Mr. MITCHELL. I thank the Senator from Pennsylvania. I am instructed by the Committee on Privileges and Elections to offer the following resolution, and ask its present consideration:

Whereas Conrad N. Jordan, cashier of the Third National Bank, New York, was, on the 7th day of February, 1877, at ten o'clock a. m., duly served with a *subpœna duces tecum* issued by the Senate Committee on Privileges and Elections, commanding him to appear before such committee on the 8th day of the present month to then and there testify in reference to subject-matters under consideration by said committee, being matters relating to the controversy concerning the electoral votes for President and Vice-President, and to bring with him a full and exact statement of the accounts as shown by the books of said Third National Bank, of Samuel J. Tilden, William T. Pelton, and ABRAM S. HEWITT, from the 1st day of June, 1876, to the 6th day of February, 1877;

And whereas said Conrad N. Jordan has refused to respond to such subpœna, has failed to appear before said committee as required by said subpœna, or to produce such statement of accounts as required: Therefore,

Resolved, That an attachment issue forthwith, directed to the Sergeant-at-Arms of the Senate, commanding him to bring said Conrad N. Jordan forthwith to the bar of the Senate to answer for contempt of a process of this body.

Mr. SAULSBURY. I object to the consideration of the resolution this afternoon. It is not reported by the unanimous consent of the Committee on Privileges and Elections. There are matters connected with the subject of the resolution which require at least some explanation that time now will not permit. I move, therefore, that the resolution be printed.

The PRESIDENT *pro tempore*. Objection being made to the present consideration of the resolution, it goes over one day. Is there objection to the motion to print?

Mr. MITCHELL. I ask that it be printed in the RECORD.

Mr. SARGENT. The fact that the Printing Office is suspended would delay the printing of this document otherwise than in the RECORD. I should like to have Senators understand that by ordering the printing of the resolution it is not understood that this resolution shall be postponed until the printing of it in document form.

The PRESIDENT *pro tempore*. The resolution will be printed in the RECORD.

BUSINESS BETWEEN TEN AND TWELVE O'CLOCK.

Mr. WEST. I should like to inquire from the Chair whether it is the understanding, when the Senate shall meet after the recess at ten o'clock to-morrow morning, that business shall then be conducted as has been customary heretofore during the proceedings of the count of the electoral votes?

The PRESIDENT *pro tempore*. The Chair thinks there is no understanding now since the decision of the commission on the case submitted to it.

Mr. WEST. Then, there being no understanding, I move that when the Senate take a recess until ten o'clock to-morrow, it assemble at that hour with the understanding that there shall be no legislative business transacted prior to twelve o'clock of the day.

The PRESIDENT *pro tempore*. Shall that be the understanding, that no business shall be transacted from ten o'clock to twelve o'colck while the commission is sitting on the present case of Louisiana? The Chair hears no objection; and that will be the understanding.

Mr. WEST. Until further notice.

The PRESIDENT *pro tempore*. That is the understanding, during the sitting on the Louisiana case or until further order.

Mr. INGALLS. Until further order.

The PRESIDENT *pro tempore*. That will be subject to the control of the Senate during the sitting of the commission.

Mr. MORRILL and others. Until further order.

Mr. WEST. Until further ordered by the Senate.

The PRESIDENT *pro tempore*. The Chair has so stated.

Mr. DAVIS. Until further ordered after twelve o'clock on any day.

The PRESIDENT *pro tempore*. So the Chair will understand, that any motion to change the order of to-day must be made after twelve o'clock for any subsequent time. The Senator from Pennsylvania moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were re-opened, and (at four o'clock and forty minutes p. m.) the Senate took a recess until to-morrow, February 13, at ten o'clock a. m.

HOUSE OF REPRESENTATIVES.

THURSDAY, *February* 1, 1877.

CALENDAR DAY, *February* 12.]

AFTER THE RECESS.

The House resumed its session at ten o'clock a. m. Monday, February 12, 1877.

ORDER OF BUSINESS.

Mr. MCCRARY. I believe the regular order is the discussion of the report of the electoral commission; and I rise for the purpose of opening debate on that question.

Mr. CLYMER. I do not wish to interfere with the remarks of the gentleman from Iowa, [Mr. MCCRARY,] but it is apparent that there is no quorum present, and I am quite certain that a very large number of gentlemen on this side of the House, who are now absent, are anxious to hear the gentleman from Iowa and others who may speak this morning.

Mr. MCCRARY. I prefer, of course, to be heard by a full House; but I do not think we ought to waste any time, and if I am in order I will proceed.

The SPEAKER. The gentleman from Pennsylvania [Mr. CLYMER] raises the point of order that there is no quorum present.

Mr. MCCRARY. I think it is not necessary that there should be a quorum in order to proceed with debate.

The SPEAKER. The House is not a House without a quorum.

Mr. HALE. But, Mr. Speaker, how can the question of a quorum be raised or tested when a gentleman is on the floor for the purpose of debate? The understanding, I suppose, on Saturday, when we took a recess, was that this matter would come up necessarily in regular order, and having come up——

The SPEAKER. The Chair thinks that it does come up.

Mr. HALE. And the gentleman from Iowa being on the floor, if he chooses to go on, how does the question as to a quorum arise until a vote is taken or some business done?

Mr. CLYMER. I take it that it is competent for any member at any time to raise the question of the want of a quorum.

Mr. WILSON, of Iowa. I rise to a point of order. Has my colleague been recognized?

The SPEAKER. The gentleman from Iowa stated that he rose to debate, but the gentleman from Iowa has not the floor for that purpose. The gentleman from New York [Mr. FIELD] who presented the objection to the decision of the electoral commission would be recognized by the Chair.

Mr. WILSON, of Iowa. I am well satisfied that there is a quorum in and about the Hall, and that if the question is not raised a quorum will be here immediately if there be not one now. I think we have never determined that a quorum is not present unless its absence be shown by the vote.

The SPEAKER. A call of the House would settle that.

Mr. WILSON, of Iowa. I think there is no need of that.

The SPEAKER. The Chair recognizes the gentleman from New York [Mr. FIELD] who presented the objection as having control of the floor. The gentleman from Iowa [Mr. MCCRARY] has no right to rise and open debate on that objection that the Chair is aware of. But the Chair thinks that there is no difficulty about this matter. If there is not a quorum present now he thinks there will be a quorum within a few minutes.

Mr. WILSON, of Iowa. I believe there is a quorum now within and about the Hall.

Mr. BANKS. I would suggest that there be a call of the House.

Mr. O'BRIEN. Is it in order to move to take a recess for half an hour?

The SPEAKER. The Chair thinks not.

Mr. CLYMER. I only desire that when this question is discussed there should be at least a quorum present.

Mr. HOLMAN. To dispose of this difficulty at once, I move that there be a call of the House.

The SPEAKER. The better way, the Chair thinks, to avoid the question of another recess is that there be a call of the House, and after a quorum is secured the debate can then be proceeded with.

Mr. WILSON, of Iowa. If that motion be entertained the Chair will see the difficulty we will run into at once. At any time when a gentleman is on the floor, another member who thinks there is not a quorum can move a call of the House. Now, I submit we have no rule requiring the Speaker to estimate by his eye whether a quorum is present or not. We have always acted on what was the previous vote of the House.

The SPEAKER. The gentleman is mistaken. Under the rules, the Speaker has that power to determine whether there is a quorum or not.

Mr. WILSON, of Iowa. The Speaker must have a fine eye if he can determine now whether there is a quorum present or not.

Mr. SAVAGE. I call the attention of the Chair to the statement on this point in the Digest, at page 194:

Whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted, and, being found deficient, business is suspended.

Mr. WILSON, of Iowa. That is a different case altogether. There is a difference between a call of the House and a counting of the House.

Mr. HOLMAN. There is nothing in the law under which we are acting that dispenses with the necessity of a quorum for the transaction of this business.

Mr. COX. That law does not abolish the House of Representatives.

Mr. HOLMAN. I move that there be a call of the House.

Mr. BANKS. I think that is the proper course.

Mr. MCCRARY. I suggest, at the request of several gentlemen, that we agree by unanimous consent that the debate shall begin at half past ten o'clock, and business in the mean time be suspended.

Mr. CLYMER. I think there will be no objection to that.

The SPEAKER. The Chair desires to state that there is no purpose on the part of any gentleman, so far as he knows, to delay debate on this question.

Mr. CLYMER. For my part, I disclaim any such purpose. What I suggested was in kindness to the gentleman from Iowa, [Mr. McCRARY,] that his remarks might be heard by a full House.

The SPEAKER. But, if it is desired that the presence of a quorum should be determined, that can be done by a call of the House. The Chair did not entertain the motion of the gentleman from Maryland [Mr. O'BRIEN] to take another recess, for reasons which must be apparent.

Mr. BANKS. There is no imputation on the motives of anybody. I have no objection to the debate going on now, but in the absence of a quorum we cannot proceed except by unanimous consent of the House. If the Speaker asks for that unanimous consent, I for one have no objection.

Mr. HALE. Does the gentleman from Massachusetts say that debate cannot go on except by unanimous consent?

Mr. BANKS. I say that it cannot go on, except by unanimous consent, in the absence of a quorum. If any member states that a quorum is not present the Speaker counts the House, as he is bound to do, and if a quorum is found not to be present, business is suspended and a motion for a call of the House may then be made.

Mr. HALE. Can that call for the House to be counted be made even when a gentleman is on the floor?

Mr. BANKS. Yes; at any moment. If the House gives its consent, the debate may go on without the question being raised.

Mr. McCRARY. I think an arrangement may be made. I understand there is no objection on the other side, and certainly there is none on this side, to the proposition that by unanimous consent the House take a recess until half past ten.

Mr. HALE. Not take a recess. I object to that. I will not consent that a recess shall be taken even by unanimous consent.

Mr. McCRARY. The proposition is that by unanimous consent the debate shall begin at half past ten.

Mr. HALE. No business to be transacted in the mean time.

Mr. LAWRENCE. With no objection to the vote being taken at the end of the two hours.

Mr. HOLMAN. I insist on my motion.

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] moves that there be a call of the House.

Mr. BANKS. I ask that the request for unanimous consent be submitted to the House.

The SPEAKER. The gentleman from Iowa [Mr. McCRARY] asks unanimous consent of the House that the commencement of the discussion upon the pending question be waived until half past ten.

Mr. HALE. No business to be done meanwhile?

The SPEAKER. No business to be done in the mean time.

Mr. O'BRIEN. I would suggest eleven o'clock.

Several MEMBERS. Half past ten.

The SPEAKER. Is there objection to the proposition?

Mr. HOLMAN. I presume there is no objection to the proposition that, by unanimous consent, there be a recess until half past ten.

Mr. HALE. Not a recess. That we shall be here in a condition of suspended animation.

Mr. HOLMAN. Very well.

There being no further objection, the House (at ten minutes past ten o'clock) suspended business until half past ten o'clock.

The SPEAKER. It is now half past ten o'clock and the Chair recognizes the gentleman from New York.

Mr. FIELD. Mr. Speaker, for the purpose of bringing the matter in due form before the House, I offer this resolution; and before it is read allow me to say it is understood that each side of the House shall have its hour and that the gentlemen who desire to speak will arrange the time among themselves.

The Clerk read as follows:

Ordered, That the counting of the electoral votes from the State of Florida shal not proceed in conformity with the decision of the electoral commission, but that the votes of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

Mr. KNOTT. I offer the following as a substitute:

Mr. HALE rose.

The SPEAKER. Does the gentleman from New York yield to the gentleman from Kentucky?

Mr. HALE. My understanding was——

Mr. FIELD. For what purpose does the gentleman rise?

Mr. KNOTT. I wish to offer a substitute.

Mr. HALE. It was the understanding that an amendment should be offered from this side.

The SPEAKER. The Chair understands that amendments are to be offered as far as they can by consent.

Mr. HALE. It was on that point I wish to call the attention of the Chair. By arrangement with the gentleman from New York I was to be permitted to offer an amendment.

The SPEAKER. The gentleman was to be recognized.

Mr. HALE. The understanding was the gentleman from New York should allow amendment to be offered from this side. It seems fitting to me that such an amendment should be recognized first, so both sides should be represented.

The SPEAKER. The Chair was advised that the gentleman from Kentucky was to be recognized.

Mr. HALE. I appeal to the Chair whether it is not proper my amendment should first be received?

The SPEAKER. The Chair has no wish about the matter. If the gentleman from New York yields to the gentleman from Maine first, very well.

Mr. FIELD. It is a mere matter of order, as both gentlemen will have the opportunity to offer amendments.

Mr. HALE. I appeal to the Chair whether this side should not offer its amendment.

The SPEAKER. The Chair was advised he was to recognize the gentleman from Kentucky first, and then the gentleman from Maine; but if the gentleman from New York wishes to act differently, very well.

Mr. FIELD. No; let it go as it is.

Mr. HALE. I wish to offer an amendment merely to change the form.

Mr. KNOTT. I believe I have the floor to offer a substitute.

Mr. BANKS. Whoever is to offer an amendment on this side ought to have the floor for that purpose.

The SPEAKER. The Chair will rule that the mere offering will not add any debate to the two hours allowed under the law.

Mr. BANKS. Debate ought to be allowed to proceed now.

Mr. HALE. My amendment is simply to perfect the resolution, which I think would be fairly in order as I presume the amendment of the gentleman from Kentucky is in the nature of a substitute.

Mr. KNOTT. I rise to a parliamentary inquiry. Should the gentleman from New York yield to the gentleman from Maine, could I then offer my resolution as a substitute for the original and amendment?

The SPEAKER. Undoubtedly.

Mr. KNOTT. Then let the gentleman from Maine offer his, and I will offer mine as a substitute for the bill.

The SPEAKER. The Chair desires to say, if he understands the amendment proposed to be offered by the gentleman from Maine, it is more pertinent to have it first; but the Chair was advised the floor was to be yielded to the gentleman from Kentucky, and consequently recognized him.

Mr. HALE. I did not know that. I move now to amend the order by striking out the word "not" and all after the word "commission," and if the Clerk will read the order as amended. members will see it simply presents the side of the negative against that of the gentleman from New York.

The SPEAKER. The original proposition of the gentleman from New York has been read, and the Clerk will now read the amendment of the gentleman from Maine.

The Clerk read as follows:

Amend, so it will read as follows:

Ordered, That the counting of the electoral votes from the State of Florida shall proceed in conformity with the decision of the electoral commission.

Mr. KNOTT. I offer the following as a substitute for the original proposition and amendment.

The Clerk read as follows:

Whereas it is provided in the act of Congress entitled "An act to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," approved January 29, 1877, that the commission thereby constituted should in reference to the vote of any State referred to it in pursuance thereof decide whether any and what votes from such State are the votes provided for by the Constitution of the United States, and how many and what persons were duly appointed electors in such State, and may thereon take into view such petitions, depositions, and other papers, if any, as shall by the Constitution and now existing laws be competent and pertinent in such consideration; which decision shall be made in writing, stating briefly the grounds thereof, and signed by the members of said commission agreeing therein;

And whereas when said commission had under consideration the case of the State of Florida evidence competent and pertinent to show that Charles H. Pearce, Frederick C. Humphreys, William H. Holden, and Thomas W. Long, the persons named in the paper known as "certificate No. 1," had not been appointed as electors by the said State of Florida in the manner directed by the Legislature thereof was offered before said commission;

And whereas upon objection made thereto said commission did decide and determine that no evidence would be received or considered by said commission which was not submitted to the two Houses in joint convention by the President of the Senate with the several certificates;

And whereas said "certificate No. 1" contains no evidence whatever, and makes no allusion whatever to any evidence, determination, or precedent judgment or decision of any board of State canvassers or tribunal as the basis thereof, showing or tending to show that the said four persons named therein had been appointed as electers by the said State of Florida in the manner directed by the Legislature thereof, or that there had ever been a canvass of the votes cast for electors in said State;

And whereas the paper known as "certificate No. 3" which was opened by the President of the Senate in the presence of the Senate and House of Representatives when assembled in joint convention and referred to said commission along with the paper marked "No. 1," does contain evidence fully and specifically showing the fact that by authority of an act of the Legislature of said State of Florida a correct canvass of the vote which had been cast in said State for electors had been made, and that Wilkinson Call, James E. Yonge, Robert B. Hilton, Robert Bullock were duly elected and appointed as electors by said State in the manner directed by the Legislature thereof;

And whereas the said paper "No. 3" contained the only evidence of any kind in nature or description whatever before said commission that the votes cast for electors in the State of Florida has ever been canvassed at all;

And whereas there was not and under the ruling of said commission there could not be any evidence whatever before said commission (except that contained in said paper "No. 3") that there ever was any determination or declaration of any board of canvassers of said State in respect to the votes cast for electors therein;

And whereas, notwithstanding the foregoing facts, the said commission, in stating the grounds for its decision that the votes of Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long named in said paper No. 1 are

the votes provided for by the Constitution of the United States, and should be counted as therein certified, has said in substance that said persons were those whose appointment as electors was regularly certified by the governor of the State of Florida *on and according to determination and declaration of their appointment* by the board of *canvassers* of said State.

Now, therefore, in order that said commission may have an opportunity to correct in manifest inconsistency therein and to explain how and in what manner it ascertained that the certificate of M. L. Stearns, as governor of the State of Florida, was on and according to any determination and declaration of any board of canvassers of said State:

Be it resolved, That the decision of said commission, and the grounds thereof, be, and the same are hereby, remanded and recommitted to said commission with the request that the same be so corrected or explained to this House, and that said commission be further requested to furnish in detail the true reasons of its decision, that this House may be enlightened as to the course it ought to pursue in the discharge of its duties in respect of the vote of the State of Florida under the Constitution of the United States and the act of Congress above referred to, and that in the mean time the votes of Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long shall not be counted.

Mr. HALE. I raise the point of order upon that resolution.

The SPEAKER. The Chair desires to state the manner in which at the end of the two hours the vote will be taken upon the propositions pending. The first vote will be upon the amendment of the gentleman from Maine, [Mr. HALE,] it being an amendment to perfect the original matter, the question will then be upon the substitute of the gentleman from Kentucky, [Mr. KNOTT,] and then upon the resolution offered by the gentleman from New York, [Mr. FIELD.]

Mr. HALE. I raised the point of order upon the substitute of the gentleman from Kentucky. Perhaps the Chair did not hear me.

The SPEAKER. The gentleman from Maine [Mr. HALE] will state his point of order.

Mr. HALE. It is this, that under the electoral-commission law, under which we are now proceeding, it is the imperative duty of the House, at the end of the two hours' debate, to vote upon the main question, and which is, in the language of the statute, "that the vote shall proceed in conformity therewith," as found in section 2, and that there is no provision or hint in the electoral bill that after the commission has reported to the two Houses anything can be sent back to that commission. The commission only intervenes to settle and determine questions of the electoral count in a particular State, and its decision makes the law, and the count proceeds in conformity therewith, and the electoral votes are counted for the one candidate or the other, unless the Houses shall separately concur in ordering otherwise, that is, in ordering that the decision of the commission is overruled; and I submit that nothing in the shape of delay, in whatever form it may be presented, the House having taken a recess up to this time and under the ruling that one recess could be taken, nothing can now arrest the wheels of this proceeding.

Mr. WILSON, of Iowa. .There is another point to which I wish to call the attention of the Chair, and it is that this commission is not a standing committee of the House, or a select committee of the House, or the Committee of the Whole of the House, and that we can refer nothing to it. It would require concurrent action to refer anything to that commission. The Chair will recollect that he made a ruling upon this point relating to referring the silver bill, so called, to a commission.

Mr. WOOD, of New York. I desire to say a word on the point of order raised by the gentleman from Maine, [Mr. HALE,] and without expressing any opinion in the affirmative or negative in respect to the substitute offered by the gentleman from Kentucky, [Mr. KNOTT,] I apprehend that there is nothing in the original law that was intended to deprive this House of the right of free expression of opinion. While I concede, as it has been stated by that gentleman, that we have but two hours for debate, I do not concede that that debate is limited in its character or range, or that so long as we do conclude to accept or reject the decision of the electoral commission on any question, I do not concede that we have not the right to express our opinion upon any question pertinent to the matter under consideration before the House.

Mr. HALE. Let me ask the gentleman if it is not expressing an opinion when a vote is taken directly on the resolution whether the decision of the commission shall be overruled or shall stand?

Mr. WOOD, of New York. The law directs us to do that. And the intimation of the gentleman from Maine, [Mr. HALE,] and also of the gentleman from Iowa, [Mr. WILSON,] that there is any disposition on this side of the House to delay action or to interpose any factious opposition to any decision that this grand electoral commission may arrive at, is entirely gratuitous and unwarranted by anything that has so far occurred.

Mr. HALE. Has anything been said this morning intimating anything of the kind? I am not aware of it.

Mr. WOOD, of New York. The gentleman himself has just spoken of delay, and on Saturday last he intimated that there evidently was a disposition on the part of this side of the House to delay action. Now I assure that gentleman that there is no such thing. But while we are ready to act in good faith and to carry out in all respects this law and the results that may be arrived at under it, yet at the same time we demand the right to have a free expression of opinion, and the right on the part of this House to place upon record what is its judgment in reference to the action of this grand electoral commission.

Mr. HALE. I was only referring to the delay involved in the proposition. I did not mean to intimate, I do not believe, that the majority on that side of the House will vote to adopt the resolution even if it shall be admitted. But certainly I had the right to claim that the proposition itself involved delay, because it carried delay with it in terms, and that is all there is of it. I do not say that that intention extends beyond the mind of the gentleman from Kentucky, [Mr. KNOTT,] but I do say that delay is embodied in the resolution with all the force that language can give it, whether the gentleman from New York assents to it or otherwise.

Mr. WOOD, of New York. I would have preferred that this discussion and the propositions submitted to the House should have been confined simply to the affirmative or the negative of the proposition as submitted by the gentleman from Maine, [Mr. HALE.] Individually I should have preferred to have had the isolated issue presented for debate and determination. But I deny the right of that gentleman to intimate that because any gentleman upon this side of the House seeks this mode of expressing his individual opinion, and sends to the desk a substitute or amendment, that action is intended for delay, because that is an imputation upon the gentleman to whom it may be addressed. With these remarks I trust that the question of order raised by the gentleman from Maine will not be sustained.

The SPEAKER. The Chair desires the gentleman from Maine [Mr. HALE] to again state his point of order, and to refer the Chair to the particular portions of the law upon which he relies as excluding the proposition of the gentleman from Kentucky, [Mr. KNOTT.]

Mr. HALE. The sections of the law, those that carry with them the force of the law against delay, and that declare what the two Houses can do, I believe are sections 2 and 4.

The SPEAKER. Will the gentleman from Maine be kind enough to read the clauses of each section upon which he relies?

Mr. HALE. Beginning with the word "whereupon," in section 2. That section, after referring to the decision of the commission that shall be presented to the two Houses, goes on to provide:

Whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the votes shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise; in which case such concurrent order shall govern.

Then section 4 provides as follows:

That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

My point of order is that but one question can be put, and that is the question contained in the resolution or order submitted by the gentleman from New York as perfected by the amendment offered by myself, which is the one single question that can be submitted to the Houses; that is, that the counting shall proceed or not proceed in conformity with the decision of the commission.

Under this bill there is no power of recommittal by the House. It is specifically provided under this bill that nothing can be sent to the commission except by the two Houses; and once sent to the commission and returned by that commission with its decision, we can do nothing but vote "yes" or "no" upon the question of the count proceeding in accordance with the decision of the commission. No authority is given to this House to send anything to this commission. Nothing can be sent to the commission except in the method provided by the law, upon objection made in the manner provided by the law. Upon that I am willing to take the ruling of the Chair, upon the point of order which I have raised, that this House alone can send nothing to the commission.

Mr. KNOTT. The act under which this commission is organized requires that it shall submit its decision in writing, and that it shall state briefly the grounds upon which such decision may be based. The commission proceeding under that act have decided that the persons named in a paper designated in their decision as "certificate marked No. 1" were entitled to cast the electoral vote for Florida because their appointment was regularly certified by the governor of Florida upon and according to the determination and declaration of the board of canvassers of that State. There is their decision; and there is the reason given by them for it. I have this morning examined "certificate marked No. 1," and I find that it not only contains no evidence whatever that there ever was a canvass of the votes of Florida, but makes no allusion to any evidence showing that the votes of Florida ever were canvassed. Moreover the only evidence offered before that commission that the votes cast for electors in Florida were ever canvassed by any board whatever is contained in certificate No. 3, which was ruled out by the commission.

Now we have here a decision resting upon a certificate that affords no evidence at all. Thus the commission is involved in an inconsistency which justice to it requires it shall have an opportunity to explain, if an explanation can by any possibility be made. This is but justice to the commission itself; and I apprehend that nothing in the law precludes this House, with the concurrence of the Senate, from remitting these papers to that commission in order that it may give a satisfactory explanation and that it may not impair its reputation in history.

Mr. HALE. Let me ask the gentleman, following out the suggestion of the Chair, to put his finger on that portion of the law which gives one House the right to send anything to the commission.

Mr. KNOTT. I do not yield to the gentleman. We all love to hear him talk; and he seldom rises to address the House; but I cannot yield to him on this occasion.

I say that the facts to which I have imperfectly adverted, but which are specifically set out in the preamble to my resolution, demand imperatively at our hands that this commission shall have an opportunity to explain the glaring and palpable inconsistency in its decision; and I submit that there is nothing in the law that prevents this House, with the concurrence of the Senate, from remanding that decision to the commission in order that it may have an opportunity to correct it.

The SPEAKER. The Chair would suggest to the gentleman from Kentucky that he confine himself to the discussion of the point of order.

Mr. KNOTT. I am endeavoring to do so, if the Speaker please. The resolution provides not only that the matter be remanded to the commission for its revision and correction, but that in the mean time the votes shall not be counted. It is a matter of justice to this House and to the Senate, as well as to the commission itself, that this commission should give a detailed statement of the true reasons upon which this important decision, the most important ever rendered by human tribunal, was made.

Mr. BANKS rose.

The SPEAKER. Does the gentleman from Massachusetts wish to speak to the point of order?

Mr. BANKS. I do.

Mr. SEELYE. May I make a single inquiry? I wish to know whether this discussion is to come out of the two hours appropriated to general discussion on the question?

The SPEAKER. It does not.

Mr. KASSON. Will the Chair allow me to say that it has been ruled elsewhere that all this discussion counts as a part of the time allowed for the discussion under the provisions of the act?

The SPEAKER. The Chair has nothing to do with any ruling elsewhere.

Mr. EDEN. I object to the gentleman's reference to proceedings at the other end of the Capitol.

Mr. BANKS. Mr. Speaker, I do not think that the discussion of this question of order can come out of the time allowed under the law; it proceeds only by general consent, and can be closed at the suggestion of any member. I ask leave to say a few words on the point of order.

This resolution of the gentleman from Kentucky [Mr. KNOTT] is clearly not in order. The act under which we are proceeding requires that the counting of the votes of the State of Florida shall proceed in conformity with the decision of the electoral commission, unless objection shall be made. Objection has been made, and by five Senators and eight Representatives, and every member of the House is entitled to an affirmative or negative vote upon the question whether in the presence of this objection the votes from Florida shall be counted in accordance with the report of the commission. We are entitled to an affirmative or a negative vote upon that single and simple proposition embodied in the law. Now the amendment of the gentleman from Kentucky moves us off in divers ways upon divers matters, so that no member can vote upon the direct question which arises under the law upon the decision of the commission and the objection made thereto.

In the first place the resolution proposes that the decision of the electoral commission shall be "remanded and recommitted" to the tribunal that made it. The House has not authority or power to give that order. It proposes that the decision shall be "corrected and explained." Such a proposition cannot be adopted by this House. It is not quite respectful to the commission to propose it. The resolution proposes that the commission shall "give reasons in detail for their decision, in order that this House may be enlightened." Sir, that commission has no constitutional, moral, or mental power to give "reasons in detail" for any such purpose as that.

And it is ordered further that "in the mean time the said votes shall not be counted." That is clearly in direct conflict with the law, and deprives every member of this House of that which is his constitutional right to give, an affirmative or negative vote on the report of the decision of the electoral commission, notwithstanding the objections which have been presented by the honorable gentleman from New York.

The SPEAKER. The gentleman from Maine will give his attention.

Mr. BANKS. I am not yet through. Allow me to say if this decision is "remanded and recommitted" it will possibly be returned to the House as not conferring authority on the commission to reverse or review, once promulgated and reported to the Senate and House, its obeisance to a public statute.

Mr. SAVAGE. Let me ask the gentleman from Massachusetts a question. I desire to know if the law does not provide that the vote shall be counted in accordance with this decision of the commission unless the two Houses separately agree in ordering otherwise. Suppose they agree in remitting it back to the commission by concurrence of the two Houses, would not that be agreeing in ordering otherwise?

Mr. BANKS. That does not give an opportunity by affirmative or negative vote to pass upon the decision of the commission or the objections thereto. "To order otherwise" must be upon an order in concurrence of the two Houses to negative the decision of the commission.

Mr. SAVAGE. But would not the remission of the decision of the electoral commission, as suggested by the gentleman from Kentucky, be separately agreeing in ordering otherwise than in counting the vote?

Mr. BANKS. It is not, in my opinion, in accordance with the law. It is not a vote on this proposition submitted to us. We have a right to an affirmative or a negative vote on the decision of the commission in the presence of the objections offered by the honorable gentleman from New York.

Mr. WOOD, of New York. I should like to remind the gentleman from Massachusetts he confounds a constitutional with a moral right. There is nothing in this law nor is there anything in the power of both Houses of Congress to deprive, under the Constitution of the United States, a member of this House from the expression of an opinion and the giving of a vote. And, as I understand, when we voted to pass this bill we parted with no constitutional right.

While I agree with the gentleman, I think under this law we are in honor bound to settle, and settle forthwith, within two hours any determination this electoral commission may reach on any question referred to it, yet I deny there is anything in the law or the rules of this House that will take a member off his feet if the Speaker accords him the floor. And we have the right to present our opinion by any positive proposition, and it is for the House to dispose of it when thus presented. We cannot deprive a Representative of the people upon this floor of his constitutional right to a vote or action on any proposition before the House.

Mr. BANKS. In answer to the inquiry of the gentleman from New York it is a constitutional not a moral right merely to vote affirmatively or negatively directly upon the decision of the electoral commission. It is a constitutional right for each member to have an affirmative or negative vote upon the decision of the commission; that is, whether, with due consideration of the objections made thereto, the votes shall be counted in conformity with the decision of that commission. That is fixed by law. The gentleman from New York, as was his right, makes objection; and we have the right to pass upon the proposition in the affirmative or negative, each member of the House to vote "ay" or "no." Now the gentleman from Kentucky moves the House off by platoons upon other inquiries, elaborate in their statement, incomprehensible to the House in the manner in which they are presented here, not because they are not clearly expressed but because we have not time, critically and properly, to study them; moves us off from the actual question which is before the House to the consideration of numerous other questions which we do not and cannot satisfactorily consider. They are not and cannot even be printed; and that is, whether these votes shall be counted in conformity with the decision of the electoral commission in the presence of the objections made thereto. It moves us off from that.

Mr. KNOTT. Let me ask the gentleman a question.

Mr. BURCHARD, of Illinois. I should like to ask a question of the gentleman from New York.

The SPEAKER. The gentleman from Kentucky desires to ask a question of the gentleman from Massachusetts before he takes his seat.

Mr. KNOTT. The question which I would respectfully ask the gentleman from Massachusetts is this: Suppose the commission itself ascertained it had made a manifest error in its decision before action had been taken by the House, would or would he not deny the right to ask the decision be remitted to it for correction or reversion?

Mr. BANKS. If the commission sends a communication to this House that it withdraws the decision it has made, then I agree further proceedings should be suspended. They have made no such decision; and we cannot remand or recommit their decision to them for revision.

Mr. KNOTT. Let me ask the gentleman another question.

Mr. BURCHARD, of Illinois. Mr. Speaker, the gentleman yields to me to suggest to the gentleman from New York this proposition is not an expression of opinion by the House, but it proposes an order of the House to refer papers before the House to a commission not authorized under the rules of this House to receive any such papers. These papers went under law from the joint meeting, and the Speaker decided it was not in order to refer a bill to an outside commission created by law. Hence, under the rules of this House, there would be no authority to refer these papers to the commission. The certificates and papers referred to them went under the law, and not under the rules of this House.

Mr. WOOD, of New York. I would say to the gentleman from Illinois that there are no rules of the House applicable to this special and particular case. This is a law—a law unto itself. We are now confronted with this question, how under the electoral bill to dispose of an action upon the part of the electoral commission. The law says that we shall after two hours' discussion determine. Now this is preliminary to that discussion, and has reference to the mode of expression of opinion. When we come to vote, if we can be permitted to vote upon the proposition of the gentleman from Kentucky, then we

will come to an action; but as preliminary to the action on the part of the House the mere sending up to the Speaker's table an amendment, a substitute, or anything that is proper in form, pertinent to the proposition, is nothing but an individual expression of opinion on the part of the gentleman who offers the substitute. And I hold that if under the rules I am permitted to offer an amendment or substitute pertinent to the proposition I am not out of order in doing it. But if the House shall sanction an improper action, that is an entirely different matter. I submit that there are no rules that guide us or control us in reference to a question of this peculiar character.

The SPEAKER. The gentleman from Maine [Mr. HALE] in making his point of order refers the Chair to two portions of the law; a part of the second section which he read, as follows:

Whereupon the two Houses shall again meet, and such decision shall be read and entered in the Journal of each House, and the counting of the vote shall proceed in conformity therewith, unless, upon objection made thereto in writing by at least five Senators and five members of the House of Representatives, the two Houses shall separately concur in ordering otherwise, in which case such concurrent order shall govern.

And the whole of the fourth section, as follows:

SEC. 4. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or upon objection to a report of said commission, or other question arising under this act, each Senator and Representative may speak to such objection or question ten minutes, and not oftener than once; but after such debate shall have lasted two hours, it shall be the duty of each House to put the main question without further debate.

That portion of the law read which really relates to the question of order raised by the gentleman from Maine, it occurs to the Chair, is embraced in the following clause:

But after such debate shall have lasted two hours it shall be the duty of each House to put the main question without further debate.

Upon the question involved in that point of order the Chair will presently rule. But in stating that proposition another point of order has cropped out. In fact, the gentleman from Iowa [Mr. WILSON] indicates his purpose to raise the point of order whether it is competent for this House, either under the law or under the rules of the House, to commit to an outside commission what is embraced in the proposition of the gentleman from Kentucky. The Chair therefore desires in a measure to consider this subject in its two aspects; because of course the gentleman from Iowa, as soon as the point of order of the gentleman from Maine shall have been decided, will immediately be entitled to raise his point of order. The language of the law is:

It shall be the duty of each House to put the main question without further debate.

The Chair thinks that the amendment or substitute of the gentleman from Kentucky could not be excluded under that language. The main question in law and in parliamentary proceedings embraces all questions upon which the previous question can be seconded and the main question ordered; and in any proceeding in this House, therefore, it would be competent for the main question to embrace, first, the original proposition, next, an amendment to the original proposition to perfect the matter of it, and third, a substitute for both. The Chair overrules that point of order. The Chair will now, so as to bring it properly before the House, recognize the gentleman from Iowa [Mr. WILSON] to make the other point of order.

Mr. HALE. If the Chair please, I stated that as part of my point of order.

The SPEAKER. The gentleman from Maine stated it as a part of his argument.

Mr. HALE. I stated that the law gave this House no right to send anything to the commission, and I called upon the gentleman from Kentucky to point out anything in the law which gave that right.

The SPEAKER. The Chair will rule on that. The Chair has already stated that the other point of order had cropped out in the remarks of the gentleman from Maine. The gentleman from Iowa is now recognized to make the other point of order.

Mr. WILSON, of Iowa. I do not wish to occupy any of the time of the House in support of that point of order. I think if the reference might possibly be made under this act, it would at least take the concurrent action of both Houses.

The SPEAKER. The Chair is unable to find anything in the law which permits a recommittal of the question back to the commission. Nay, more; the Chair continues to hold as it has been intimated he has heretofore ruled, that it is not competent for one House to refer a bill or any matter to an outside commission. The Chair therefore sustains the point of order taken by the gentleman from Iowa.

Several members called for the regular order.

Mr. FIELD. I yield to the gentleman from Iowa, [Mr. MCCRARY.]

Mr. MCCRARY. Mr. Speaker, the decision of the commission embraces several important points, upon the correctness of which the two Houses are now to decide. That these propositions are eminently sound and fully supported, both by reason and authority, seems to me entirely clear. The first point decided is that the two Houses of Congress, in the exercise of their power to count the votes for President and Vice-President, cannot go into an inquiry as to the number of votes cast at the polls for the electors in the several States. In other words, it is held that the decision of that question is left to the proper authority in the States, and that when that authority has canvassed the votes, declared and adjudged the result, and certified the election of their electors in due form, that is the appointment of the electors required by the Constitution of the United States. This is in accordance with the important precedent established by the electoral bill of 1800, which, after thorough and exhaustive discussion, passed both Houses of Congress and was only lost by a failure to agree upon the form of a single provision. That bill created a "grand committee," to whom were to be referred questions arising upon the count of the electoral votes of the States; but it was carefully provided, both by the Senate and House bill, that no inquiry should be made as to the number of votes cast for the electors at the polls, that being regarded by all the statesmen of that day as a matter within the exclusive control of the States. The House bill of 1800 drafted, reported, and advocated by John Marshall, afterward Chief-Justice of the United States, embodied the views of that great constitutional lawyer upon this question. After providing for the grand committee, it defined their jurisdiction in these words:

And the persons thus chosen shall form a joint committee and shall have power to examine into all disputes relative to the election of President and Vice-President of the United States, *other than such*—

Mark the words—

other than such as might relate to the number of votes by which the electors may have been appointed.

This legislation was proposed and supported by the men who took part in the formation and adoption of the Constitution, and the suggestion of power in Congress to review and reverse the action of the State in the appointment of electors was never once made. If made it would have excited only astonishment.

The ruling of the commission is also abundantly supported by the most cogent reasons. To have ruled otherwise would have been to assert a jurisdiction to inquire into and overturn the action of all the States in the appointment of their electors and institute here proceedings in the nature of suits in *quo warranto* to try the title to his office of every one of the persons appointed as such. What clause of the Constitution confers such a jurisdiction upon the two Houses? Their power in the premises is all conferred by the words of the Constitution, "and the votes shall then be counted." The commission has decided, and I think upon the soundest reason, that these words confer no judicial power whatever. They describe, and very aptly describe, a ministerial duty only. The words of the Constitution are the last words that would have been chosen by which to confer that immense power and vast jurisdiction which have lately, for the first time, been claimed for the two Houses. The impossibility of exercising this jurisdiction is a strong argument against its existence. How can the two Houses of Congress entertain and try a suit to determine the title of electors to their offices? If it can be done in one case it can be done in all, and Congress may have brought before it three hundred and sixty-nine contests over elections for electors with witnesses, numbered by hundreds in each, all to be determined within the brief interval between the meeting of Congress in December and the counting of the votes in February. It is plain that to establish this doctrine is, in effect, to give the election of President and Vice-President into the hands of Congress and to take it out of the control of the States, where the Constitution places it. The commission has therefore very properly, as I think, decided that the record of the final canvass and decision and declaration of the result, made by the proper State authority, is final and conclusive, and that when this record is presented, duly authenticated and accompanied by the return required by law and the Constitution, there is but one thing that can be done, and that is to obey the mandate of the Constitution, which is that "the votes shall then be counted."

The commission has decided one other point of importance, namely, that the appointment of electors made by the State prior to the time when they are to meet and vote for President and Vice-President is final, and cannot be set aside by subsequent State action after the votes have been cast and the return thereof has been duly made to the President of the Senate. This decision rests upon the following, among other grounds:

1. For reasons of great public importance it is provided by the Constitution that the electors shall meet in all the States upon the same day and cast their votes, and Congress is authorized by the Constitution to fix the day for such meeting, which was done by the act of 1792. The great wisdom and importance of this provision are apparent. Its purpose is to prevent the very mischief which has been attempted in Florida. It was to prohibit a State from withholding its vote until it is seen how it will affect the result, and from changing its vote after it has been once cast, in order to change a result. And above all, it must be apparent that the Constitution cannot be so construed as to allow a new State administration, upon coming into power, to proceed to set aside and reverse the action of the State government completed under a previous administration, in the matter of appointing presidential electors and casting and returning the vote of the State for President and Vice-President.

2. If proceedings, either by the State Legislature or the State courts, had in the latter part of January, can be allowed to set aside the constitutional action of the State in this respect had in December, it must result, not only in a violation of the constitutional requirement that the votes of all the States shall be cast on the same day, but must also lead to the most serious consequences in the future. If a judgment of an inferior court in Florida, rendered on the 27th of Jan-

uary, can annul the vote of that State cast on the 6th of December, it follows that similar judgments in any or all the other States may be certified to the President of the Senate and must govern the count. In New York, I believe, there are more than thirty judges possessing jurisdiction in cases of *quo warranto*. Can any one of them, after the presidential election is over, transfer the thirty-five votes of that State from one candidate to another? Who can fail to see that such a doctrine would result in confusion, disaster, and ruin? If by an *ex post facto* judgment in one State one party should secure an advantage, by a similar movement in another State a corresponding advantage would be sought for the other party. We should encounter the very evil which our fathers sought to prevent, and instead of counting the votes cast by the States at the time and in the manner prescribed by the Constitution and law, it would become necessary to count the judgments in *quo warranto* rendered in the various States and certified up to the President of the Senate. The only safe, sound, and constitutional rule is that adopted by the commission, to wit, that the decision made by the proper State authority upon the claims of candidates for the office of elector *prior to the time fixed by the Constitution and law for electing the President and Vice-President* is not subject to review, and must stand as final. The power of Congress is to *count*—not to set aside—duly certified votes of the States.

Mr. FIELD. I yield to the gentleman from Virginia, [Mr. TUCKER.]

Mr. TUCKER. In the remarks that I shall submit I do not propose to criticise, much less to censure, the action of any member of the commission. But I propose, in doing my duty as a member of this House on the question now before it, to criticise with respect the judgment of the commission.

By the law under which this commission acts, each member takes an oath to render a judgment "agreeably to the Constitution and the laws." The commission is bound to observe the Constitution in making up its decision.

The law then provides that the commission shall "decide whether any and what votes from such State are the votes *provided for by the Constitution* of the United States, and how many and what persons were *duly* appointed electors in such State."

In the report which the commission has made, it declares:

> The commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, Mr. Humphreys was not a Federal officer on the day of election.

Now, does the commission mean by this to intimate or to decide that the ineligibility of an elector is to have no effect upon the validity of his vote?

Let me examine this point for a moment.

If a disqualified elector be chosen, is he an elector at all, or can he vote? By the Constitution, State judges are bound by it, anything in the constitution and laws of the State to the contrary. The *laws* of a State repugnant to it are therefore held null and void. If such a law be void, can the act of the Government or of a returning board have a better fate? Every act or law of a State repugnant to the Constitution is and must be void. For if it be held valid, then the Constitution is nullified. And if it is void for such repugnance, are we to treat it as if valid and make an act which violates of equivalent effect to one which conforms to the Constitution?

The reasoning of Marshall, Chief-Justice, in Marbury *vs.* Madison, on the effect of an unconstitutional law, is applicable to the ministerial and executive acts of the State with even greater force than to the laws of the State. He says:

> If an act of the Legislature, repugnant to the Constitution is void, does it, notwithstanding its invalidity bind the courts and oblige them to give it effect; or in other words, though it be not law, does it constitute a rule as operative as if it was a law.
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> Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining *that courts must close* their eyes on the Constitution and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our Government is entirely void, is yet in practice completely obligatory. It is prescribing limits, and declaring that those limits may be passed at pleasure.

From the obligation taken by each member of the commission, from the duties prescribed in the law creating it, and from the operative force of the Constitution as the supreme law of the land, I declare, therefore, the imperative duty of the commission to deny to a disqualified elector the power to vote as such for President.

But there is another question to which I desire to call the attention of the House, which is of more importance, and that is as to the decision upon the main inquiry; and I must state it very briefly.

The State appoints the electors and the Legislature directs the manner of appointment. There are, therefore, in all this, two functions: the elective or appointing function and the determinant function. The determinant power in a State must not by any illegal or fraudulent means usurp the elective function. If it transcends its legal authority or fraudulently changes the results of an election, it assumes the elective function and quits the realm of its merely determining authority. It does not decide whom others have elected, but it decides to elect by its own will. Such illegal or fraudulent act is void.

In Florida the board is the creature of law, must act under it, and not above it. It is subject to law. It may exercise its powers within the limits prescribed by the law, but not beyond them; within these its acts are valid; beyond them they are void.

Nor can it decide finally on the extent of its own powers. Though some of its powers may be quasi-judicial, it belongs to the executive, not the judicial, department. The limits of its power must be subject to the supervisory control of the judiciary in cases arising under its action. This is the nature of judicial power. If the board could execute its powers and judge of their extent finally, it would unite executive and judicial powers.

The legislative department prescribes the general rule of civil conduct; the executive administers it in the private cases for which it was designed; and the judicial defines its terms, applies it to the cases, and makes the execution conform to the precept of the law. The judiciary must see that the execution does not pass beyond the meaning of the law—that the executive act realizes the legislative conception—but no more.

In the case already cited Judge Marshall says:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret the rule.

The point I make is this: The board had the primary right to canvas. The extent and nature of its action, and whether final and conclusive or not was not, for it to determine, but was for the Florida courts to decide, and for them alone and finally to decide.

The Supreme Court of the United States has from the earliest period to the latest case in the last report held that the interpretation of a State *statute* by the supreme court of the State is binding upon courts elsewhere and upon the Supreme Court itself. It will not intrude its opinion in opposition to that of the supreme court of the State.

If this be so, *a fortiori*, these two Houses and the commission created to act with their respective and united powers must be bound to defer to the decision of a State court upon a State statute; to the judgment of a Florida court upon a Florida statute.

The supreme court of Florida, in the late case of The State of Florida *ex rel.* Drew *vs.* The Board of Canvassers, has defined the meaning of the statute creating this board and the extent of its powers. It has corrected the board's canvass, by which it elected Stearns, and compelled it by mandamus to decide in favor of the election of Drew. It plants itself upon its previous decisions, and is clear and emphatic in denying the claim of the board to do in that case what it has done in the case of the electors. I quote a passage from its elaborate decision:

> Westcott, J., delivered the opinion of the court.
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> The view that the board of State canvassers is a tribunal having power strictly judicial, such as is involved in the determination of the legality of a particular vote or election, cannot be sustained. The constitution of this State (article 3, and section 1 of article 6) provides that "the powers of the government of the State of Florida shall be divided into three departments: legislative, executive, and judicial; and no person properly belonging to one of the departments shall exercise any functions appertaining to either of the others, except in those cases expressly provided for by this constitution."
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> "The judicial power of the State shall be vested in a supreme court, circuit court, county courts, and justices of the peace."
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> All of the acts which this board can do under the statute must be based upon the returns; and while in some cases the officers composing the board may, like all ministerial officers of similar character, exclude what purports to be a return for irregularity, still everything they are authorized to do is limited to what is sanctioned by authentic and true returns before them. Their final act and determination must be such as appears from and is shown by the returns from the several counties to be correct. They have no general power to issue subpœnas, to summon parties, to compel the attendance of witnesses, to grant a trial by jury, or do any act but determine and declare who has been elected as shown by the returns. They are authorized to enter no judgment, and their power is limited by the express words of the statute which gives them being, to the signing of a certificate containing the whole number of votes GIVEN for each person for each office, and therein declaring the result *as shown by the returns*.
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> This certificate thus signed is not a judicial judgment, and the determination and declaration which they make is not a judicial declaration—that is, a determination of a right after notice, according to the general law of the land as to the rights of parties, but it is a declaration of a conclusion limited and restricted by the letter of the statute. Such limited declaration and determination by a board of State canvassers has been declared by a large majority of the courts to be a ministerial function, power, and duty, as distinct from a judicial power and jurisdiction. Indeed, with the exception of the courts in Louisiana, and perhaps another State, no judicial sanction can be found for the view that these officers are judicial in their character, or that they have any discretion, either executive, legislative, or judicial, which is not bound and fixed by the returns before them. The duty to count these returns has been enforced by mandamus so repeatedly in the courts of the several States of the Union, that the power of the courts in this respect has long since ceased to be an open question. Mr. Justice Smith, in the very celebrated case of the Attorney-General *ex rel.* Bashford *vs.* Barstow, 5 Wisconsin, 813, when speaking of the powers of the board of State canvassers, after reciting their power to "determine" the result of an election from the returns, says: "These are not judicial but purely ministerial acts." We must, therefore, decide that the general nature of the power given by the statute is ministerial, and that to the extent that any strictly and purely judicial power is granted, such power cannot exist.
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> This brings us to the consideration of the only remaining general question as to the powers of the board under the statute.
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> While the general powers of the board are thus limited to and by the returns, still as to these returns the statute provides that "if any *such returns* shall be shown or shall appear to be so *irregular, false*, or *fraudulent* that the board shall be unable to determine the *true vote* for any officer or member, they shall so certify, and shall not include such return in their determination and declaration; and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers." The words *true vote* here indicate the vote *actually cast*, as distinct from the *legal vote*. This follows, *first*, from the clear general duty of the canvassers, which is to ascertain and certify the "*votes given*" for each person for each office, and, *second*, because to determine whether a vote cast is a legal vote is

beyond the power of this board. As to the words "irregular, false, and fraudulent," in this connection, their definition is not required by the questions raised by the pleadings in this case.

These respondents have not alleged that they have before them any return "so irregular, false, or fraudulent" that they are unable to determine the actual vote cast in any county, as shown by the returns; and nothing can be clearer than that the *counting of returns sufficiently regular to ascertain the whole number of votes given and signing a certificate are merely ministerial acts.* Under these pleadings the genuineness and regularity of the particular returns in question here are admitted. We will say, however, that the clear effect of this clause in the statute is that a return of the character named shall not be included in the determination and declaration of the board; and that it has power to determine the *bona fide* character of the returns *dehors* their face. It is not within the power of this board to refuse to count some of the votes embraced in a return and to count others embraced therein. *They must count the whole of the return or must reject it in toto.* We will also say that the powers here conferred are ministerial powers. It is true that in some respects these powers are something more than simple counting or computing, but they are powers which necessarily appertain to the discharge of every ministerial duty of this character. Their existence is no obstacle to the control of such officers by mandamus from a court having jurisdiction of the subject-matter.

In defining the duties of a board of State canvassers where there was no like clause to this in the act defining their powers, this court in 13 Florida, 73, said:

"Their duties and functions are mainly ministerial, but are quasi-judicial so far as it is their duty to *determine whether the papers received by them and purporting to be returns were in fact such, were genuine, intelligible, and substantially authenticated as required by law.*" The power to ascertain the regularity, the genuineness and the honesty of a return, are powers of like character to those mentioned and thus described in that case.

By the statute of 1868 the duty and power of the board of State canvassers were confined exclusively to the compiling of such returns of any election as should come to their hands from the county canvassing boards, and upon computation of the aggregate vote, as shown by such returns, to ascertain who had received the highest number of votes for any office, and to certify the result and declare therefrom who was elected to any office.

In the circuit court for Leon County that court, on a *quo warranto* proceeding of The State of Florida *ex rel.* Call and Others (Tilden electors) *vs.* Humphreys and Others, (Hayes electors,) begun December 6, 1876, (before the Hayes electors voted,) rendered a judgment which I quote in full:

Information in the nature of quo warranto.

And now, on this 25th day of January, 1877, came the parties by their attorneys, and the court having fully considered what should be its findings and judgment herein, finds that respondents did not, as shown upon the face of the returns of the election held on the 7th day of November, A. D. 1876, transmitted to the secretary of state from the several counties, and did not, in fact, (as shown by the proof produced herein,) receive the highest number of votes cast at said election for electors of President and Vice-President of the United States, for the State of Florida; but that the relators did, as shown by said returns upon their face, and did, in fact, as shown by the proof produced herein, receive the highest number of votes cast at said election for such electors. It is therefore considered and adjudged that said respondents, Frederick C. Humphreys, Charles H. Pearce, William H. Holden, and Thomas W. Long were not nor was any one or them elected, chosen, or appointed, or *entitled* to be declared elected, chosen, or appointed as such electors or elector, or to receive certificates or certificate of election, or appointment as such electors or elector; and that the said respondents were not, upon the said 6th day of December or at any other time, entitled to assume or exercise any of the powers and functions of such electors or elector, *but that they were upon the said day and date mere usurpers, and that all and singular their acts and doings as such were and are illegal, null, and void.*

And it is further considered and adjudged that the said relators, Robert Bullock, Robert B. Hilton, Wilkinson Call, and James E. Yonge, all and singular were at said election duly elected, chosen, and appointed electors of President and Vice-President of the United States, and were, on the said 6th day of December, 1876, entitled to be declared elected, chosen, and appointed as such electors, and to have and receive certificates thereof; and upon the said day and date, and at all times since, to exercise and perform all and singular the powers and duties of such electors, and to have and enjoy the pay and emoluments thereof. It is further adjudged that said respondents do pay to the relators their costs by them in this behalf expended.

Now the question is, is the judgment of this commission right that no evidence shall be introduced before it to prove that the act of this canvassing board and of the executive department of Florida was absolutely null and void because contrary to law? Are we to be precluded from inquiring whether the board has fraudulently and illegally acted by an actual usurpation of the elective function vested by law in the people instead of a mere exercise of its determinant function under the law of the State, as interpreted by its own courts?

Now I say that upon a question of this kind the whole organism of the State must speak its voice; but the commission seems to say that the only organisms that shall speak for the State is that of the canvassing board and of the executive. We say that the State must speak not only through them, but through the ultimate determinant authority of the judiciary, which has defined the extent of the powers of the canvassing board. We must respect the authority of the State expressing its will through its whole organism, and not merely regard the acts of the board and of its executive, which are themselves subject to the judicial authority. We cannot strike off the judicial head of State authority and bow to the mutilated trunk of the board and the executive. We must defer to the whole authority of the State. We must hear its full-toned voice, and submit to it.

What is it? Its Legislature, its judiciary have set at naught and annulled the acts of the board. Florida, through its State organism, has declared the act of the board giving the election to the Hayes' electors a nullity, and the act of the electors in voting in the name of Florida on the 6th of December, 1876, a usurpation, and that act "illegal, null, and void."

But it is said the judgment in the *quo warranto* case had nothing to operate on, as the electors had voted prior to its rendition, on the 25th of January, 1877.

In answer:

1. Concede it; this tribunal or these Houses must decide on the question of right of these electors to vote. Suppose by their action, *non obstante*, the pendency of the *quo warranto* proceedings, they put themselves beyond the reach of preventive power of the court. In other words, suppose in the face of Florida's demand, "By what warrant" you assume to act, the parties defiantly dare to use the prerogative of the States; shall the two Houses give effect to the usurpation, adjudged to be such by the Florida court, because the usurpers' act was done in the teeth of its procedure and judicial remedy was thereby defeated? Shall we award to their usurpation a triumph against the sovereign voice of the State, adjuding them convict of usurpation?

2. But the judgment in *quo warranto* is to seize the franchise *in manibus regis*—into the hands of the king—Salk., 374; Comyn's Dg., title Quo Warranto, ch. 5.

Now, the vote cast by electors and by them certified is not effectual until opened and counted. The act of voting on December 6, 1876, by them was inchoate. It now claims to be made consummate. In the interval the inchoate act is declared to be usurpation by the court of Florida. Shall we make the inchoate usurpation consummate by our judgment?

The *quo warranto* proceeding is *in nomine regis*—in the name of Florida. The Constitution gives to Florida the power to appoint electors. The elective function is in the State. These electors assume to speak her voice. Through her judiciary Florida forbids it. Their title she has adjudged void.

Now shall we give a validity to their title, which Florida declares void?

3. But it is said the acts of a *de facto* officer are valid. True as to private parties, as to the mass of the public generally, in order to the furtherance of the rights of private parties and of justice.

But this is never held as to any political act or against the *de jure* sovereign. (See United States *vs.* Insurance Companies, 22 Wall., 99, and cases there cited.)

In these cases all acts of the confederate government or of the governments of the States of the confederacy, relating to the private rights and relations of citizens, were held valid, but all exercise of power, when against the authority of the *de jure* government, was held utterly null and void. This doctrine bears striking analogy to the case under consideration.

Besides, the right of no officer having a colorable title can be disputed by a denial of his title collaterally. It must be assailed by the sovereign whose power he usurps. Hence, while his acts may avail as to private parties, because done in the name and under color of the authority of the sovereign, they can never stand against the arraignment and judgment of the sovereign power.

[Here the hammer fell.]

Mr. TUCKER. I ask leave to print some further remarks.

No objection was made.

Mr. PAGE. I desire to give notice that I shall object to any remarks being printed in the RECORD on this subject in the future which are not delivered on the floor.

Mr. TUCKER. I insist that I had permission before the gentleman objected.

Mr. PAGE. I do not object to the gentleman's printing additional remarks, because the same privilege has been accorded to a gentleman on the other side of the House.

The SPEAKER *pro tempore*, (Mr. COCHRANE.) Unanimous consent was given to the gentleman from Virginia to print additional remarks, and the same permission was accorded to the gentleman from Iowa, [Mr. MCCRARY.]

Mr. TUCKER. Now, what does the commission decide? It holds that neither the Houses nor the commission shall hear any voice from Florida but through its board and its governor. Before these omnipotent usurpers the Legislature of Florida and its judiciary are powerless. The trio of its board and the bass-notes of its executive must drown the acclaim of its Legislature and the solemn voice from the judgment-seat of the State. Her Legislature and judiciary are naught. When the board and the governor speak let her Legislature and her judges keep silence before them! Whatever illegality or fraud the board or governor commit must triumph over all other departments of the State government. The State judiciary should not, and we cannot intrude inquiry into their supreme, conclusive, and final determinations.

Justice is said to be blind. This commission claims that we and its members are deaf as well as blind. Having eyes, we see not and cannot see, and ears, we hear not and cannot hear, the illegality and fraud that shock the sight and hearing of forty millions of people.

It seems to me this conclusion is plainly unsound. Its consequences are appalling. It puts fraud at a premium, fair dealing at a discount.

Therefore, we may proclaim it from the house-tops that through all the ranks of social life, in all departments of human affairs, public and private, the rewards of success in all, as the highest offered to American ambition, are to be won by those who can best organize fraud and most surely screen it from inquiry by the Federal and the State authority. Upon such principles the entries for the presidential race of 1880 will be for the worst jockeys, and not for honorable gentlemen. He who can best cheat will best succeed, and the people will mourn because the vilest men will be exalted to rule the country. Then may we tear down the Goddess of Liberty from the Dome of our Capitol and elevate Fraud in her place as the patron saint or rather the tutelary divinity of the American Republic.

Let us, the Representatives of the people of the States, whose vic-

tory by a majority of a quarter of a million of freemen is to be reversed by the fraud of a trio in Florida and a quartette in Louisiana, stand our ground, and if we may not avail by our vote in this House to reverse, we may yet utter our solemn protest against the successful achievements of wrong over the rights of an outraged people.

Let it not be thought that victories thus won will bring joy to the victor. The wreath upon his brow will wither before the breath of public indignation; the flowers will fade along his pathway, and tangled thorns will obstruct and impede his progress. The fraud of the agent taints the title of his principal, whether he directs it or not. Since Eve plucked and Adam ate of the forbidden tree, the taker of the fruit of fraud has ever been held the full partaker in its guilt. The wearer of presidential robes obtained by such means may win a fleeting renown, but history will herd him with its pretenders to right and its usurpers of popular liberty; his glory will be turned into shame and his fame will be immortal infamy.

In the closing moments of the convention of 1787, Mr. Madison relates that Dr. Franklin (referring to a painting of the sun behind the chair of the President) said:—

> I have often in the course of the session, and the viscisitudes of my hopes and fears as to its issue, looked at that picture behind the President without being able to tell whether it was rising or setting; but now at length I have the happiness to know that it is a *rising* and not a setting sun.

Shall we, ninety years after the great philosopher first saw the sun of constitutional liberty above the American horizon, be doomed to see it go down under a cloud of impenetrable fraud? May the God of our Fathers forbid such a destiny for this federative Republic of great and growing Commonwealths!

Mr. BANKS. Mr. Speaker, it is one of the highest privileges I have had, as a member of the House, to give my vote in support of the decision and report of the electoral commission. It will, in my opinion, be the foundation of that change in the fundamental law of the country, constitutional and statutory, now made imperatively necessary by conflicting and irreconcilable opinion in regard to the proper method of counting the electoral votes for President and Vice-President. In the few moments that are allowed me for the expression of my opinion, I shall reply very briefly to the suggestions made by the gentleman from Virginia, [Mr. TUCKER.]

And, first, in regard to the ineligibility of electors.

In the case of Humphreys, according to the decision of the electoral commission and according to the facts in the case, there was no substantial pretense of ineligibility. He had been an officer of the United States. He had resigned his office. His resignation had been accepted. Now unless it be a fact that a commission from the United States once accepted and held incapacitates a man forever after from being an elector for President and Vice-President, then Humphreys was absolutely and entirely free from any political disqualification to take, hold, and execute that office in the late presidential election in Florida.

But I go further than this. In the Constitution and laws of the United States there are some twenty specifications made in regard to the appointment of electors of President and Vice-President. There are three hundred and sixty-nine electors, and if there are twenty specific conditions upon the fulfillment of which the validity of the appointment depends then there are more than seven thousand points of qualification upon the failure of any one of which conditions, if the argument upon the other side be good, the House of Representatives can annul the appointment of an elector and upon its own judgment as to the invalidity of the appointment take the election of President into its own hands. That, sir, is a result never contemplated by the law, and it is not, ought not to be applied to this case. If we add to these specific conditions of election imposed by the Constitution and laws of the United States those of the thirty-eight separate States, it will increase the specific qualifications so many thousand more, upon the failure of any one of which an elector would be disqualified, that it would be impossible ever to effect a valid election of President by the votes of the people I do not hesitate to state it as my opinion and the basis of my vote on the question of the eligibility of the elector in Florida whose appointment is disputed, that the doctrine here asserted cannot be maintained upon any just principle of constitutional law nor without defeating the operation of the especial feature of our system of government.

I do not question or deny the assumption that the people are bound to know the law because the law is made so that they can know it; but to make the case good upon the argument now advanced they are not only bound to know the law but to anticipate and inform themselves upon every fact that can exist in connection with the choice of electors and upon what the validity of the choice will depend. It will be impossible for the people to make themselves acquainted with every fact connected with the election of an elector and his qualifications for that office. They cannot upon any principle of law or justice be held responsible for the failure of information which, in many cases, it will be out of their power to obtain; and, in the absence of fraud, no election can be or will be held invalid for such reason or upon such grounds as are asserted in regard to the case of Humphreys.

Let me state briefly an incident of the late civil war. During the war, in one of the four great States of the Union an active, vigorous, and able man held the office of adjutant-general. He was possessed of all the secrets of the Government; he had the most intimate and confidential intercourse with the President, with the Cabinet, with the commanders of the Army and Navy, and with the executive officers of the principal State governments. He knew everything that was going on. When the war closed business called him to a foreign country, and he now holds a seat in the British Parliament as a native-born subject of the British Empire. Now, it would have been an offense in him, it would have been an offense in any portion of the people of a State, to have allowed him to hold this position under these circumstances if they had known the facts to be as I state them. But no one knew them, and no one had the means of knowing them. If he had been chosen an elector under these circumstances, who can say that that fact, unknown to everybody but himself, would so far have incapacitated him from holding that office as to defeat the will of the people in a presidential election and elevate to that high office a candidate against whom a majority of their votes might have been given?

If the people use due diligence to get such information as is in their power, and it shall be found in a matter of this kind that a man fails in some one of the many qualifications prescribed by law and is therefore ineligible, the people are not to be deprived of their votes, nor of their voice in the organization of the Government which they have chosen. This is a principle which has been recognized by the House of Representatives, and never questioned, so far as I know. Where a condition is attached by the statute to the election of public officers, as Representative in Congress for instance, and the State elects a Representative in violation of that statute, the House in every case has yielded its assumed right to control that election and has submitted to the decision of the State in the election. And so it would be in this case.

In the election of Senators and Representatives the condition prescribed by the Constitution as to age is often disregarded so far as the period of election is concerned, "and a member-elect of either body is admitted whenever he reaches the age required by the Constitution." The act of 1845, so much cited in this discussion, which required the appointment of presidential electors on the same day in every State of the Union, also provided that the Representatives to Congress from each should be chosen by the separate congressional districts and not upon a general State ticket as they had before been elected. The State of New Hampshire disregarded and disobeyed the law, electing as before all her Representatives to this House upon a general ticket for the entire State, and they were received here, rightly received, as if they had been elected in accordance with the law. And this principle, in the absence of fraud, must be applied to electors of President and Vice-President; and when the State has chosen its electors, and their duty has been executed as it was intended by the State it should be, and their votes deposited, it will be too late for Congress to set it aside as invalid and void.

We come in this discussion upon the very essence of the Constitution. The question is in what manner the powers of the Constitution shall be executed, and the answer is by the election of President and Vice-President. In framing the Constitution there were three important objects kept constantly in view on the part of the convention and of the people. It was to elect a President in such a way as, first, to avoid tumult and disorder; second, to suppress cabal, intrigue, and corruption; and third, a chief object was to avoid the danger arising from the disposition on the part of foreign powers to control this Government. These objects are set forth in the sixty-eighth number of the Federalist as showing that the convention that framed the Constitution took the greatest care and exerted the highest possible degree of prudence and circumspection to avoid these dangers. They found what they thought to be the safety of the Government in the appointment of electors. They did not make the appointment of a President to depend upon pre-existing bodies of men who might be tampered with before hand to prostitute their votes, but they referred it in the first instance to the immediate act of the people, to be exerted in the choice of these persons, these electors, "for the temporary and sole purpose" of making the appointment of President and Vice-President.

We have in this statement the best possible exposition of the nature and character of the office of presidential elector. It is a *temporary* office. When the elector has voted, his office and his duty and his functions are exhausted. No court of a State and no court of the United States can change that act. It is executed, it is completed, the elector exists no longer, and there is no power to change his official act from what it was and is to what some of us might think it should be. Whatever the State may choose to do in regard to the appointment or the action of electors it must do before he deposits his ballot and certifies his act to the President of the Senate, in accordance with the provisions of the Constitution. When his act comes within the scope prescribed by the Constitution the State and the people have parted with their power. The vote, in the language so often repeated, "must then be counted." It cannot then be changed from one candidate to another or annulled so as to confer upon another tribunal the election of President and Vice-President.

Let me state an incident that happened among men who were parties to the organization of the Government under the Constitution, illustrating the impossibility of changing an executive or ministerial act of a public officer. Samuel Adams, of Massachusetts, whose statue was lately placed in the old Hall of the Capitol, a man whose name carries with it weight, and whose virtue and integrity constitute a part of the history and the glory of this country, when gov-

ernor of the State of Massachusetts was called upon to approve or disapprove an act of the Legislature to provide for filling a vacancy in the office of presidential electors. He signed the bill; and the very day, possibly the very hour, in which he placed his signature to that bill, he followed it to the office of the secretary of state, where it had been sent to be afterward transmitted to the senate, in which body the bill originated, and erased his name from the bill. But the senate of Massachusetts held that he had no power to erase his name, that the act had been done. If there were at any time authority of or discretion in him to consider and decide it had been exhausted when he signed his name, and there was no power to reverse it. The senate and house of representatives, elected with him upon the same ticket, held that he had no power to withdraw his name from the bill after it had been once written. And when he recorded the passage of an act repealing the statute they refused their assent to its passage. How much greater is the necessity and justice of the recognition of this principle of government, that when an act is done it is done, where so much depends upon the completion of the act of the people, and where the question arises, not between officers of the same State, but between the authorities and the people of the States and the Federal Government.

So neither these electors nor any court in Florida, nor any subsequent Legislature, nor any political party, still less any defeated candidate, has the right or even the shadow of a power to reverse the decision of the people as expressed in and by the official and final act of their electors.

[Here the hammer fell.]

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. FIELD obtained the floor and said: I yield ten minutes to the gentleman from Illinois, [Mr. SPRINGER.]

Mr. SPRINGER. I oppose the counting of the vote of Florida in accordance with the decision of the electoral commission, for the reason that the commission, in the course of its deliberations on this subject, adopted an order to this effect:

Ordered, That no evidence will be received or considered by the commission which was not submitted to the joint convention of the two Houses by the President of the Senate with the different certificates, except such as relates to the eligibility of F. C. Humphreys, one of the electors.

This order excluded evidence which would have conclusively shown that a majority of the legal votes actually cast and canvassed by the returning board in the State of Florida were in favor of the Tilden electors, and not in favor of the electors certified by the commission. The case of Florida has been stated most clearly and ably by Mr. Charles O'Conor, of counsel for the Tilden electors, in his argument before the electoral commission; and therefore I quote his remark in reference to it. He said:

So, then, in this case of rivalry between these two sets of electors it appears to me that we present the best legal title. That we have the moral right is the common sentiment of all mankind. It will be the judgment of posterity. There lives not a man, so far as I know, upon the face of this earth who, having the faculty of blushing, could look an honest man in the face and assert that the Hayes electors were truly elected. The whole question, therefore, is whether, in what has taken place, there has been such an observance of form as is totally fatal to justice and beyond the reach of any curative process of any description.

It is a conceded fact that the people of Florida have not in truth appointed the electors certified by the decision of this commission. A Procrustean rule was adopted which prohibited them from considering the allegations of fraud that were made in the objections laid before them by this House, and which could have been proven beyond all question if they had heard evidence in the case. Surely this is the most remarkable decision ever pronounced by any tribunal in this or any other country; a decision which renders it utterly impossible to defeat the wicked fruits of fraud and conspiracy even if this fraud and conspiracy result in the election of the Chief Magistrate of this people. The objectors of the two Houses charged before the commission and offered to prove by competent testimony that the pretended Hayes electors were never appointed by the people of Florida; that the pretended certificate of their election signed by Governor Stearns was in all respects untrue, and was corruptly procured and made in pursuance of a fraudulent conspiracy to assert and set up fictitious and unreal votes for President and Vice-President and thereby to deceive the proper authorities of this Union; that the State of Florida, by all its departments of government, legislative, judicial, and executive, had repudiated the authority of these pretended electors and pronounced them usurpers and declared all their acts null and void. By excluding this evidence the commission have decided in effect that if all the allegations of the objectors be true it would not change their decision.

I oppose, further, the counting of the vote of Florida in conformity with this decision for the reason that to do so would be giving our sanction to the legal proposition laid down by the commission as the basis of their judgment. The commission, as a proposition of law, holds:

That it is not competent, under the Constitution and the law as it existed at the date of the passage of said act, to go into evidence *aliunde* the papers opened by the President of the Senate in the presence of the two Houses to prove that other persons than those regularly certified to by the governor of the State of Florida on, and according to, the determination and declaration of their appointment by the board of State canvassers of said State prior to the time required for the performance of their duties had been appointed electors or by counter-proof to show that they had not, and that all proceedings of the courts or acts of the Legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

This proposition differs materially from the first order adopted by the commission, and to which I have already referred. By the first order we were led to believe that all the papers laid before the joint convention by the President of the Senate, with the different certificates, would be regarded as evidence, and due weight would be given to them. But it seems they only proceeded to consider the papers opened by the President of the Senate in so far as they related to the certificates of Governor Stearns and the Hayes electors, and excluded all evidence which, if considered as they resolved to do in the first order, would have shown by the face of the returns submitted with the third certificate that the Hayes electors were not elected. They decided that they would not consider the facts before them, but ruled them out as appears by this portion of their decision:

And that all proceedings of the courts or acts of the Legislature or of the executive of Florida subsequent to the casting of the votes of the electors on the prescribed day are inadmissible for any such purpose.

What purpose? Inadmissible to show that the pretended electors were never elected; that they were usurpers and the mere creatures of fraud and conspiracy!

So that this House and the country are informed that there is no power in Congress to correct this fraud, that there is no power in the State of Florida to correct it, even by the concurrent action of all the departments of the government; but that we are to stand powerless in the presence of it, and recognize it, and make it a living reality.

Further, this decision is not the law. If you will turn to Cushing's work on the Law and Practice of Legislative Assemblies, you will find the law thus laid down on page 72:

SEC. 195. It is the invariable practice, therefore, with us, to allow the authority and qualifications of returning officers to be inquired into.

And also this rule:

SEC. 197. If returning officers act in so illegal or arbitrary a manner as to injure the freedom of election, the whole proceedings will be void.

Further, it has been decided by the Supreme Court of the United States, in 15 Peters's Reports, that—

Fraud will vitiate any, even the most solemn transactions; and any asserted title founded upon it is utterly void.

Any title founded upon fraud is utterly void. This rule applies as well to the title to the presidential office as to that to a piece of property.

But the court, in the same case, further hold:

In the solemn treaties between nations it can never be presumed that either state intends to provide the means of perpetrating or protecting frauds; but all the provisions are to be construed as intended to be applied to *bona fide* transactions.

That is the law as laid down by the Supreme Court of the United States in the Amistad case, in 15 Peters, page 520.

But there are other authorities applicable to this case. The honorable gentleman from Iowa, [Mr. MCCRARY,] in his Treaties on the American Law of Elections has laid down the law thus:

It is undoubtedly the policy of the law not to throw too many obstacles in the way of investigating the correctness and *bona fides* of election returns. On this point the court in Reed *vs.* Kneass, 2 Parsons, 584, very justly observe:

"The true policy to maintain and perpetuate the vote by ballot is found in jealously guarding its purity, in placing no fine-drawn metaphysical obstructions in the way of testing election returns charged as false and fraudulent, and in assuring to the people by a jealous, vigilant, and determined investigation of election frauds that there is a saving spirit in the public tribunals charged with such investigation, ready to do them justice if their suffrages have been tampered with by fraud or misapprehended through error."—*McCrary on American Law of Elections*, pages 382, 383.)

This is the law of elections laid down by the honorable gentleman from Iowa [Mr. MCCRARY] in his own book as the law unto us. Yet by the decision we have before us we are confronted with "fine-drawn metaphysical obstructions" in the presence of a gigantic fraud, and are informed that there is no power to correct it either in Congress or in the States themselves.

But, further, I regret that this decision has come here by the significant vote of 8 to 7. I regret this the more because it is contrary to the spirit of the electoral law and disappoints the expectation of those who framed it. It was fondly hoped that this law would be carried out in a spirit of patriotism and justice, and not in a spirit of partisanship. The honorable gentleman from Massachusetts [Mr. HOAR] in supporting this bill said:

But it is charged that this commission is in the end to be made up of seven men who of course will decide for one party, and seven men who of course will decide for the other, and who must call in an umpire by lot, and that therefore you are in substance and effect putting the decision of this whole matter upon chance. If this be true, never was a fact so humiliating to the Republic expressed since it was inaugurated. Of the members of our National Assembly, wisest and best selected for the gravest judicial duty ever imposed upon man, under the constraint of this solemn oath can there be found in all this Sodom not ten, not one to obey any other mandate but that of party?

This decision answers, "No, not one." But the honorable gentleman especially repelled the imputation that the Supreme Court would be actuated by any partisan bias. He said:

But I especially repudiate this imputation when it rests upon those members of the commission who are to come from the Supreme Court. It is true there is a possibility of bias arising from old political opinions even there, and this, however minute, the bill seeks to place in exact equilibrium. But this small inclination, if any, will in my judgment be overweighted a hundred-fold by the bias pressing them to preserve the dignity, honor, and weight of their judicial office before their countrymen and before posterity. They will not consent by a party division to have

themselves or their court go down in history as incapable of the judicial function in the presence of the disturbing elements of partisan desire for power, in regard to the greatest cause ever brought into judgment.

I confess, Mr. Speaker, that I was much impressed by these eloquent words of the gentleman from Massachusetts, so much so that in the remarks submitted by me the evening following on the same bill I stated that an appeal from the Louisiana returning board to this commission was like stepping from a diminutive mole-hill to the sublime heights of Mont Blanc. But it seems that in this I was mistaken, and that the mountain heights from which we expected a decision in this case were, like the mountains spoken of by the poet and referred to by a distinguished Senator elsewhere—

Evermore
Tumbling into seas without a shore.

[Here the hammer fell.]

Mr. FIELD. I yield now for ten minutes to the gentleman from Maine, [Mr. FRYE.]

Mr. FRYE. Mr. Speaker, that which impresses me more than anything else, and has impressed me for the last month, is the unblushing effrontery with which charges of "gigantic fraud" are made against the republican party of this country. [Cries from the democratic side, "Ah!"] Four times the gentleman from Illinois [Mr. SPRINGER,] in his speech charged "gigantic fraud." Out of the eight objections filed by the gentleman from New York [Mr. FIELD] to the acceptance of the report of this commission four of them charge fraud against the republican party. To use the language of one of them, "fraudulently and corruptly cheating the honest voters of Florida out of the electoral vote of that State." And when I go into the Supreme Court room from this floor I find there the gentlemen arguing on the democratic side rolling the word "fraud" on their tongues like a sweet morsel. When I come back into the House I find a great committee organized and appointed to hunt up the fraud of the republican party, and under the lead of the distinguished gentleman from New York throwing out the drag-net, bringing in telegrams and letters, unexplained, throwing out the drag-net, bringing in disreputable witnesses and allowing no opportunity up to a certain time for the refutation of these witnesses, all pointing at what the gentleman from Illinois calls in his speech "the gigantic frauds of the republican party."

And then there comes the cry that the republican party interposes and places the law between those frauds and God's pure sunlight so they can be obscured from the people of the land; that we dare not open the door for investigation; that we dare not take evidence in the cases of Florida and Louisiana. I say to the gentlemen that there is no republican on this side of the House who would not court investigation into the frauds of Florida and the frauds of the State of Louisiana. I court it into the frauds of the city of New York; I court it into the frauds of New Haven, Bridgeport, and Hartford, in Connecticut, by which the democratic party this year stole the electoral vote of that State; I court it into the State of Indiana, where, under their laws requiring no registration whatever, they imported voters from the great State of Kentucky, thus gaining and counting the electoral vote of that State for Tilden. Ay, by which one of the democratic counties in Southern Indiana cast more democratic majority than there were males twenty-one years of age living within the county. The republican party fear no examination and testimony, and I would like to know——

Mr. LANDERS, of Indiana, rose.

Mr. FRYE. I decline to yield to the gentleman from Indiana. I desire to know of the gentlemen on the other side what is the evidence of our stealing the vote of Florida? Where do you find it? Turn to Senate report 611, page 414, and you will find Attorney-General Cocke, one of the pure, undefiled democrats of the South; you will find McLinn, secretary of state; you will find Dr. Cowgill, comptroller of the State, sitting as canvassers of the State of Florida to determine under the judicial authority which they had by the law who had received the electoral vote of that State. And on page 415 you will find a protest filed against allowing Attorney-General Cocke to sit there in the capacity of judge. Why? Because he had sent a telegram as follows:

FLORIDA, *November* 14.

The returns of county managers of election are not yet in. The board of State officers, of which I as attorney-general am one, does not meet until thirty-five days after the election, and you may rest assured that Tilden has carried the State, and Drew is elected. I do not think the radicals can cheat the democrats out of this State.

WM. ARCHER COCKE.

And because he signed that dispatch a protest was entered; but when he assured the board of canvassers that he would act under his oath, and under the knowledge of the law which he had, they permitted that democrat to sit as a judge of the election in Florida.

And now I call your attention to the canvass of Hamilton County, in the State of Florida——

Mr. SOUTHARD. I will ask whether Drew is not elected, and now governor of Florida?

Mr. FRYE. I do not yield to anybody. And you will find on page 25 of Mr. WOODBURN'S report in the CONGRESSIONAL RECORD that this Attorney-General Cocke, a democrat, joined with the republicans in throwing out precincts in the county of Hamilton which if counted would have given the democratic party 138 majority. Now you only claim 90, counting every democratic vote cast in that State, not excluding anybody; and you know the attorney-general decided against you by a majority of over 60. Turn to Monroe County and you will find he was asked his opinion as a lawyer by Dr. Cowgill, and replied emphatically—

Under the law, sir, those precincts must be thrown out.

And he voted to throw out precincts in Monroe County, with the two republicans, which, if they had been counted, would have given 342 majority for the Tilden electors. Where, then, comes the "steal" of the electoral vote of Florida? By your own democratic authority acting under his oath of office, and acting deliberately, we have a majority for Hayes of nearly 400 votes in that State. I know this weak man, Attorney-General Cocke, left the office of the canvassing board at three o'clock in the morning, went to his own office, there met Manton Marble, and F. Perry Smith of Illinois, and a dozen other faithful democrats. What took place I know not. But I presume they threatened, and bull-dozed, and entreated, and promised. They took him up into a high mountain and said to him, "All the possessions of the earth shall be yours, Attorney-General Cocke, if you will but be faithful to the democratic party and Samuel J. Tilden." He was convicted. He was converted. He at once commenced doing works meet for repentance, went back to the canvassing board, asked to change his vote on Monroe County——

Mr. CLYMER. Will my friend allow me to interrupt him——

Mr. FRYE. No, sir. He did not ask to change his vote in Hamilton County, but he asked to change it on Monroe County, which, if that had been allowed, would have left a majority for Hayes and Wheeler in the State of Florida of over 50 votes.

[Here the hammer fell.]

Mr. FIELD. I yield to the gentleman from Ohio, [Mr. HURD.]

Mr. HURD. I do not rise, Mr. Speaker, to criticise the action of the commission in reporting their judgment to this House nor to complain of the result as it may affect the presidential candidate of my choice, but as a member of the legal profession and a member of this House to enter my protest against the novel, anomalous, and dangerous doctrine upon which this decision rests.

When the President of the Senate submitted to the two Houses the certificates from the State of Florida, certificate No. 1 was objected to on the ground that it had been procured through fraud and as a result of a conspiracy entered into between the members of the returning board, the electors named in the certificate, the governor of the State, and others to the objectors unknown. This objection was referred to the commission. Evidence was tendered tending to show the frauds and conspiracies which had been charged. The commission excluded the evidence and refused to hear it for any purpose whatever.

I protest most solemnly and earnestly against this judgment. As has been frequently said, fraud vitiates everything. It poisons the sources of all jurisdiction. It taints the blood of every body-politic which it infects. It avoids every deed; it cancels every obligation, annuls every contract, revokes every award, repeals every law, reverses every judgment. Every tribunal, however organized, is bound to treat as a nullity every fraudulent transaction, however it comes before it, whether directly impeached in an independent proceeding or whether it comes under its notice collaterally. The judgment of the highest judicial tribunal may be treated as of no effect by the humblest court if fraud has procured it.

As stated by a distinguished writer:

It matters not whether the judgment impugned has been pronounced by an inferior or by the highest court of the land; but in all cases alike it is competent for every court, whether superior or inferior, to treat as a nullity, any judgment that can be clearly shown to have been obtained by manifest fraud.

Why is it claimed that there is an exception to this universal rule in the case of the returning board of Florida? What sanctity surrounds that tribunal that shall enable fraud to do its perfect work, without hindrance, behind its authority? Why is it that it alone, of all the tribunals on the face of the earth, can render judgment charged to be tainted with fraud which can bind courts and Congresses, commissions and peoples? If this exception is to prevail it is because either of the constitution of the returning board or of this commission, or of the subject-matter referred to it for decision.

There is nothing in the constitution of this returning board that allows this principle to be established. The highest judicial tribunal of Florida has decided that the duties of the returning board are purely ministerial. It takes the returns, counts the votes, aggregates the result; and whatever fraud may do anywhere else, no person has ever been found bold enough to say that a candidate for office can profit by the fraud of the canvassers of his election or that officers can fraudulently thwart the will of the people. But even if you say that the authority of this board, as claimed, is judicial, then I maintain it is a court of limited jurisdiction. Its judgment can have no more sanctity than the judgment of the supreme court of Florida. That court has unlimited jurisdiction subject to its constitution. This is the ultimate appellate tribunal of that State, and every judgment it renders may be impeached for fraud.

If this be true, how much more can the judgment of this inferior subordinate returning tribunal, constituted by a statute for the performance of a particular specific duty, be impeached for the same cause. The constitution of the commission does not authorize this exception, as the language of the law expressly declares that it was

created for the purpose of determining the true and lawful electoral vote of a State. It cannot be said that the commission can determine that vote when it refuses to receive evidence to show that the vote is false and unlawful. Under the Constitution this commission was organized to assist in counting the vote, and in counting the vote the first thing is to ascertain the vote, and in ascertaining the vote you must first distinguish between the true and the false returns, and in doing that testimony must be heard; for it is the only method by which the fraud and falsity of returns objected to can be exposed. There is nothing in the nature or subject-matter of this inquiry that requires this exception; it relates to the election of a President. The duties and interests of forty millions of people depend upon it. The hopes and fears of all who love free institutions throughout the world hang upon it. Can it be said, that while fraud may vitiate the humblest act of the most subordinate tribunal in the most trifling cause, fraud shall be sacred and protected here in this the greatest cause of all time? Nor will it do to say the State of Florida has acted in the matter and that therefore the fraud cannot be inquired into. No matter how perfect the sovereignty, no matter how solemn the ceremonies under which a fraud is perpetrated, it is void, and courts must so declare it, and States and returning boards cannot escape the inexorable force of this rule. Moreover the State of Florida by its highest judicial tribunal has decided that the vote cast by those named in certificate No. 1 was the vote of usurpers.

The courts of a State are part of its governmental machinery. The people vote, the returning board counts, the judiciary determines. Every contract made, every act done within the limits of the State is upon the implied condition that it shall meet with the approval of the courts in a case properly brought. The validity of all official acts depends upon the judicial finding. Not until the judiciary has spoken, if objection be made, is the true will of the State known, and when it has spoken every other voice is a false one. Florida has declared its will, not through a returning board, but through its courts. Her courts, without objection by the defeated, have reversed the action of the returning board, and given her a governor, a Legislature, and State officers. Why shall her voice be stifled as to electors. Florida is indeed unfortunate if its will cannot be truly announced in choosing a President. Fraud has stolen her greatest offices; it has installed itself in her highest places. Congress cannot relieve. Commissions cannot interfere. She is powerless to help herself. Who, then, shall deliver her from the body of this death?

Mr. Speaker, a decision reached with the charges of fraud uninvestigated will not be satisfactory to the American people. It has been believed by millions that the certificates given to electors in certain southern States were procured through fraud. The whole country has been excited for months upon this question. The commission was accepted by the people because it was supposed that this question would be determined by it; but if evidence of fraud is to be excluded, the questions as to which the people have differed cannot be decided. No result thus reached will be accepted. It cannot bring the peace and quiet to the country we all so much desire, and he who assumes the duties of the presidential office with a title obscured by fraud, which, while charged, no one is permitted to prove, will be regarded as a usurper by the vast majority of the American people.

[Applause on the floor and in the galleries.]

Mr. FIELD. I yield to the gentleman from Iowa [Mr. KASSON] for ten minutes.

Mr. KASSON. I wish to say that I do not understand that under this law either of us have a right to dispose of the floor for an hour. I am now recognized by courtesy simply to designate the order of speaking during the second hour, which belongs to the minority, as the gentleman from New York has done during the first hour. I yield ten minutes, or as much of that time as he needs, to the gentleman from Indiana, [Mr. CARR.]

The SPEAKER *pro tempore*. The gentleman from New York [Mr. FIELD] controls the floor, and yields ten minutes to the gentleman from Iowa.

Mr. KASSON. How does the gentleman from New York control the floor for two hours, or for anything more than ten minutes, to which he is entitled?

Mr. FIELD. It is all the result of an arrangement made before the gentlemen from Iowa [Mr. KASSON] came into the House. It was agreed that certain gentlemen should be called on on behalf of both sides of the House, and called on by me, but I do not desire to do it at all.

Mr. KASSON. I was not aware of that. I wanted only to disclaim any right to parcel out the floor in my own behalf.

The SPEAKER *pro tempore*. Gentlemen upon both sides of the House have been recognized in their order.

Mr. KASSON. O, there has been no disorder in the assignment of the floor, only I disclaim the right to dispose of it on my own part. I yield the ten minutes to which I am entitled to the gentleman from Indiana, [Mr. CARR.]

Mr. CARR. Mr. Speaker, I have no hesitancy in saying that the electoral commission in refusing to receive any other evidence as to the genuineness of electoral votes than that presented in the certificate of the governor of a State, have sought to establish a destructive principle, and in this particular, for a partisan purpose, have ignored the duty to inquire into the facts, which was plainly imposed upon both these Houses, and through them upon their commissioners, by the Constitution. I have further no hesitancy in saying my convictions are that under the palpable facts behind the governor's certificate the vote of the State of Florida should have been returned for Tilden and Hendricks. But, sir, at the same time I hold that the democratic majority of this House have no moral right to complain that this commission have rendered a partisan decision in reporting the four electoral votes of Florida for Hayes and Wheeler. While I assert that this decision is contrary to the facts and contrary to the will of a large majority of the people of the United States, yet I as boldly assert that the wrong is chargeable to a cause further back than the commission. The wrong rests upon the shoulders of those who established this partisan tribunal. When the democratic majority of this House adopted this law with the full knowledge that a majority of the commission would be republican, governed by republican instincts, controlled by republican interests, warped by republican biases, and moved by republican motives, they deliberately abandoned every claim which the democratic masses asserted to a control of our national affairs.

The commissioners have done no more nor less than what could or should have been expected or required of them. You erected a political tribunal, invested it with political attributes, and gave them political questions to determine, which they have settled from a political stand-point. Being republicans, they believed the republican candidate for the Presidency was and ought to be elected. In making their declaration they have been true and faithful to their political sentiments, education, and associates. No legal wrong can attach to them for this. But when you as democrats deliberately put such power, over such questions, in the hands of a tribunal so constituted, you committed a bold and daring wrong to your pretended political convictions, and assuredly, to your political associates, whose political sentiments and rights you betrayed and abandoned to your political adversaries.

I rise to remind the democratic majority that in common decency your votes on this measure have estopped you from indulging in even one word of criticism against the decision of that tribunal. Sirs, it is your own offspring; you brought it into being, you gave it life and power, and you and you alone are responsible for the result. It is no excuse for you to assert that you did not anticipate such a result, that you expected higher and better things from your fondling. You had no more right to expect a tribunal so constituted to produce a different result than to expect a thorn-bush to bring forth figs. Nor will so weak an apology save you from the just condemnations which your betrayed and outraged constituency will forever heap upon your treacherous heads. [Laughter and applause.]

No, sirs, the wrong, the great and burning outrage lies at your hands, and your hands alone. Nor will the democratic people be slow in ascertaining the true source of their discomfiture and defeat. It may subserve your purpose for a brief time to attempt to shield yourselves under the cover of hollow denunciations of your tribunal, as the cry of "stop thief" for a moment may delude the officers of the law; but when the mad populace shall have vented their unmerited anger upon this tribunal for a brief hour it will seek the true object of its just indignation, and the blame will at last lie where it properly belongs.

The few only who had the moral courage to stand here upon this floor, and, amid the derision and contumely of the democratic majority, dared to warn you of the inevitable results of that day's work have a moral right to complain of the end of this day's labor; but, sirs, while they have deep regrets as to the action of the commission, they have deep and bitter denunciations and condemnations to heap upon the heads of those who, claiming to be leaders of the great democratic party in this trying hour of its existence, have proven themselves either incompetent from ignorance or unworthy for baser reasons. [Renewed laughter and applause.]

Here, then, in the name of the democracy of the whole country, I absolve that commission from all charges, save it may be that of an honest mistake; and in the name of the same great power I denounce the majority of this House as being responsible for the wrong, and recreant, ignorantly or corruptly recreant, to the confidence which has been imposed in them, and faithless to the trusts confided in them. [Applause.]

Mr. KASSON. I am advised that the gentleman from Massachusetts [Mr. THOMPSON] will next speak.

The SPEAKER *pro tempore*. The Chair intended to recognize the gentleman from Massachusetts [Mr. THOMPSON] as the next to speak.

Mr. THOMPSON. Mr. Speaker, I oppose the adoption of the finding of the electoral commission in relation to the vote of Florida for the reason that that finding is not in accordance with the fact, but declares a falsehood to be the truth. It says that the Hayes electors were duly appointed by the State of Florida when in truth and in fact the Tilden electors were so appointed, the Hayes electors being appointed by the board of State canvassers, and not by the legal voters of the State. The State of Florida and the whole country are prepared to prove this fact, have offered to prove it, but the commission has refused them an opportunity to prove it.

The finding of the commission amounts simply to this: that a majority of the board of State canvassers of Florida have declared the Hayes electors elected. This the people of the United States have known for more than two months and they did not need an electoral commission to inform them of it. The people believe that the declaration made by that board is false and they have relied, as this House

has relied, upon this commission to inquire into the situation and declare, after a full and careful examination, the real fact. The country demands that the truth of the statement of that board shall be inquired into by this commission. This House has inquired into that fact and the evidence taken by it shows beyond all fair controversy that the Tilden electors were elected. The House has copies of the returns from every county in the State, certified by the chairman of that board, clearly showing that result. That evidence the House took for the purpose of settling the question as to which set of electors were elected. It has offered it to the commission, but the commission declares that question of fact to be wholly immaterial. A lie told by the returning board the commission regard as binding as the truth, a fraud committed by that board as having all the elements of an honest act. The position assumed by the commission is: if, through the foulest corruption and the grossest bribery, the State board of canvassers have declared the Hayes electors regularly appointed and elected, although they may not have received a single vote and the Tilden electors may have received every vote in the State, these falsely declared elected are in law the regularly and duly appointed electors, and no power exists in the State of Florida or in the United States to prevent the votes cast by electors so certified from being counted.

What a spectacle we shall present to the civilized world, confessing that, under our system of government, which we claim to be a model in excellence, the Government, although it can raise armies and navies to defend itself from foreign invasion and domestic violence, is helpless before internal fraud and corruption; that the known and admitted fraud of two men can usurp the Government, and the people are not only powerless to resist the fraud but are bound when it is initiated to use the Army and Navy and all the resources of the Government to put into execution the fraud and to accept usurpers as their lawful rulers.

If it were shown that R. B. Hayes bribed the board of canvassers to make the declaration and certificate which they did, a false certificate, there is no power, we are told by the commission, to prevent him from getting those votes, and the two Houses of Congress must count the votes, declare him elected, inaugurate him, and, there being no power to impeach him for an offense committed before his inauguration, we must accept him as a constitutionally elected President and continue him in office as such. A statement of the proposition is all that is needed to show its falsity. But we are asked to sanction such a principle. The certificate of the canvassing board is known to be false. It has been declared by the supreme court of Florida to be false. That court adjudged its certificate to be false, made at the same time upon the same principles, declaring Marcellus L. Stearns duly elected governor of Florida. The court told them their statement was false and demanded of them the truth; they told part of the truth, said that their certificate giving a majority of over four hundred votes for Stearns was false, and that, instead of his having four hundred majority, Drew had a majority; and he, Drew, is now governor of Florida by virtue of that majority. That false canvass then made, the commission says, is a correct canvass, although the board has been compelled to admit it to be false and it is in fact false.

The commission had only to read the record from which the State board of canvassers made their declaration to learn that their declaration was false. But I may be told that the board has exercised quasi-judicial powers. My answer is that the record shows they did not reject a single vote, precinct, or county for any lawful cause. Their own record shows that there was nothing to change in any single instance the face of the certificate as made by the county canvassing boards, and that the only duty the State board had to perform was to certify the vote as it appeared upon the face of the returns. The certificate is just as false as if it had said the Hayes electors received 90,000 votes and the Tilden electors 100,000 votes, and we declare the Hayes electors elected. The commission would find just as properly the Hayes electors elected under that certificate as under the one they have. They being declared elected the declaration cannot be controverted however false; this is the finding of the commission. This commission has declared that there is no power through the forms of law, State or national, to resist a fraud and prevent usurpation, and consequently that the only constitutional mode of resisting fraud and usurpation is by revolution. I know the people of this country are not prepared to sanction such a proposition as this, and shall we their representatives sanction it?

It is a plain proposition of law that when an offer is made to prove a fact and the evidence is decided to be immaterial, the fact is admitted to be true in its broadest sense and fullest significance; so this commission have by their action admitted that the most wicked conspiracy did exist alleged to have been entered into by the Hayes electors and M. L. Stearns and other persons, to the objectors unknown, to deprive the people of the State of Florida of the right to appoint electors and deprive the Tilden electors of their right to said office, and to assert and set up fictitious and unreal votes for President and Vice-President, and thereby deceive the proper authorities of this Union; and that a paper purporting to be a certificate signed by M. L. Stearns as governor of said State of the appointment of the Hayes electors was and is in all respects untrue and was corruptly procured. The commission say that these facts are in no wise material to the investigation they are to make. I cannot accede to such a proposition as this, and therefore I am opposed to ratifying the finding of the commission; and I further most earnestly object to the ratification of the finding of that commission for the reason that it has utterly refused to hear the question submitted to it.

The question submitted to that commission is not which set of electors are indorsed by the board of State canvassers; that as I have before stated, has been known to the whole country for more than two months; but the question submitted is which were, as a matter of fact, elected. This country is not to be ruled by returning boards. It will acknowledge no persons as duly elected but those who have a majority or plurality of the legal votes. The country demands that it be made known who were elected electors for the State of Florida without regard to the false and fraudulent declarations of returning boards. This commission has been charged with the duty of making that fact known. But it has refused to make the examination necessary to determine the question. How can this House, with any regard for its duty to the country, approve of such a course of proceedings? This House is in duty bound to return to the commission its finding, with an earnest request that the question submitted to the commission be heard, and if it refuses to hear and determine the question submitted to it, it will be the duty of this House to do all in its power to vacate that commission.

This House ought not to submit another question to this commission until after it has heard and determined the Florida case according to the fair intent and meaning of the submission. It most assuredly ought not to ratify the action of that commission as reported.

Mr. DUNNELL. Mr. Speaker, the commencement of this session of Congress witnessed a new phase in national legislation. For the first time in the history of the Government, the dominant party in this House proposed something wholly new, something wholly strange. The power behind the throne, which had first manifested itself at Saint Louis, demanded of the majority of this House that an attempt should at once be made to overturn the decision of the people of Florida, Louisiana, and of South Carolina, as made at the election on the 7th of November last. The honorable gentleman from New York, [Mr. HEWITT,] the chairman of the national democratic committee, early on the first day of the session, proposed that a committee from this House should start out toward Florida, another committee toward South Carolina, and another committee toward Louisiana, for the purpose of overturning, if possible, the will of the people as expressed in those States in favor of Hayes rather than Tilden as President.

These committees were appointed, and I feel compelled here to indulge myself in this statement, that if the other committees acted with an eye as single to the purpose of their creation as did the committee to Florida, then I venture to say that nothing was left unsaid, nothing was left untried, on their part, to prejudice the American people against the expressed will of the States. On the part of the majority of the committee to Florida there was pre-eminently but one single object in view, and that was to do anything and everything in the interest of the Tilden electors. We of the minority, in our simplicity supposed that, at the very beginning, there would be placed before us as a committee, the affidavits, the evidence, and the testimony upon which the returning board of Florida had acted; for we were called upon and directed to report to Congress the action of the returning board. How were we to judge of that action, whether it was just or unjust, legal or otherwise, unless we were to have the affidavits and all other evidence upon which that board had acted? But the majority of the committee said no, not an affidavit, not a scrap of paper, not a piece of testimony shall come before this committee that went before the canvassing board of Florida; not a ray of light that struck the canvassing board shall strike this committee; not one particle of evidence that that board had, shall this committee know anything about. And they voted down the resolution that we in our simplicity had presented as lying at the very beginning and threshold of an honest investigation. And, from the beginning to the end, not one particle of evidence that went before the canvassing board did we have.

There was left over at Tallahassee from the raid made by democratic politicians from the city of New York a certain democratic politician. He was found there as a part of the *débris* of that grand raid upon the canvassing board, made by the democracy of New York and other portions of the country. This democratic Tilden attorney was caught up and made the secretary of this investigating committee. He had papers; he had affidavits; he had telegrams; but they were only to be read, only to be examined by the democratic portion of this committee; they were never once seen or looked upon by the minority.

Mr. THOMPSON. Will the gentleman——

Mr. DUNNELL. No, sir; I was voted down in Florida by the majority of this committee, and I propose now to have my ten minutes.

Mr. THOMPSON. They took the original certificates from the State of Florida.

Mr. DUNNELL. I do not yield. No one was more surprised than I, to read or hear the report of the majority of that committee. When the grand announcement was made that the State of Florida had as clearly gone for Tilden as Massachusetts had gone for Hayes, then I thought, indeed, the day of fiction had not passed, that the reign of romance was but just setting in. A balder assertion was never penned.

The State canvassing board of Florida pronounced that that State had gone for Hayes by 925 majority. That majority stands to-day. The supreme court of Florida has not interfered with that declared majority from that day to this. It stands to-day as the voice of the

returning board, untouched and unaffected by any decision of the supreme court of Florida. The gentleman from Massachusetts says that they counted in Drew for governor. They were authorized to recanvass for governor, but not for electors. But even if they had recanvassed for electors on the same basis that they recanvassed for governor, then the State went for Hayes by a majority of 211. And there it stands, first by the returning board and then by the decision of the supreme court of that State, if that decision had ordered a recanvass of the electoral vote.

A democratic Legislature came into power on the 2d of January. Does the gentleman from Massachusetts [Mr. THOMPSON] suppose that any commission made up of intelligent men would let in the action of a democratic Legislature, born out of due time, without any earthly connection with this canvass? It is not a matter of surprise. The gentleman from Ohio [Mr. HURD] said that it was supposed that this high electoral commission would go behind the certificates and down to the polls. Did any man on that side of the House ever claim, when this bill was under consideration, that any such thing would be done? No; no man here can claim that any tribunal that mortals can create, could ever go down to the polls in all the States of the country.

Mr. Speaker, I wish to make one point here. They talk of gigantic frauds. They talk in their report of "Archer No. 2." They relied for their proof upon one Mr. Fleming; he and he alone was their sheet-anchor. Let me say here that every democratic witness upon the stand, no matter if he had perjured himself like Green R. Moore or Floyd Dukes, was a paragon of virtue; and every republican witness was a liar because he was a republican. How turns out this Mr. Fleming, the only witness upon whom they rest in Archer No. 2, and upon whose testimony they claim 219 fraudulent votes?

[Here the hammer fell.]

Mr. WALKER, of Virginia. Mr. Speaker, I was not aware until this discussion began that I should have the opportunity of addressing the House upon this question. My remarks will therefore be rather desultory.

I desire to say at the outset that I was one of those democrats who supported this electoral bill in good faith; and I say to my friend from Indiana [Mr. CARR] that it will take more than him or the few who voted with him against this measure to read the majority of this House out of the democratic party. We voted for that measure; and it was to my mind one of the grandest and loftiest evidences of democratic faith in the honesty of mankind. And if it so be that this commission has not risen to the full height of the great occasion, if so be that this commission has not decided in accordance with what we believe to be law and precedent and right, we have the satisfaction of knowing that we at least have done our duty and made the grandest effort possible for us to make to settle this great question according to law and according to right.

Sir, I am also one of those who do not agree with the decision of this commission. I am rejoiced that these objections were presented here, because I want the Democratic party in this House by their votes to enter their solemn protest against this consummation of outrageous wrong under mere legal fictions.

We are establishing precedents here. This electoral bill is a great precedent for our successors to follow; and that very bill provides that each House, after the report of the commission shall have been made, shall decide whether they will abide by it or not. I would not have supported this bill, I would not have voted for it, if it had removed entirely from the control of Congress this question. We called in these gentlemen as an advisory board. They have advised us of their conclusions; and I say to you gentlemen here to-day, I believe their conclusions are wrong, and I believe the great body of the people will so decide and so hold for all time to come.

What, sir! Are the people of a great State to be disfranchised, their voices hushed into silence by the mere fraud and theft of a few men who happen to be called a returning board? Yet the decision of this commission precludes utterly in this case, and if it is to stand as law prohibits forever any inquiry beyond the simple certificate of the governor of a State.

Mr. Speaker, I hope that this House will by its vote to-day show to the country that it does not agree with that principle. I hope it will show that it stands ready to-day to face the real facts in every case as they may arise. This evidence is shut out. Gentlemen say that we have been crying fraud and that they have been ready to meet us upon that cry. How have you met us? By skulking behind the merest legal fictions. If you believe that Hayes carried the State of Florida or the State of Louisiana, why do you not like men, come up and say, "Let us investigate these facts and determine whom the people of these States honestly desired to elect?"

Mr. Speaker, I rose simply to express my hope that the House would to-day sustain these objections. If they are sustained also by the Senate, then of course the vote falls. But if the Senate sustains the decision of the commission, then of course the vote will have to be counted, and the wrong will receive the sanction which will damn the party profiting by it.

I yield the remainder of my time to my friend from North Carolina, [Mr. ROBBINS.]

Mr. ROBBINS, of North Carolina. Mr. Speaker, I shall vote against concurring in this decision of the commission because it was not reached and rendered on that lofty plane of equity and candor upon which the country expected the tribunal to act when it was created. When this great plan for settling the pending dispute as to the Presidency was devised and adopted, this House and the country and the world expected that the question would be considered and decided upon the broadest principles of truth and right, and not upon legal quibbles. I am proud of the position of my party in this crisis. We go before the electoral commission and say, "If we have the Presidency upon the merits of the case, give it to us, but not otherwise." The other party go there and say in substance through their counsel, "No matter how fraudulent, no matter how false, if there is any legal technicality upon which you can give us the Presidency, then we want the Presidency adjudged to us without inquiring as to what was the true voice of the people." The world will take notice of the difference in the moral attitude of these two parties in this great controversy. One asks that it be decided upon the very right and truth of the matter; the other says, "Give us success by any dodge necessary to win."

A great man once said that he would rather be right than be President. I would rather see my party do right than win the Presidency. If the victory should finally be awarded to our adversaries by the system of special pleading together with the refusal to look at the bottom facts, which has led to this decision in the Florida case, I say "Take the Presidency and welcome. We scorn to have it on such terms." The man who shall consent to receive that exalted office under such a decision and the members of the commission who shall give that decision upon such principles will write themselves down in history so deeply disgraced that the hand of resurrection can never reach them to restore them again to the respect of mankind. And the party which accepts victory by such means will find its cup of fancied triumph contains only the bitternesss and poison of ultimate ruin and eternal dishonor.

Sir, this crisis will always be distinguished by some extraordinary features. The first is the unparalleled villainy of the conspiracy that brought the country into this difficulty; the next is the sublime spirit of moderation, conservatism, and magnanimity by which a peaceable way was devised to get the country out of the difficulty; and I did trust that this spirit would be responded to and further illustrated by the commission itself showing that it could meet this issue on the high patriotic basis of equity and impartiality. I trust that they will yet do it. I have not yet lost hope in the success which our good cause deserves; nor have I yet withdrawn all faith in the commissioners. Under the great responsibility which rests upon them and with the eyes of the world and of posterity looking at them, I shall not believe until it is done that they will finally decide this case upon the narrow and technical grounds upon which they seem as yet to be standing.

I hope the voice of this House to-day, emphatically pronouncing its non-concurrence in their judgment on the Florida case, may be heard and received by them as an earnest call to the commission for the sake of liberty and country to rise to the grandeur of the occasion and decide the Presidency so that the conscience of the country and mankind will be satisfied with the decision. To do this they must look at everything which history will look at in making up its final verdict on this case and on the actors in this great crisis. Let them inquire into the facts. Let them search for truth as for hid treasure. Let them expose fraud, and annul every result founded on fraud. Thus only can they satisfy public opinion, preserve the good name of our institutions, and give genuine contentment to the country.

Mr. HOPKINS. I believe there is one minute left of the time of the gentleman from Virginia, and he yields that one minute of his time to me so I may have a paper read to show how much truth and justice there is in the complaint of the gentleman from Minnesota that he was precluded from getting at the truth.

Mr. PAGE. I object to the reading of any paper. The law does not contemplate any remarks not delivered printed in the RECORD.

Mr. HOPKINS. I will read it myself if the gentleman insists on objecting.

The SPEAKER *pro tempore*, (Mr. COCHRANE in the chair.) The Chair overrules the point of order.

The Clerk proceeded to read——

Mr. PAGE, (interrupting.) I insist on my point of order.

Mr. BANKS. Is it the right of any member to have a paper read? If it is read as part of his speech then I do not object.

The SPEAKER *pro tempore*. The gentleman asked the paper be read as part of his remarks, and it is now being so read by the Clerk. The Clerk will proceed.

Mr. BANKS. If it is his speech I do not object.

The Clerk read as follows:

Record of witnesses summoned before congressional committee, House of Representatives, in Florida.

Number of witnesses summoned by minority	447
Number of witnesses summoned by the majority	327
Total number summoned in State	774

The minority summoning 120 more witnesses than majority.

Number of witnesses sworn—minority	209
Number of witnesses sworn—majority	183
Total	392

Number of witnesses appearing—minority	327
Number of witnesses appearing—majority	283
Total	610

Forty-four more witnesses summoned appearing for the minority.

Number of witnesses not found—minority	43
Number of witnesses not found—majority	19
Number of witnesses failing to appear—minority	81
Number of witnesses failing to appear—majority	21

WILLIAM DICKSON,
Deputy Sergeant-at-Arms.

FEBRUARY 5, 1877.

[Here the hammer fell.]

Mr. KASSON. Mr. Speaker, in the largeness of debate which we are accustomed to allow in this House I think on the part of both sides on this occasion the debate has wandered somewhat, I may say rather widely, from the precise point involved in the questions submitted to the House.

Under the act of Congress this commission has made its report. Objections have been filed to that report, and on those objections this House is required to act. There is no evidence before the House upon which it has jurisdiction to act in the case of Florida. The question presented is purely a question of law so far as it invites our judgment and that question is, has this commission in making the order, based upon the reasons reported, gone contrary to the Constitution and laws of the land? If so, they ought to be overruled; if not, of course this House ought to concur.

Now, sir, in that condition of the question it is said that an offer was made to prove certain allegations of fraud or error in the proceedings of the popular election. Grant the offer was made, and the question, of course, is then raised of the admissibility of the evidence under the Constitution and laws. But upon that slight hinge gentlemen come before the House and ask us to proceed at once to discuss the true canvass of Florida. If the commission is right, this House has no jurisdictiction to recanvass the popular votes of Florida. If the commission was wrong, then gentlemen may possibly argue that the House has the right to discuss the original election, although I should still deny that the true canvass would change the result in the case of electors or that they could judicially determine the rights of electors.

Sir, I say to the gentlemen who declare we are relying on legal fictions to elect a President of the United States that this whole Constitution is a legal fiction if the position taken by the majority of this commission is incorrect. Unless gentlemen can point me to some clause or phrase in that Constitution that gives us power to revise the action of State governments in the canvass of their votes for electors, then I affirm that the attempt to do it is necessarily a usurpation of authority by the House.

Now, sir, upon this unconstitutional assumption of right they come before us with unproved charges of fraud which they claim vitiates the election. My honorable friend from Ohio, [Mr. HURD,] to whom we always listen with so much interest, declared that fraud vitiates everything. I must take direct and pointed issue with him on that declaration, even where fraud does exist. If a bill, for example, passes this House by a majority of one vote, and upon trial afterward by the House the man who casts it is unseated because he is shown to have been elected by bribery or fraud, your law still stands; your law cannot be impeached; the courts of the country have decided it over and over again.

So you turn, repeatedly, members from their seats on this floor who have voted on all the questions that come before this House; and, whatever the ground of unseating the members, every act that they have done stands valid in the eye of the law. So of many other public officers. It is, therefore, Mr. Speaker, incorrect and against the law to say that fraud vitiates everything. It does not have the effect of vitiating a public and completed act like that in question. So much for that allegation.

But they say: "If we had been allowed to prove certain things, we would have shown, in Florida, that the returning board acted corruptly and carried out a conspiracy." I regret even to turn in this debate to these conflicting statements of fact. Mr. Speaker, it is impossible that we can agree on the disputed facts. When your witnesses are nearly half and half swearing to different statements, when your judges decide differently, what is the use of coming before this House and making these charges and counter-charges? What would be the use on this question of my reminding the gentlemen who make these charges that the evidence of corruption is on the other side; that money has been passed from New York to Oregon; that offers of money were made in Florida, as sworn to by some witnesses, and that offers of money were also made in New Orleans, as sworn to by other witnesses, to corrupt republican electors or republican officers? I have kept all that out of the debate before the commission, and I have no desire to throw it in here beyond the simple point that in that way I desire gentlemen to recognize the utter futility of assuming for granted the charges of fraud that are made and hurled from one side of the House to the other, and of which we have no judicial proof, and about most of which the evidence is absolutely conflicting.

There is one point, however, upon which the evidence is not conflicting. It is this: The supreme court upon application being made ordered a recanvass by this same returning board upon a different rule of law from that first adopted. In that recanvass which the court made applicable to the votes for Drew, the same principles were applied to the election of the electors and the return made by the board to the supreme court, contained the result as applied to the presidential electors and to the State officers alike. This recanvass on rules settled by the supreme court elected by about two hundred majority the Hayes electors, as it also elected Drew on the democratic State ticket. They moved to strike out the electoral recanvass from the return as not within the order of the court. It was so done. But the fact remains that the very principles applied to the recanvass which elected Drew and the democratic ticket also elected the republican presidential ticket.

Now, then, I beg with these statements to call again the attention of the House to the simple question whether this commission, embracing the majority of the judicial element upon it, have decided against the Constitution and the law, when they declined to go back of the election record made by the State. We affirm they have decided in strict accordance with the Constitution and the law: first, because in the Constitution you have not a single clause giving power to the National Congress to touch the action of the State authority behind the organization of the electoral board; secondly, because by this same Constitution, under its executive clauses, you find no grant of power to examine into those facts; thirdly, because under its legislative clauses you find no possible power to go behind and examine into the action of the State authorities prior to the time the electoral college is constituted; and, lastly, because the trial of right to an office is a judicial act, and the Constitution by its third article positively affirms the whole judicial power of the United States to be vested in the Supreme Court and inferior courts to be organized by Congress. Nobody pretends that we have organized this commission as an inferior court under the Constitution. Consequently there is no judicial power in Congress or in this commission. As a result of that, it is evident that they cannot try a judicial question. It is a hybrid organization made up from the judicial and legislative branches of the Government to do an executive act; and from neither of those branches can Congress derive judicial power which it either can use or delegate in this case; and it is impossible, without a usurpation, that this commission or the House itself should attempt to try a question of title to the electoral office, because the trial is judicial in its nature and requires the consideration of unofficial evidence not provided for by Constitution or statute.

[Here the hammer fell.]

Mr. FIELD. Mr. Speaker, scarcely had the election taken place in November when the President invited representatives of the republican party to visit the disputed States of the South for the purpose of witnessing the canvass of the votes, declaring as he did it that no President could afford to be elected by fraud. When Congress met in December, acting in the same spirit, it sent committees of investigation into the same States to ascertain the truth. The States have been ransacked, hosts of witnesses have been examined, and piles of evidence have been laid upon our tables. Now, of a sudden, it is discovered that the invitation of the President was an act of superfluous folly, and that his messengers and the committees of the two Houses went on a fool's errand.

This discovery is made by republicans. There is not a democrat in either House of Congress who does not disown and reject it. It is now to be seen whether the republicans disown or accept it. We shall soon know whether the republican party has so far forgotten the brave words and heroic deeds of its earlier days as to cry, "Evil, be thou my good," and seek to install a falsehood in the Chief Magistracy of the land.

The electoral commission which you have constituted to solve the doubts and relieve the consciences of the people has gravely resolved, first, that no evidence can be received beyond the certificates and papers submitted to the two Houses by the President of the Senate.

And, second, that of these certificates and papers none can be considered which bears record of any act done after the casting of the votes by the electors. This decision means nothing less than that the certificate of the governor of the State, in accordance with the determination of the State canvassers, is conclusive, unless before the electoral vote is cast the State rectifies the certificate. The qualification, I was about to say, is a mockery. We know that there is scarcely a State in the Union where the canvass is completed until within a few days of the meeting of the electors. We know moreover that in the State of Florida the canvassers completed their canvass at three o'clock in the morning, and that the electors voted at twelve o'clock of the same day. Upon the theory of the commission, unless the State of Florida, within those nine hours, acting through its various departments, aroused itself and rejected the determination of the canvassing board, there is no power to do it in the State or in Congress. The doctrine of the commission, if I interpret it aright, amounts to this: that if the general commanding in Florida had upon the morning of the 6th of December marched a corporal's guard into the State-house, told off four of his soldiers, and forced the State canvassers to certify to their election and the governor to superadd his certificate, there would then have been no power in the land to prevent the votes of these soldiers from being counted as the electoral vote of Florida. We are here called upon to say whether in the solemn judgment of this House this is the law of the land.

Let me show you some of its consequences. We offered to prove

fraud; we were denied the right to do so. We offered to show that the pretended appointment of the Hayes electors was corruptly made. This was refused. But the truth cannot all be concealed. One of the persons certified by the commission to be a lawful elector of the State of Florida is Charles H. Pearce. There is a record of him from the reports of the supreme court of the State which shows him to be a convicted felon. In the fourteenth volume of these reports I find the case of The State of Florida against Pearce. The indictment set forth "that Charles H. Pearce, colored, a minister of the gospel and a senator representing the eighth district in the senate of the State of Florida," on the 4th of February, 1870, during the pendency before the house of assembly of a resolution to impeach the governor of high crimes and misdemeanors with the intent of feloniously influencing the vote of a member, offered and promised him $500. He was convicted by a jury, and upon his appeal to the supreme court of the State the judgment and sentence were affirmed. That man, a pardoned convict, gave the one vote which will elect Mr. Hayes, if elected at all, to the presidential office.

Mr. Speaker, the decision of this commission, as I view it, is entitled to no respect. It is as unsound in morals as it is unfounded in law, and mischievous in its consequences. The spectacle of successful villainy is corrupting in proportion to the extent of the theater on which it is displayed and the prizes which it wins. The prize of the Presidency has never yet been won by fraud. If it is thus won now, the spectacle will be more injurious to our good name and more corrupting to our people than all the peculation, robbery, and frauds of all our history. [Applause.]

The SPEAKER. The question now is first upon the amendment offered by the gentleman from Maine [Mr. HALE] to the resolution of the gentleman from New York, [Mr. FIELD.] The resolution of the gentleman from New York will first be read, and then the amendment of the gentleman from Maine.

The Clerk read Mr. FIELD's resolution, as follows:

Ordered, That the counting of the electoral vote from the State of Florida shall not proceed in conformity with the decision of the electoral commission, but that the votes of Wilkinson Call, James E Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

Mr. HALE'S amendment was then read, as follows:

Strike out the word "not," and also strike out all after the word "commission," to the end; so that it will read:

Ordered, That the counting of the electoral vote from the State of Florida shall proceed in conformity with the decision of the electoral commission.

Mr. HOSKINS and Mr. BANKS called for the yeas and nays upon agreeing to the amendment.

The yeas and nays were ordered.

The question was taken; and there were—yeas 103, nays 167, not voting 20; as follows:

YEAS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hays, Hendee, Henderson, Hoar, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kelley, Kimball, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Robinson, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Stowell, Strait, Thornburgh, Washington Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whitehouse, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—103.

NAYS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, Wigginton, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—167.

NOT VOTING—Messrs. Bass, Beebe, Buckner, Durand, Hoge, King, Lane, Lapham, Lord, Meade, Phelps, Purman, Schumaker, Stanton, Stephens, Martin I. Townsend, Charles C. B. Walker, Wheeler, Whitthorne, Wike, Alpheus S. Williams, and James Williams—20.

So the amendment was not agreed to.

During the roll-call the following announcements were made:

Mr. WILLIAMS, of Michigan. My colleague, Mr. DURAND, is absent on account of sickness. If present he would vote "no."

Mr. LORD. I desire to say that upon this question I am paired with my colleague, Mr. LAPHAM. If he were present he would vote "ay" and I should vote "no."

Mr. CLYMER. I desire to say that my colleague, Mr. STANTON, is detained from the House by reason of sickness. Were he present he would vote "no."

Mr. WALKER, of New York. I desire to state that my colleague, Mr. TOWNSEND, is absent and that I am paired with him. If he were present he should vote "ay" and I should vote "no."

Mr. RAINEY. My colleague, Mr. HOGE, is absent on account of a death in his family. If present he would vote "ay."

Mr. WILLIAMS, of Alabama. I ask unanimous consent to have printed in the RECORD as a portion of the debates of this House some remarks which I have prepared upon this subject.

Mr. SAMPSON. I object.

Mr. GARFIELD. I hope objection will not be made.

Mr. FRYE. It is against the spirit of the law entirely to print as debates what was not said.

The question recurred upon the order submitted by Mr. FIELD, upon which the yeas and nays were ordered.

The question was taken; and there were—yeas 168, noes 103, not voting 19; as follows:

YEAS—Messrs. Abbott, Ainsworth, Anderson, Ashe, Atkins, Bagby, John H. Bagley, jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bright, John Young Brown, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Campbell, Candler, Carr, Cate, Caulfield, Chapin, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, De Bolt, Dibrell, Douglas, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Field, Finley, Forney, Franklin, Fuller, Gause, Gibson, Glover, Goode, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Hardenbergh, Henry R. Harris, John T. Harris, Harrison, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Knott, Lamar, Franklin Landers, George M. Landers, Le Moyne, Levy, Lewis, Luttrell, Lynde, Mackey, Maish, McFarland, McMahon, Meade, Metcalfe, Milliken, Mills, Money, Morgan, Morrison, Mutchler, Neal, New, O'Brien, Odell, Payne, John F. Philips, Piper, Poppleton, Powell, Rea, Reagan, John Reilly, James B. Reilly, Rice, Riddle, John Robbins, William M. Robbins, Roberts, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, Singleton, Slemons, William E. Smith, Southard, Sparks, Springer, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Watterson, Erastus Wells, Whitthorne, Wigginton, Alpheus S. Williams, Jere N. Williams, Willis, Wilshire, Benjamin Wilson, Fernando Wood, Yeates, and Young—168.

NAYS—Messrs. Adams, George A. Bagley, John H. Baker, William H. Baker, Ballou, Banks, Belford, Blair, Bradley, William R. Brown, Horatio C. Burchard, Burleigh, Buttz, Cannon, Cason, Caswell, Chittenden, Conger, Crapo, Crounse, Danford, Darrall, Davy, Denison, Dobbins, Dunnell, Eames, Evans, Flye, Fort, Foster, Freeman, Frye, Garfield, Hale, Haralson, Benjamin W. Harris, Hathorn, Hays, Hendee, Henderson, Hoar, Hoskins, Hubbell, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kelley, Kimball, Lawrence, Leavenworth, Lynch, Magoon, MacDougall, McCrary, McDill, Miller, Monroe, Nash, Norton, Oliver, O'Neill, Packer, Page, William A. Phillips, Pierce, Plaisted, Platt, Potter, Pratt, Rainey, Robinson, Sobieski Ross, Rusk, Sampson, Seelye, Sinnickson, Smalls, A. Herr Smith, Stowell, Strait, Thornburgh, Washington Townsend, Tufts, Van Vorhes, Wait, Waldron, Alexander S. Wallace, John W. Wallace, G. Wiley Wells, White, Whitehouse, Whiting, Willard, Andrew Williams, Charles G. Williams, William B. Williams, James Wilson, Alan Wood, jr., Woodburn, and Woodworth—103.

NOT VOTING—Messrs. Bass, Beebe, Buckner, Durand, Hoge, King, Lane, Lapham, Lord, Phelps, Purman, Schumaker, Stanton, Stephens, Martin I. Townsend, Charles C. B. Walker, Wheeler, Wike, and James Williams—19.

So the order was adopted.

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

Mr. LORD. I desire to state that I am paired with my colleague, Mr. LAPHAM, who is absent; if present he would vote "no," and I would vote "ay."

Mr. CLYMER. My colleague, Mr. STANTON, is absent on account of sickness; if here he would vote "ay."

Mr. WALKER, of New York. I am paired with my colleague from New York, Mr. TOWNSEND; if present he would vote "no," and I would vote "ay."

Mr. DUNNELL. My colleague, Mr. KING, is absent on account of sickness.

Mr. FINLEY. As one of the Representatives from the State of Florida, I ask unanimous consent to have printed in the RECORD as a portion of the debates of this House some remarks which I would have made if opportunity had been accorded me.

Mr. BANKS. I desire to say that if the gentleman from Florida [Mr. FINLEY] asks permission to print remarks upon the method of conducting the electoral count, not upon proceedings under the law, there would be no objection. But there is objection to printing in the RECORD remarks not made in the House upon the question now before the House, because the law restricts the debate to two hours and each speech to ten minutes. If any one is allowed to print in the RECORD remarks not made here, that would be a violation of the law. But the gentleman can have printed remarks upon the subject of the election in Florida.

Mr. PAGE. I object.

Mr. KELLEY. I understand that the gentleman has that right under the leave already given.

Mr. FIELD submitted the following; which was read, considered, and adopted:

Ordered, That the Clerk inform the Senate of the action of this House, and that the House is now ready to meet the Senate in this Hall.

The SPEAKER. The Chair desires to suggest that the four front rows of seats on the right of the Chair be reserved for the use of the Senate.

Mr. HOLMAN. I ask unanimous consent that business may be suspended for five or ten minutes, for the purpose of enabling the officers of the House to prepare the seats for the Senators.

There was no objection.

At two o'clock and twenty minutes p. m. the House was called to order by the Speaker, and at two o'clock and twenty-five minutes p. m. the Doorkeeper announced the Senate of the United States.

The Senate entered the Hall, preceded by its Sergeant-at-Arms and headed by its President *pro tempore* and its Secretary, the members and officers of the House rising to receive them; and the Senators, tellers, Secretary of the Senate, Clerk of the House of Representatives, and officers of the two Houses took the seats provided for them.

The PRESIDING OFFICER. The joint meeting of Congress resumes its session. The two Houses separately have considered and determined the objection submitted by the member from the State of New York [Mr. FIELD] to the decision of the commission upon the certificates from the State of Florida. The Secretary of the Senate will now read the decision of the Senate.

The Secretary of the Senate read the following:

Resolved, That the decision of the commission upon the electoral vote of the State of Florida stand as the judgment of the Senate, the objection made thereto to the contrary notwithstanding.

The PRESIDING OFFICER. The Clerk of the House will now read the decision of the House.

The Clerk [Mr. Pettit] read as follows:

Ordered, That the counting of the electoral votes from the State of Florida shall now proceed in conformity with the decision of the electoral commission; but that the votes of Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock be counted as the votes from the State of Florida for President and Vice-President of the United States.

The PRESIDING OFFICER. The two Houses not concurring in ordering otherwise, the decision of the commission will stand unreversed, and the counting will now proceed in conformity with the decision of the commission. The tellers will announce the vote of the State of Florida.

Mr. ALLISON, (one of the tellers.) The State of Florida gives four votes for Rutherford B. Hayes, of Ohio, for President, and four votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The Chair having opened the certificate of the State of Georgia, the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tellers.

Mr. COOK (one of the tellers) read in full the certificate of the electoral vote of the State of Georgia.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Georgia? [A pause.] There being none, the vote of that State will be counted. The tellers will announce the vote.

Mr. STONE, (one of the tellers.) The State of Georgia casts 11 votes for Samuel J. Tilden, of New York, for President of the United States, and 11 votes for Thomas A. Hendricks, of the State of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair having opened the certificate from the State of Illinois, one of the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tellers.

Senator ALLISON (one of the tellers) read the certificate of the electoral vote of the State of Illinois.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Illinois? If none, the vote will be counted. The tellers will announce the vote of that State.

Senator ALLISON, (one of the tellers.) In the State of Illinois 21 votes were cast for Rutherford B. Hayes, of Ohio, for President, and 21 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The certificate of the State of Indiana having been opened, one of the tellers will read the same in the presence and hearing of the two Houses. The Chair hands to the tellers the corresponding certificate received by mail.

Mr. STONE (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Indiana? There being none, the vote of that State will be counted. The tellers will announce the vote of Indiana.

Mr. STONE, (one of the tellers.) The State of Indiana casts 15 votes for Samuel J. Tilden, of the State of New York, for President of the United States, and 15 votes for Thomas A. Hendricks, of Indiana, for Vice-President of the United States.

The PRESIDING OFFICER. Having opened the certificate from the State of Iowa, the Chair directs the reading of the same by the tellers in the hearing and presence of the two Houses. A corresponding certificate, received by mail, is also submitted to the tellers.

Senator ALLISON (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate of the State of Iowa? If there be none, the vote of that State will be counted. The teller will announce the vote of Iowa.

Senator ALLISON, (one of the tellers.) The State of Iowa casts 11 votes for Rutherford B. Hayes, of Ohio, for President, and 11 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The certificate from the State of Kansas having been opened it will now be read by one of the tellers. A corresponding one received by mail is also submitted.

Senator INGALLS (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate from the State of Kansas? If there be none, the vote of that State will be counted. The teller will announce the vote.

Senator INGALLS, (one of the tellers.) The State of Kansas casts 5 votes for Rutherford B. Hayes, of Ohio, for President of the United States, and 5 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. Having opened the certificate from the State of Kentucky, received by messenger, the Chair hands the same to the tellers to be read in the presence and hearing of the two Houses. A corresponding certificate, received by mail, is also delivered to the tellers.

Mr. COOK (one of the tellers) read the certificate.

The PRESIDING OFFICER. Are there objections to the certificate from the State of Kentucky? If there be none, the vote of that State will be counted. It will be announced by the teller.

Mr. COOK, (one of the tellers.) The State of Kentucky casts 12 votes for Samuel J. Tilden, of New York, for President, and 12 votes for Thomas A. Hendricks, of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair opens a certificate from the State of Louisiana received by mail, no corresponding one by messenger. One of the tellers will read the same in the hearing and presence of the two Houses.

Senator ALLISON (one of the tellers) read a certificate of William P. Kellogg, as governor of the State of Louisiana, to the election of certain electors, and the certificate of those electors that they had met and cast 8 votes for Rutherford B. Hayes, of Ohio, for President of the United States, and 8 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. Having opened a certificate received by messenger from the same State the Chair hands it to the tellers, to be read in the presence and hearing of the two Houses. A corresponding one received by mail is also handed to the tellers.

Mr. STONE (one of the tellers) read a certificate, signed by John McEnery, as governor of the State of Louisiana, to the election of certain electors, and the certificate of those electors that they had met and cast 8 votes for Samuel J. Tilden, of New York, for President, and 8 votes for Thomas A. Hendricks, of Indiana, for Vice-President.

The PRESIDING OFFICER. The Chair having opened another certificate from the State of Louisiana, received by messenger, one of the tellers will read the same in the presence and hearing of the two Houses. A corresponding certificate received by mail is also handed to the tellers.

Senator INGALLS (one of the tellers) read a certificate of William P. Kellogg, as governor of the State of Louisiana, to the election of certain electors, and an accompanying certificate of the electors that they had met and cast 8 votes for Rutherford B. Hayes, of Ohio, for President, and 8 votes for William A. Wheeler, of New York, for Vice-President.

The PRESIDING OFFICER. The Chair having opened another certificate received by mail from the State of Louisiana—no corresponding one by messenger—it will be read in the presence and hearing of the two Houses.

Mr. STONE (one of the tellers) proceeded to read a paper signed "John Smith, bull-dozed governor of Louisiana," purporting to give "the proceedings of the college of electors" at New Orleans, December 6, 1876.

Senator SARGENT, (when the certificate had been thus far read.) It is obvious that this certificate is not *bona fide*. I doubt whether anybody desires its reading.

The PRESIDING OFFICER. It is the duty of the Chair to submit all papers coming into his hands and purporting to be certificates. He has opened and presented this in compliance with his duty. Is there objection to this paper being suppressed?

Senator BLAINE. Read it.

Mr. STONE (one of the tellers) resumed the reading of the paper, but was interrupted by

Senator McDONALD, who said: Do I understand that this was received by messenger?

The PRESIDING OFFICER. The Chair on opening it stated that it was received by mail, without a corresponding one by messenger.

Mr. McDONALD. It seems to me very clear that this is not a certificate of any votes cast, and that we are not compelled to listen to it.

The PRESIDING OFFICER. The teller will read the indorsement upon the envelope, which designates it as containing an electoral vote and so explicitly that the Chair had no discretion in respect of laying the paper before the two Houses.

Mr. STONE (one of the tellers) read as follows:

To the Vice-President of the United States, Washington, D. C:

Vote of electoral college of the State of Louisiana for President and Vice-President, 1876.

The PRESIDING OFFICER. The teller will proceed with the reading.

The reading was resumed, but was interrupted by

Mr. HOAR, who said: I desire to inquire if the Chair has held that it is not in order by unanimous consent to dispense with the reading of this paper.

The PRESIDING OFFICER. The Chair asked unanimous consent to suppress it, but there was objection. It was therefore the duty of the Chair to direct that the reading proceed.

Mr. HOAR. I hope unanimous consent will be given to dispensing with the reading, unless some gentleman rises in his place to object.

The PRESIDING OFFICER, Is there objection?

Mr. MILLS. This is a burlesque and I object.

The PRESIDING OFFICER. Objection being made, the reading will proceed.

The reading of the paper was then concluded.

The PRESIDING OFFICER. This closes the reading of the certificates from the State of Louisiana. Are there objections to the certificates which have been read?

Senator McDONALD. On behalf of the Senators and Representatives whose names are subscribed hereto, I submit the following objections to the counting of the electoral vote of the State of Louisiana as cast for Hayes and Wheeler.

The PRESIDING OFFICER. The objections to counting the vote will be read by the Secretary of the Senate.

Mr. GORHAM, Secretary of the Senate, read as follows:

The undersigned Senators and members of the House of Representatives of the United States object to the lists of names of the electors made and certified by William P. Kellogg, claiming to be but who was not the lawful governor of the State of Louisiana, and to the electoral votes of said State signed by W. P. Kellogg, J. H Burch, Peter Joseph, L. A. Sheldon, Morris Marks, A. B. Levissee, O. H. Brewster, Oscar Joffrion, being the two several certificates the first and third presented by the President of the Senate to the two Houses of Congress in joint convention, for the reasons following:

I.

Because on the 7th day of November, 1876, there was no law, joint resolution, or other act of the Legislature of the State of Louisiana in force directing the manner in which electors for said State should be appointed.

II.

Because if any law existed in the State of Louisiana on the 7th day of November, 1876, directing the manner of the appointment of electors it was an act of the Legislature which directed that electors should be appointed by the people of the State in their primary capacity at an election to be held on a day certain, at particular places, and in a certain way; and the people of the State in accordance with the legislative direction exercised the powers vested in them at an election held in said State November 7, 1876, in pursuance of said act and of the laws of the United States, and appointed John McEnery, R. C. Wickliffe, L. St. Martin, F. P. Poché, A. De Blanc, W. A. Seay, R. G. Cobb, and K. A. Cross to be electors by a majority for each of six thousand and upwards of all the votes cast by qualified voters for electors at said election, and said electors received a certificate of their due appointment as such electors from John McEnery, who was then the rightful and lawful governor of said State, under the seal thereof, and thereupon the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross became and were vested with the exclusive authority of electors for the State of Louisiana, and no other person or persons had or could have such authority or power, nor was it within the legal power of any State or Federal officer or any other person to revoke the power bestowed on the said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross, or to appoint other electors in their stead, or to impair their title to the office to which the people had appointed them.

III.

Because the said Kellogg, Burch, Joseph, Sheldon, Marks, Levissee, Brewster, and Joffrion were not, nor was either of them, duly appointed an elector by the State of Louisiana, in the manner directed by the constitution and laws of said State and of the United States, and the lists of names of electors made and certified by the said William P. Kellogg, claiming to be, but not being, governor of said State, were false in fact and fraudulently made and certified by said Kellogg, with full knowledge at the time that the said Kellogg, Burch, Joseph, Sheldon, Marks, Levissee, Brewster, and Joffrion were not duly appointed electors by the qualified voters of said State, and without any examination of the returns of the votes cast for electors, as required by the laws of the State.

IV.

Because the pretended canvass of the returns of said election for electors of President and Vice-President by J. Madison Wells, T. C. Anderson, G. Casanave, and Louis Kenner, as returning officers of said election, was without jurisdiction and void, for these reasons:

First. The statutes of Louisiana, under which said persons claimed to have been appointed returning officers and to have derived their authority, gave them no jurisdiction to make the returns or to canvass or compile the statements of votes cast for electors of President and Vice-President.

Secondly. Said statutes, if construed as conferring such jurisdiction, give the returning officers power to appoint the electors, and are void as in conflict with the Constitution, which requires that electors shall be appointed by the State.

Thirdly. Said statutes, in so far as they attempt to confer judicial power and to give to the returning officers authority in their discretion to exclude the statements of votes and to punish innocent persons without trial by depriving them of their legal right of suffrage, are in conflict with the constitution of the State of Louisiana, and are anti-republican and in conflict with the Constitution of the United States, in so far as they refer it to the discretion of the returning officers to determine who are appointed electors.

Fourthly. If said Louisiana statutes should be held valid, they conferred no jurisdiction on said Wells, Anderson, Casanave, and Kenner, as a board of returning officers, to make the returns of said election or to canvass and compile the statements of votes made by the commissioners of said election, for the reason that they constituted but four of the five persons to whom the law confided those duties; that they were all of the same political party; and that there was a vacancy in said board of returning officers which the said Wells, Anderson, Casanave, and Kenner failed and refused to fill as required by law.

Fifthly. Said board of returning officers had no jurisdiction to exercise judicial functions and reject the statement of the votes at any poll or voting-place unless the foundation for such jurisdiction was first laid as required by the statute, which the papers and records before said board of returning officers showed was not done to such an extent as to change the result of the election as shown on the face of the returns.

Sixthly. Said returning officers, with a full knowledge that a true and correct compilation of the official statements of votes legally cast November 7, 1876, for presidential electors in the State of Louisiana, showed the following result, to wit:

	Votes.
John McEnery	83,723
R. C. Wickliffe	83,859
L. St. Martin	83,650
F. P. Poché	83,474
A. De Blanc	83,633
W. A. Seay	83,812
R. G. Cobb	83,530
K. A. Cross	83,603
W. P. Kellogg	77,174
J. H. Burch	77,162
Peter Joseph	74,913
L. A. Sheldon	74,902
Morris Marks	75,240
A. B. Levissé	75,395
O. H. Brewster	75,479
Oscar Joffrion	75,618

And that said McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross were duly and lawfully elected electors, illegally and fraudulently changed, altered, and rejected the statements of votes made by the commissioners of election and the returns of supervisors of registration, and declared the following to be the state of the poll, to wit:

John McEnery	70,508
R. C. Wickliffe	70,509
L. St. Martin	70,553
F. Poché	70,335
A. De Blanc	70,536
W. A. Seay	70,525
R. G. Cobb	70,423
K. A. Cross	70,556
W. P. Kellogg	75,135
J. H. Burch	75,127
Peter Joseph	74,014
L. A. Sheldon	74,027
Morris Marks	74,418
A. B. Levissé	74,007
O. H. Brewster	74,013
Oscar Joffrion	74,736

The said returning officers thereupon falsely and fraudulently certified that said Kellogg, Burch, Joseph, Sheldon, Marsh, Levissé, Brewster, and Joffrion were duly elected electors; when the fact was that, omitting the statements of votes illegally withheld by supervisors, those before the returning officers which it was their duty to, but which they did not, canvass and compile showed majorities for McEnery, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross, ranging from 3,459 to 6,405.

5. That said returning officers before making any declaration of the vote for electors offered for a money consideration to certify and declare the due election of the persons who, according to the face of the returns, received a majority of the votes and were duly and properly elected. Failing to find a purchaser, they falsely, corruptly, and fraudulently certified and declared the minority candidates elected, after having first applied for a reward for so doing. Wherefore the undersigned object to the certificate or declaration of the election of electors made by said board of returning officers as utterly void by reason of the fraud and corruption of said board of returning officers in thus corruptly offering said certificates for sale.

V.

The undersigned especially object to counting the vote cast by the said A. B. Levissé for the reason that the State of Louisiana was forbidden by the Constitution of the United States to appoint the said A. B. Levissé an elector, because he was at the time of the appointment of the electors in said State, to wit, on the 7th day of November, 1876, and for a number of days previous and subsequent thereto, holding an office of trust or profit under the United States, to wit, the office of commissioner of the United States circuit court for the district of Louisiana, and his subsequent appointment by the other electors was not only without authority of law, and void, but it was knowingly and fraudulently made for an illegal and fraudulent purpose.

VI.

The undersigned especially object to counting the vote cast by the said O. H. Brewster for the reason that the State of Louisiana was forbidden by the Constitution of the United States to appoint the said Brewster an elector because he was at the time of the appointment of electors of said State, to wit, the 7th day of November, A. D. 1876, and for a number of days previous and subsequent thereto, holding an office of trust or profit under the United States, to wit, the office of surveyor-general of the land office for the land district of the State of Louisiana, and any subsequent appointment of the said Brewster as an elector by the other electors was not only without warrant of law and void, but was made knowingly and fraudulently for an illegal and fraudulent purpose.

VII.

The undersigned object and insist that under no circumstances can more than six of the eight electoral votes cast in Louisiana for Rutherford B. Hayes and William A. Wheeler be counted, for the reason that at least two of the persons casting such votes, to wit, A. B. Levissé and O. H. Brewster, were not appointed electors by said State; and they further object especially to the vote given and cast by William P. Kellogg, one of the pretended electors of said State of Louisiana, because the certificate executed by himself as governor of that State to himself as elector of that State is void as to him and creates no presumption and is no evidence in his own favor that he was duly appointed such elector, and there is no other evidence whatever of his having been appointed an elector of said State. And they further object to the said Kellogg that by the constitution of Louisiana he was not entitled to hold both offices, but was disqualified therefrom, and that on the day of casting the vote aforesaid, and on the day of the election for electors, and after those days, he continued to act as governor of the State, and that his vote as elector is null and void.

VIII.

Because the certified lists of the names of the said Kellogg, Burch, Joseph, Sheldon, Mark, Levissé, Brewster, and Joffrion as the duly appointed electors for the State of Louisiana by W. P. Kellogg, claiming to be, but who was not, governor of said State, were falsely, fraudulently, and corruptly made and issued as a part of a conspiracy between the said Kellogg and the said returning officers Wells, Anderson, Casanave, and Kenner, and other persons, to cheat and defraud the said McHenry, Wickliffe, St. Martin, Poché, De Blanc, Seay, Cobb, and Cross of the offices to which they had been duly appointed as aforesaid, and to defraud the State of Louisiana of her right to vote for President and Vice-President according to her own wish as legally expressed by the vote of the people at the election aforesaid.

For which reason the list of names of the said Kellogg, Burch, Joseph, Sheldon, Mark, Levissé, Brewster, and Joffrion as electors, and the votes cast by them are utterly void; in support of which reasons the undersigned refer to the Constitution and laws of the United States and of the State of Louisiana, and among other to the evidence taken at the present session of Congress by the Committee and sub-committees on Privileges and Elections of the Senate, the select committee and the sub-committees of the House of Representatives on the recent election in the State of

Louisiana, and the committee of the House of Representatives on the powers, privileges, and duties of the House of Representatives in counting the electoral vote, together with papers accompanying said evidence.

ELI SAULSBURY,
J. E. McDONALD,
J. W. STEVENSON,
L. V. BOGY,
Senators.

DAVID DUDLEY FIELD,
G. A. JENKS,
R. L. GIBSON,
JOHN R. TUCKER,
W. M. LEVY.
E. JOHN ELLIS,
WM. R. MORRISON,
Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana?

Mr. GIBSON. I have the honor to offer objections to the certificates of the electoral vote of the State of Louisiana signed by William Pitt Kellogg on behalf of the State of Louisiana.

The PRESIDING OFFICER. While the objection is being sent to the desk, the Chair will order the last paper read by the tellers, purporting to be a certificate from the State of Louisiana, to be suppressed from the record of these proceedings, if there be no objection.

There was no objection, and it was so ordered.

The PRESIDING OFFICER. The Clerk of the House will read the objections presented by the member from the State of Louisiana, [Mr. GIBSON.]

The Clerk of the House read as follows:

The undersigned, Senators and members of the House of Representatives of the United States, object to the certificates and electoral votes of the State of Louisiana signed by William P. Kellogg, J. H. Burch, Peter Joseph, L. A. Sheldon, Morris Mark, A. B. Levissé, O. H. Brewster, and Oscar Joffrion, for the following reasons:

First. The government of the State of Louisiana as administered at and prior to the 7th day of November, 1876, and until this time was and is not republican in form.

Second. If the government of the State of Louisiana was and is republican in form, there was no canvass of the votes of the State made on which the certificates of election of the above-named alleged electors were issued.

Third. Any alleged canvass of votes on which the certificates of election of said alleged electors are claimed to be founded was an act of usurpation, was fraudulent and void.

Fourth. The votes cast in the electoral college of said State by Oscar Joffrion, William P. Kellogg, J. H. Burch, Morris Marks, are not electoral votes, for that the said Oscar Joffrion, William P. Kellogg, J. H. Burch, and Morris Marks are and were ineligible by the laws of Louisiana, and were disqualified; for by the constitution of the State of Louisiana, section 117, it is provided that no person shall hold or exercise at the same time more than one office of trust or profit, except that of justice of the peace or notary public; whereas on and prior to the 7th day of November, 1876, and until after the 6th day of December, 1876, W. P. Kellogg was acting *de facto* governor of said State; Oscar Joffrion was supervisor of registration for the parish of Pointe Coupée, in said State; Morris Marks was a district attorney for one of the districts of said State and candidate for district judge, and was elected at said election; and J. H. Burch was a member of the senate of said State, also a member of the board of control of the State penitentiary, administrator of the deaf and dumb asylum, both salaried officers, and treasurer of the school board of the parish of East Baton Rouge.

Fifth. In addition thereto, said Oscar Joffrion was specially disqualified by the thirteenth section of the act of the Legislature of said State, dated 24th day of July, 1874, which provides that no supervisor of registration shall be eligible for any office at any election when said supervisor officiates, and the said Oscar Joffrion, at the election held on the 7th day of November, 1876, did act and officiate as supervisor of registration for the parish of Pointe Coupée, in said State. In support hereof, *inter alia*, there is herewith submitted the testimony taken before the special committee of the House of Representatives to investigate the election in Louisiana, also the testimony taken before the committee on powers and privileges of the House of Representatives; also the testimony taken before the Committee of Privileges and Elections of the Senate.

ELI SAULSBURY,
J. E. McDONALD,
FRANCIS KERNAN,
Senators.

G. A. JENKS,
J. R. TUCKER,
R. L. GIBSON,
DAVID DUDLEY FIELD,
W. M. LEVY,
E. JNO. ELLIS,
Representatives.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana?

Mr. WOOD, of New York. I present, on behalf of the Senators and Representatives who have signed it, a further objection.

The PRESIDING OFFICER. The objection submitted will be read by the Clerk of the House.

The Clerk of the House read the objection, as follows:

The undersigned Senators and Representatives object to the counting of the vote of O. H. Brewster, A. B. Levissee, W. P. Kellogg, Oscar Joffrian, Peter Joseph, J. H. Burch, L. A. Sheldon, and Morris Marks as electors for the State of Louisiana, for the reason that the said persons were not appointed electors by the State of Louisiana in the manner directed by its Legislature.

M. I. SOUTHARD,
Representative from the State of Ohio.
CHAS. E. HOOKER, *of Mississippi.*
R. A. DE BOLT, *of Missouri.*
R. P. BLAND, *of Missouri.*
JNO. W. STEVENSON, *of Kentucky.*
WM. PINCKNEY WHYTE, *of Maryland.*
FERNANDO WOOD,
Representative from the State of New York.
ERASTUS WELLS,
Representative of Missouri.
A. G. EGBERT,
Representative of Pennsylvania.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana?

Senator HOWE. I submit some concise objections to counting the vote certified here by John McEnery and his associates.

The PRESIDING OFFICER. The objections will be read by the Secretary of the Senate.

The Secretary of the Senate read the objections, as follows:

The undersigned respectfully object to the counting of any vote for President and Vice-President of the United States given or purporting to have been given by John McEnery or R. C. Wickliffe, or of either of them, for the reason that there is no evidence whatever that either of said persons has been appointed an elector of said State in such manner as the Legislature thereof has directed; and for the further reason that there is evidence conclusive in law that neither of said persons has been appointed to be an elector for the State of Louisiana in such manner as the Legislature thereof has directed.

They respectfully object to the reading, the recording, or the acknowledging of any commission or license or certificate of appointment or of authentication signed or purporting to be signed by John McEnery as governor of the State of Louisiana, for the reason that there is no evidence that John McEnery is now or ever was at any time during the year 1876 governor of the State of Louisiana, and for the further reason that there is conclusive evidence that W. P. Kellogg was during the whole of the year 1876 and for several years prior thereto governor of that State; was recognized as such by the judicial and legislative departments of the government of that State and by every department of the Government of the United States.

T. O. HOWE.
R. J. OGLESBY.
JOHN SHERMAN.
J. R. WEST.
S. A. HURLBUT.
W. TOWNSEND.
CHAS. H. JOYCE.
L. DANFORD.
W. W. CRAPO.
EUGENE HALE.
WM. LAWRENCE.

The PRESIDING OFFICER. Are there further objections to the certificates from the State of Louisiana? If there be no further objections, all the certificates from that State, and the papers accompanying the same, together with the objections thereto, will now be submitted to the electoral commission for its judgment and decision. The Senate will now retire to their Chamber.

Accordingly (at four o'clock and thirty-four minutes p. m.) the Senate withdrew.

ORDER OF BUSINESS DURING ELECTORAL COUNT.

Mr. COX. I rise to a privileged report. I am directed by the Committee on Rules to report back the bill introduced by the gentleman from Iowa, [Mr. WILSON,] being House bill No. 4562, to amend the act in relation to the counting of the votes for President and Vice-President, and the decision of questions thereon. I am instructed by the committee to offer a simple resolution as a substitute for this bill.

Mr. CONGER. Before debate commences upon this report I desire to raise a point of order, that this bill was not referred to the Committee on the Rules, but to the Committee on the Judiciary.

The SPEAKER. The bill was referred to the Committee on the Rules.

The SPEAKER. The gentleman from New York, from the Committee on the Rules, reports back with a substitute the bill introduced by the gentleman from Iowa [Mr. WILSON] to amend the act in relation to counting the electoral votes.

Mr. COX. This bill was referred to the Committee on the Rules, not to the Committee on the Judiciary, as the gentleman from Michigan [Mr. CONGER] seems to have supposed. It was my resolution which was sent to the Judiciary Committee.

Mr. CONGER. I find that I was mistaken.

Mr. COX. My reason for again offering this resolution is——

Mr. WILSON, of Iowa. Mr. Speaker, I want to reserve any point of order on this proposition as being opposed to the electoral law. The gentleman from New York, as I understand, reports back a bill.

Mr. COX. I report back the bill of the gentleman, with a substitute in the nature of a resolution.

Mr. WILSON, of Iowa. O, that cannot be done. In the first place, the gentleman has not been authorized to report it back.

Mr. COX. Then I will modify my proposition by merely reporting the resolution from the committee, as they have charge of this subject. The effect is about the same.

Mr. WILSON, of Iowa. I desire to reserve any points of order until we hear what the gentleman's proposition is.

Mr. COX. I was about to say—and I ask attention, for I shall not be very long—that the proper transaction of the business of the House requires that every fresh day should give us all the advantages of that day under the rules. We have but seventeen working days remaining in this session. We have two hundred and forty-one bills on the Private Calendar. We have fifty public bills undisposed of. We have thirty bills which have been made special orders on motions to reconsider. Of the twelve general appropriation bills, only one has become a law; eleven are undisposed of between the two Houses, being liable to come up at any time upon reports of conference committees, &c. We have two outside deficiency bills: one in relation to the public printing and the other in regard to the contingent fund of the House. We have the Mississippi levee bill. We have a bill to pay the interest on the bonds of the District of Columbia. All this

business is to be done within the next seventeen days, while at the same time the work of counting the electoral vote must proceed.

This matter was fully discussed the other day. The Judiciary Committee have reported on the subject, and their report, which will be found on page 18 of the RECORD of February 9, declares that—

They are of opinion that the adoption of the resolution would materially aid in carrying out the manifest intent of the provision in that act that while any question is being considered by said commission either House may proceed with its legislative or other business, in order to do which each House may make whatever rules and regulations, consistent with the Constitution, which it may think proper. They would therefore recommend the adoption of the resolution.

It will thus be seen that this proposition has the sanction of the Committee on the Judiciary as well as the Committee on Rules; and I hope that in the interest of the public business it will have the sanction of the House. I call the previous question on the adoption of the resolution.

Mr. WILSON, of Iowa. Let it be read first.

The SPEAKER. The resolution will be read, the gentleman from Iowa having reserved all points of order.

The Clerk read as follows:

Resolved, That the rules of the House be, and are hereby, so amended that pending the count of the electoral vote and when the House is not required to be engaged therein, it shall on assembling each calendar day after recess from the preceding day proceed at and after twelve o'clock m. with its business as though the legislative day had expired by adjournment.

Mr. WILSON, of Iowa. I should like to say a word or two on this subject.

The SPEAKER. The gentleman from New York demands the previous question.

Mr. WILSON, of Iowa. I wish to suggest one or two words in connection with this matter.

The SPEAKER. The Chair will hear the gentleman from Iowa, if there be no objection.

Mr. WILSON, of Iowa. We think on this side, Mr. Speaker, that it requires an act to interpret the provisions of another act. The electoral bill found us with a certain code of rules and stopped the operation of those rules. I introduced a bill for the purpose of getting us over the difficulty into which we were put in the work of the House. I think, as my colleagues on this side many of them think, it requires an act to change the operations of the electoral-commission bill. For that reason I have been compelled to raise this question of order against the introduction of the rule just reported by the gentleman from New York, which is calculated, in my judgment, to change the operations of law.

Mr. BURCHARD, of Illinois. I desire to suggest to the gentleman from New York that the law in section 5 provides that while any question is being considered by said commission either House may proceed with its legislative or other business. Now, if I read the resolution of the gentleman from New York rightly, it provides while the electoral count is proceeding, and it seems to me it would not be within the meaning of the provision of the law to proceed with business only while the question is referred to the commission. I trust if the scope of the resolution is more than that, the gentleman will make a modification. I ask the resolution be again read.

The resolution was again read.

The SPEAKER. Does the gentleman from Iowa insist on his point of order?

Mr. WILSON, of Iowa. I should like to have the ruling of the Chair upon the point.

The SPEAKER. The Chair really does not think it is a point of order.

Mr. WILSON, of Iowa. In a few words, what is the ruling of the Chair? Can a rule of this House amend a law passed by both Houses and signed by the President? My belief is that it cannot. Does the Chair hold otherwise?

The SPEAKER. The Chair, while he does not think it is a point of order——

Mr. HOOKER. It is an argument.

The SPEAKER. The Chair holds it is not a point of order, because it is the construction of a law, and he has nothing to do with the construction of the law. The Chair will express it as his opinion that he would feel governed, and be compelled to be governed, by the committee and this House as expressed in the adoption of the rule. The Judiciary Committee is charged with the construction of the law in a measure.

Mr. WILSON, of Iowa. I do not suppose there will be any serious objection to the resolution presented by the gentleman from New York, if it is understood that in no way, shape, or manner shall it interfere with the counting of the votes for President and Vice-President.

Mr. COX. That is the intent and very meaning of the resolution.

Mr. WILSON, of Iowa. Then will the gentleman from New York allow me to make this modification?

Mr. COX. Read it.

Mr. WILSON, of Iowa. That this shall not be interpreted as interfering in any way with the counting of the votes for President and Vice-President, or interfering with the report of the joint commission, or the meeting of the two Houses in joint session.

The SPEAKER. The Chair would suggest as an additional modification the insertion of the words "when such meetings are necessary."

Mr. WILSON, of Iowa. Of course if the gentleman from New York accepts this as a modification of his resolution, there will I think be no objection to its adoption.

Mr. COX. The rule would supersede the necessity for that, but out of abundant caution, and to save debate, I will accept that proviso if the gentleman will withdraw his opposition.

The SPEAKER. The Chair then understands that the gentleman from New York accepts it as a modification of his resolution.

Mr. COX. Certainly; and now I demand a vote.

Mr. WILSON, of Iowa. I now ask that the resolution be read as modified.

The Clerk read as follows:

Resolved, That the rules of the House be, and are hereby, so amended that, pending the count of the electoral vote, and when the House is not required to be engaged thereon, it shall assemble on each calendar day after recess from the preceding day, proceed at and after twelve o'clock meridian with its business, as though the legislative day had expired by adjournment; and this rule shall not be interpreted as interfering in any way with the counting of the votes for President and Vice-President, nor as interfering with the report of the joint commission, nor the meeting of the two Houses in joint session.

Mr. COX. I now demand the previous question on the adoption of the resolution as modified.

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

Mr. COX moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. COX. Mr. Speaker, I now move the House take a recess until half past seven o'clock this evening.

Mr. HOOKER. And I move to amend that motion, that the House take a recess until ten o'clock to-morrow.

Mr. HOOKER'S motion was agreed to; and the motion, as amended, was then adopted.

And then (at eight minutes to five o'clock p. m.) the House took a recess until ten o'clock to-morrow.

PETITIONS, ETC.

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

By the SPEAKER: Memorial of the Legislature of Colorado, asking for the grant of arid lands for irrigation purposes, to the Committee on Public Lands.

By Mr. ANDERSON: Joint resolutions of the Legislature of Illinois, memorializing Congress in reference to certain land scrip, to the same committee.

By Mr. BUCKNER: The petition of citizens of the District of Columbia, for an appropriation for the schools of the District, to the Committee on Appropriations.

By Mr. BURCHARD, of Wisconsin: Memorial of the Legislature of Wisconsin, asking an appropriation for the completion of the Sturgeon Bay and Lake Michigan Canal, to the Committee on Commerce.

By Mr. CANNON, of Utah: The petition of Silas Hillman and 35 other citizens of Cannon, Utah, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. DE BOLT: The petition of George W. Mason and others, for a law allowing arrears of pension, to the Committee on Invalid Pensions.

Also, the petitions of Harrison Hatfield, Josiah Utley, and William Becket, privates in Company F, First Cavalry, Missouri State Militia for compensation for horses lost in the United States service, to the Committee on War Claims.

By Mr. DOUGLAS: The petition of Louis Kruger, for compensation for property taken by the United States Army, to the same committee.

By Mr. EGBERT: The petition of citizens of Corry, Pennsylvania, for a law granting arrears of pension, to the Committee on Invalid Pensions.

By Mr. FAULKNER: The petition of citizens of West Virginia, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. FINLEY: Papers relating to the establishment of post-routes from Hawkinsville to Fort Mason, and from Volusia to Fort Mason, Florida, to the same committee.

By Mr. FORT: The petition of Joseph Langeler and 160 other citizens of Papineau, Illinois, for cheap telegraphy, to the same committee.

By Mr. FRYE: The petition of William Carpenter and others, of similar import, to the same committee.

By Mr. HANCOCK: The petition of W. F. Hudson and others, for a post-route from San Saba to Brady City and Menardville, Texas, to the same committee.

By Mr. LEAVENWORTH: The petition of Nathan T. Graves and 56 other citizens of Onondaga County, New York, for the repeal of the bank-tax law, to the Committee of Ways and Means.

By Mr. LE MOYNE: The petition of citizens of Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. LUTTRELL: The petition of A. J. Bryant and others, of San Francisco, communicated by telegraph, that if any subsidy be granted for mail service between the United States and China that it be applicable alike to the Pacific Mail Steamship Company and

the Occidental and Oriental Steamship Company, to the same committee.

By Mr. MAGOON: Memorial of the Chamber of Commerce of Milwaukee, Wisconsin, for a treaty of reciprocity with Canada, to the Committee on Foreign Affairs.

By Mr. OLIVER: The petition of R. B. Dardo and other citizens of Iowa, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. PHILIPS, of Missouri: Memorial of citizens of Missouri, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. PHILLIPS, of Kansas: The petition of citizens of Kansas, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. PIERCE: Resolutions of the Boston Board of Trade, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. JAMES B. REILLY: The petition of citizens of Schuylkill County, Pennsylvania, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. STRAIT: Memorial of the Legislature of Minnesota for an extension of the grant of the Hastings and Dakota Railway, to the Committee on Public Lands.

Also, joint resolutions of the Legislature of Minnesota requesting the Senators and Representatives from that State to use their efforts to secure pensions to the soldiers of the Mexican war, to the Committee on Invalid Pensions.

Also, the petition of George W. Vaight and others, that pensioners be paid from the date of their discharge from the Army, to the same committee.

Also, memorial from the Legislature of Minnesota, for an appropriation for the improvement of the navigation of the Red River of the North, to the Committee on Commerce.

By Mr. WAIT: The petition of the Phœnix National Bank of Hartford, Connecticut, and 8 other national banks in said city, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

By Mr. WALDRON: The petition of M. L. Noyes, and 51 other citizens of Chelsea, Michigan, of similar import, to the same committee.

By Mr. WALKER, of New York: The petition of citizens of New York, of similar import, to the same committee.

By Mr. WARD: The petition of Mary Wilkes, widow of the late Admiral Charles Wilkes, for a pension of $50 per month, to the Committee on Invalid Pensions.

By Mr. WHITEHOUSE: The petition of Samuel W. Lawrence and others, executors of William F. Garner, to change the name of the yacht Mohawk to that of Queen, to the Committee on Commerce.

By Mr. WIGGINTON: Papers relating to the survey of the Rancho Rio de Santa Clara, California, to the Committee on Public Lands.

By Mr. WILLARD: The petition of Byron Church and 21 others, of Calhoun County, Michigan, for the repeal of the bank-tax laws, to the Committee of Ways and Means.

IN SENATE.

TUESDAY, *February* 13, 1877—10 a. m.

The Senate resumed its session.

Mr. DORSEY. I move that the Senate take a further recess until twelve o'clock.

The motion was agreed to; and the Senate accordingly took a recess until twelve o'clock.

The Senate re-assembled at twelve o'clock.

Prayer by Rev. JESSE B. THOMAS, D. D., of Brooklyn, New York.

The PRESIDENT *pro tempore*. The recess having expired, the Senate will come to order. The Secretary will read the Journal of yesterday.

The Journal of the proceedings of Monday, February 12, was read and approved.

HOUSE BILLS REFERRED.

The bill (H. R. No. 4629) to provide for the distribution of the awards made under the convention between the United States of America and the republic of Mexico, concluded on the 4th day of July, 1868, was read twice by its title, and referred to the Committee on the Judiciary.

The bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and prior years, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

STATUE OF LIBERTY IN NEW YORK HARBOR.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was referred to the Committee on Foreign Relations:

To the Senate and House of Representatives:

The accompanying memorial is transmitted to Congress at the request of a committee, composed of many distinguished citizens of New York, recently appointed to co-operate with a generous body of French citizens who design to erect in the harbor of New York a colossal statue of "Liberty enlightening the world."

Very little is asked of us to do, and I hope that the wishes of the memorialists may receive your very favorable consideration.

U. S. GRANT.

EXECUTIVE MANSION, *February* 9, 1877.

REPORT ON CENTENNIAL EXHIBITION.

The PRESIDENT *pro tempore* also laid before the Senate the following message from the President of the United States; which was referred to the Committee on Public Buildings and Grounds:

To the Senate and House of Representatives:

I transmit herewith the catalogues and report of the board on behalf of the Executive Departments at the international exhibition of 1876, with their accompanying illustrations.

The labors performed by the members of the board, as evinced by the voluminous mass of information found in the various papers from the officers charged with their preparation have been in the highest degree commendable; and believing that the publication of these papers will form an interesting memorial of the greatest of international exhibitions, and of the centennial anniversary of the Independence of our country, I recommend that they be printed in a suitable form for distribution and preservation.

The letter of the chairman of the board will give to Congress the history of its organization, the laws and executive orders under which it has acted, and the steps which have been taken to preserve the large and instructive collections made, with a view to their forming a part of a national museum should Congress make the necessary appropriations for such a desirable object.

U. S. GRANT.

EXECUTIVE MANSION, *February* 9, 1877.

EXECUTIVE COMMUNICATONS.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Attorney-General, transmitting a full and perfect copy of his letter of instructions to the marshals of the United States dated September 4, 1876; which was referred to the Committee on the Judiciary, and ordered to be printed.

He also laid before the Senate a letter of the Secretary of the Interior, transmitting a statement of the Osage ceded lands sold by the Leavenworth, Lawrence and Galveston Railroad Company prior to the 25th February, 1870; which was referred to the Committee on Public Lands, and ordered to be printed.

CREDENTIALS.

Mr. PATTERSON presented the credentials of David T. Corbin, elected by the Legislature of the State of South Carolina a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented the petition of W. E. Comer and 22 other vessel-owners of Detroit, Michigan, praying for an appropriation by Congress for a light-house at Little Traverse, Michigan; which was referred to the Committee on Commerce.

He also presented a petition of the Board of Trade of Detroit, Michigan, praying the repeal of the bankrupt act; which was referred to the Committee on the Judiciary.

He also presented the memorial of the General Assembly of Colorado, praying for a grant of lands in aid of irrigation and reclamation of waste lands in said State; which was referred to the Committee on Public Lands.

He also presented the petition of W. E. Parker and 57 others, of Emmet County, Michigan, praying for an appropriation by Congress for a light-house at the entrance of Little Traverse Harbor, Michigan; which was referred to the Committee on Commerce.

Mr. LOGAN presented a joint resolution of the Legislature of Illinois, which was read and referred to the Committee on Patents as follows:

Whereas the patent laws of the United States have been so devised and construed as to shield and protect great and oppressive monopolies, and to encourage gigantic speculations for the benefit of a few at the expense of the people, while they are totally inadequate to secure to inventors adequate compensation for their invention: Therefore,

Resolved by the house of representatives, (the senate concurring herein,) That the Senators from this State in Congress are instructed and the Representative are requested to use their earnest efforts to secure such amendments to said laws as will provide—

First. That any person may use any patented invention upon executing a bond, in such sum and with such security as the circuit court of the United States for the district in which such use is to be made shall direct and approve, conditioned that he will pay to the owners of such inventions a proper license fee for the use of the same; which bond shall be filed in the office of the clerk of said court.

Second. That in all cases the measure of the license fee shall be such sum as will give the inventor reasonable compensation for his time, labor, ingenuity, and expense, which sum shall in no case exceed the fee fixed for such use in contracts made by the inventor or owner; and such license fee shall be the measure of damages in all action and proceedings for the infringment of patents, and no other recovery for damages or profits shall be allowed.

JAMES SHAW,
Speaker of the House of Representatives.
ANDREW SHUMAN,
President of Senate.

Mr. LOGAN presented a joint resolution of the Legislature of Illinois, in reference to swamp lands; which was referred to the Committee on Public Lands, and ordered to be printed in the RECORD, as follows:

Senate joint resolution No. 11, concerning Government swamp lands.

Whereas section 2 of the act of Congress approved March 2, 1855, entitled "An act to amend the act approved September 28, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,'" pro-