. I was not present when they canvassed those votes. If they did make mistakes those mistakes are to be corrected and ought to be corrected; but I make the statement that they had the right to foot up the figures just as much as any returning board has the right to do this in any State in this Union. If they declare that one candidate has a majority over another, that gives him a *prima facie* case, whether they have added up the figures correctly or incorrectly. I say that, if a board of returning officers in the State of Maine should declare that one gentleman had a majority over another gentleman, the mere circumstance that they had made a mistake or failed to canvass certain parishes or certain counties would not make the *prima facie* case of the gentleman returned any the less valid.

I say, therefore, that it is not a question for this House to consider at this stage whether the returning-board correctly canvassed those votes or not. I say they had the right to canvass them; they did canvass them; and in accordance with a universal principle of law their canvass must be presumed to be valid until duly set aside, and therefore no mere suggestion of fraud is sufficient to nullify what they did. Their canvass is *prima facie* valid and correct. I say, therefore, that in accordance with the law they did canvass these returns; they did declare Mr. Smith to have a majority; and that that declaration was published in the official journal of the State in accordance with the law, and upon that declaration the governor of the State issued his certificate to Mr. Smith, which has been filed and read here to-day.

So far as the objection to the form of that certificate is concerned, I would state it is the very identical certificate which has always been filed here; that is to say, it is identical in form with the certificate upon which the gentlemen on the other side, my honorable colleagues, have held their seats in former Congresses. I have before me the RECORD containing the opening proceedings of the last Congress, and I ask the Clerk to read from page 170 the certificate which appears there.

The Clerk read as follows:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, December 26, 1874.

Be it known, that at an election begun and held on the 2d day of November, A. D. 1874, for members of Congress, Frank Morey received 12,279 votes, and W. B. Spencer received 11,038 votes according to the certificate of the returns of said election made, filed, and of record in the office of the secretary of state in the manner prescribed by law.

Now, therefore, I, William Pitt Kellogg, governor of the State of Louisiana, do hereby certify that Frank Morey, who received a majority of the votes cast at said election, is truly and lawfully elected to represent the fifth congressional district of Louisiana in the Forty-fourth Congress of the United States.

In testimony whereof I have hereunto signed my name and caused the seal of the State to be attached, this 26th day of December, A. D. 1874, and of the Independence of the United States the ninety-ninth.

[L. S.] WILLIAM P. KELLOGG.

By the Governor:
P. G. DESLONDE,
Secretary of State.

Mr. LEONARD. Mr. Speaker, this certificate was before the House at the opening of the last Congress. It was acknowledged by the members then on this floor to be valid in point of form. The question between Mr. Morey and Mr. Spencer was debated by the best speakers in this House. But it never occurred to any of them to suggest that that certificate, either of Morey or Spencer, was defective in point of form under the laws of the State of Louisiana.

Mr. HOUSE. Will the gentleman yield to me for a question?

Mr. LEONARD. Yes, sir.

Mr. HOUSE. Does the gentleman say that the certificate in the Morey-Spencer case just read at the Clerk's desk is identical with the certificate now before the House?

Mr. LEONARD. I say it is identical in form.

Mr. HOUSE. It is wholly different.

Mr. LEONARD. Wherein is it different?

Mr. HOUSE. I will show wherein it differs if the gentleman will allow me.

The SPEAKER. Does the gentleman from Louisiana [Mr. LEONARD] yield further?

Mr. LEONARD. I will answer the gentleman's question first. I say there is no difference in the essentials of these two credentials. That is to say, the objection which was raised by the Clerk was that these certificates did not purport to be copies from the records of the secretary of state. If he had any other objections to these certificates I do not know what they were. He said that the law of Louisiana required that the secretary of state should make up a certificate and that a copy of this certificate should be granted to the claimant; that as that had not been done in this case there was no valid certificate. In answer to that I say it was not done in the Morey case, and the certificate in that case was held to be a valid one. While the question was being debated Mr. Holman, of Indiana, said:

The Clerk, as I have no doubt rightfully upon the presumptive case before him, placed the name of Mr. Morey on the roll, for the credentials which have been read clearly make out a *prima facie* case in his behalf.

Mr. HOUSE. Will the gentleman yield to me for a moment? I simply want the House to understand the question.

Mr. LEONARD. And I want the House to understand the question. I do not wish to deceive the House. I say that the Clerk stated that his objection to these certificates was that they did not purport to be copies from the records of the secretary of state; and I have had a similar one read, and shown that it was received in the last Congress.

Mr. HOUSE. The gentleman announced that the certificates relied upon here in the cases of Mr. Nash and Mr. Smith were identical——

Mr. LEONARD. In form.

Mr. HOUSE. With the certificate in the Morey-Spencer case. Now, if the gentleman will allow me, I will show to him and to the House that they are essentially different.

Mr. LEONARD. I cannot yield for that purpose at present, but I will give the gentleman enough time at the proper moment, if he will show wherein they are essentially different.

Now, if there be any objection to the form of these credentials, which I have not heard, I should be very glad to hear that objection and have a chance to reply to it. But I say that the objection which the Clerk made to the certificates of Mr. Smith and Mr. Nash was that they did not purport to be copies from the books of the secretary of state, and that therefore they were in no sense the certificates required by the law of Louisiana; and, if there be any essential difference between this certificate and that certificate, it is not the difference to which the Clerk drew our attention on the first day of the session. If there be such a difference, I will be very glad to know wherein it consists. An argument on that point would relate to a question not yet raised.

Now, I say that the returns were made up and canvassed, that the result was promulgated, and that Governor Kellogg issued certificates to Mr. Nash and Mr. Smith. A gentleman suggested a little while ago that perhaps the gentleman from Maine was speaking of something he did not know anything about when he said a new board of canvassers was organized by the Nichols government, and that this new board assumed to canvass the returns already counted. The Nichols government claimed to go into operation on the 8th day of

January, 1877. On that very day its legislature assumed to pass the act which I send to the desk that it may be read by the Clerk.

The Clerk read as follows:

An act to repeal sections 2, 3, and 26 of an act entitled "An act to regulate the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives and to enforce article 103 of the constitution," approved November 20, 1872; to constitute a board of canvassers, and to authorize said board to canvass and make return of the votes cast at the recent election; and to authorize contest for office in certain cases.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened*, That sections 2, 3, and 26 of an act entitled "An act to regulate the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers and defining their powers and duties; to prescribe the mode of entering on the rolls of the senate and house of representatives; and to enforce article 103 of the constitution," approved November 20, 1872, be, and the same are hereby, repealed.

SEC. 2. *And be it further enacted, &c.*, That a board of canvassers, to be composed of the lieutenant-governor, the speaker of the house of representatives, and three senators, to be elected by the senate from the different parties, a majority of whom shall constitute a quorum, is hereby created and empowered to canvass and make returns of the votes cast at the recent general election in this State for all officers other than governor and lieutenant-governor, and for and against the constitutional amendments.

SEC. 3. *And be it further enacted, &c.*, That the canvass and return made by the board herein constituted shall be *prima facie* evidence of the election of the candidate returned by them, reserving to all other candidates the right to contest the said election and return by filing a petition for that purpose in the court of proper jurisdiction within their respective parishes within a delay of thirty days from the official promulgation of the canvass herein provided for.

SEC. 4. *And be it further enacted, &c.*, That all laws and parts of laws contrary to and inconsistent with this act be, and the same are hereby, repealed.

SEC. 5. *And be it further enacted, &c.*, That this act shall take effect from and after its passage.

Mr. LEONARD. I think the House will now see the aspect of this case.

Mr. WHITE, of Pennsylvania. If the gentleman from Louisiana will give way for a motion to adjourn, I will submit that motion.

Mr. LEONARD. I will yield for that purpose.

Mr. WHITE, of Pennsylvania. I move, then, that the House do now adjourn.

Mr. COX, of New York. What will be the condition of this matter to-morrow?

The SPEAKER. It will be unfinished business.

Mr. COX, of New York. Then it will come up the first thing after the morning hour.

The SPEAKER. It will come up the first thing after the reading of the Journal.

The question was taken on Mr. WHITE'S motion, and it was agreed to; and accordingly (at four o'clock and five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk, under the rule, and referred as stated:

By Mr. BURCHARD: The petition of George W. S. Staplin, late a private in Company C, Fifteenth Regiment Illinois Volunteers, and others, that he be granted a pension—to the Committee on Invalid Pensions, when appointed.

By Mr. BURDICK: Papers relating to the claim of the heirs of John Rice Jones, deceased, for indemnity for lands sold and otherwise appropriated by the United States, within the limits of certain confirmed private land claims in the State of Illinois—to the Committee on Private Land Claims, when appointed.

By Mr. MORGAN: The petition of B. Hunt, B. H. Stone, J. A. Gibson, and 30 other citizens of Lawrence County, Missouri, for the remonetization of silver and the issue of 3.65 interconvertible United States bonds—to the Committee on Banking and Currency, when appointed.

By Mr. VANCE: The petition of Mrs. V. S. M. Chapman, to be reimbursed for property confiscated by decree of the United States courts in the State of New York, with papers relating thereto—to the Committee of Claims, when appointed.

IN SENATE.

WEDNESDAY, *October* 17, 1877.

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

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

PETITIONS AND MEMORIALS.

Mr. ANTHONY presented the petition of Thomas A. Doyle, mayor of the city of Providence, Rhode Island, and others, praying for an increase of the compensation of letter-carriers; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. FERRY presented the petition of Aaron L. Sibley and others, of Grand Rapids, Michigan, praying for an increase of compensation to letter-carriers; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of William A. Willis and others, settlers upon and purchasers of lands known as Detroit and Milwaukee Railroad lands, situated in the western part of the State of Michigan, and interests therein, praying the passage of a law protecting them in their rights and interests therein; which was referred to the Committee on Public Lands.

He also presented a concurrent resolution of the Legislature of the State of Michigan in favor of aid by Congress in the construction of a tunnel under the Detroit River at or near Detroit, Michigan; which was referred to the Committee on Commerce.

Mr. CAMERON, of Pennsylvania, presented the petition of Charles R. Taylor and others, letter-carriers of Philadelphia, Pennsylvania, praying an increase of compensation; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. GARLAND presented the petition of Henry Page, late agent and disbursing officer of the Bureau of Refugees, Freedmen, and Abandoned Lands, praying to be refunded certain moneys by him paid to parties representing themselves to be discharged soldiers; which was referred to the Committee on Finance.

Mr. MERRIMON presented the petition of J. H. Hardin and others, citizens of Watauga, North Carolina, praying for the establishment of a new post-route from Boone, North Carolina, to Baker's Gap post-office in that State; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. KERNAN presented the petition of James M. Snyder and others, letter-carriers of Troy, New York, praying for an increase of compensation; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. SARGENT presented the petition of Edward Byrne and others, letter-carriers of San Francisco, California, praying for an increase of compensation; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. HAMLIN presented the petition of Greenleaf Cilley, commander United States Navy, praying that his name be taken from the retired list and restored to his appropriate rank on the active list of the Navy; which was referred to the Committee on Naval Affairs.

Mr. OGLESBY presented the petition of John Harrison, of Quincy, Illinois, praying compensation for services rendered as a scout during the late war; which was referred to the Committee on Military Affairs.

The VICE-PRESIDENT presented the petition of J. S. Berry and others, citizens of the county of Tama, Iowa, praying for the passage of a law making silver a legal tender for all sums; which was referred to the Committee on Finance.

Mr. CHRISTIANCY presented a joint resolution of the Legislature of the State of Michigan, in favor of an appropriation for the improvement of the harbor at New Buffalo, in that State; which was referred to the Committee on Commerce.

He also presented a joint resolution of the Legislature of the State of Michigan, in favor of an appropriation to construct a harbor at Menominee upon the dividing line between the States of Michigan and Wisconsin; which was referred to the Committee on Commerce.

He also presented a joint resolution of the Legislature of the State of Michigan, in favor of an appropriation for a light-house at the mouth of Thunder Bay, in the county of Alpena, Michigan; which was referred to the Committee on Commerce.

Mr. McDONALD presented the petition of Thomas Wall, of Marion County, Indiana, praying for a pension; which was referred to the Committee on Pensions.

He also presented the petition of Jacob H. Mattern and 27 others, letter-carriers of Indianapolis, Indiana, praying for an increase of compensation; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. KIRKWOOD presented a petition of citizens of Des Moines, Iowa, praying an increase of compensation to letter-carriers; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. WALLACE presented the petition of J. W. Forney and 17,000 other citizens of Philadelphia, Pennsylvania, praying an increase of compensation to letter-carriers; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONKLING presented a petition of a number of citizens of Mattoon, Illinois, praying the remonetization of the old silver dollar; which was referred to the Committee on Finance.

Mr. CONKLING. I present also a petition signed by the letter-carriers of Troy, New York, representing that $1,200 per annum is a reasonable compensation, and praying that it be fixed as the compensation of letter-carriers. I move that this petition be referred to the Committee on Post-Offices and Post-Roads.

The motion was agreed to.

Mr. CONKLING also presented a petition of the letter-carriers of Oswego, New York, praying that the salary of letter-carriers be fixed at the uniform sum of $1,200 per annum; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONKLING. I present also a petition of the commissioners of the State of New York appointed for the purpose of erecting a monument to the memory of David Williams, one of the captors of Major André, praying an appropriation of $10,000 by Congress in addition to $2,000 already appropriated by the State of New York, to be used in erecting an appropriate work of art in commemoration of the event referred to. I wish the Chair would be kind enough to indicate the proper reference.