By Mr. MAGOON: Resolutions and memorial of Milwaukee Clearing-House Association, favoring the repeal of the tax on deposits and capital of banks, to the Committee of Ways and Means.

By Mr. McCRARY: The petition of Mrs. J. C. McKinney, Etta R. Holmes, Mrs. E. S. Henderson, and others—164 men and 194 women of Iowa—for a sixteenth amendment to the Constitution of the United States prohibiting the several States from disfranchising United States citizens on account of sex, to the Committee on the Judiciary.

By Mr. NEW: The petition of citizens of Indiana for the removal of the limitations of the pension laws, to the Committee on Invalid Pensions.

By Mr. O'NEILL: Memorial of representatives of historical societies of the several States, for the passage of the resolution providing for the purchase of the papers of the General Count de Rochambeau, to the Joint Committee on the Library.

Also, the petition of Theresa Lewis and 354 others, of Pennsylvania, for a sixteenth amendment to the Constitution of the United States relating to woman's suffrage, to the Committee on the Judiciary.

By Mr. ROBBINS, of Pennsylvania: The petition of Albert Cingria, of the District of Columbia, for compensation for damages done to his property by order of the board of public works, to the Committee for the District of Columbia.

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

By Mr. SHEAKLEY: The petition of citizens of Mercer County, Pennsylvania, for the removal of all limitations in the pension laws, to the Committee on Invalid Pensions.

By Mr. THORNBURGH: The petition of Henry Clear and other citizens of Anderson County, Tennessee, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. WADDELL: The petition of citizens of North Carolina, of similar import, to the same committee.

By Mr. WALLING: The petition of James M. Morris, Amos Baker, and others, of Pickaway and Fairfield Counties, Ohio, for a repeal of the limitations in the pension laws, to the Committee on Invalid Pensions.

By Mr. WATTERSON: The petition of citizens of Louisville, Kentucky, for the repeal of the tax on banks, to the Committee on Banking and Currency.

IN SENATE.

WEDNESDAY, *January* 31, 1877.

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

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

HOUR OF MEETING.

Mr. MORTON. Mr. President, in order that some reports may be made to the Senate to-morrow, before the main business of the day begins, I move that when the Senate adjourn to-day it adjourn to meet at eleven o'clock to-morrow.

The motion was agreed to.

CREDENTIALS.

The PRESIDENT *pro tempore* presented the credentials of John R. McPherson, elected by the Legislature of the State of New Jersey a Senator from that State for the term beginning March 4, 1877; which were read and ordered to be filed.

SENATOR SWORN IN.

Mr. COOPER. Mr. President, in the absence of the Senator from West Virginia [Mr. DAVIS] I present the credentials of Frank Hereford, elected by the Legislature of the State of West Virginia a Senator from that State to fill the vacancy caused by the death of Allen T. Caperton. I ask that the credentials be read and the oath of office administered to Mr. Hereford.

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

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Acting Commissioner of Patents, transmitting the annual report of the operations and condition of the Patent Office for the year 1876 as required by section 494 of the Revised Statutes; which was referred to the Committee on Patents, and ordered to be printed.

THE ELECTORAL COMMISSION.

The PRESIDENT *pro tempore*. The Chair will lay before the Senate a communication from certain associate justices of the Supreme Court, which will be read by the Secretary.

The Secretary read as follows:

To the President pro tempore of the Senate of the United States:

Pursuant to the provisions of the second section of the act of Congress entitled "An act to provide for and regulate the counting of 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, the undersigned associate justices of the Supreme Court of the United States assigned to the first, third, eighth, and ninth circuits respectively, have this day selected Hon. Joseph P. Bradley, the associate justice of the Supreme Court assigned to the fifth circuit, to be a member of the commission constituted by said act.

Respectfully submitted.

NATHAN CLIFFORD,
SAM. F. MILLER,
STEPHEN J. FIELD,
W. STRONG,

Associate Justices of the Supreme Court of the United States assigned respectively to the First, Third, Eighth, and Ninth Circuits.

WASHINGTON, *January* 30, 1877.

The PRESIDENT *pro tempore*. The communication will be placed on the files of the Senate.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a memorial of the Board of Trade of Kansas City, Missouri, praying for the repeal of the law levying taxes on capital and deposits of banks; which was referred to the Committee on Finance.

Mr. DAWES. I have had placed in my hands the memorial of a large number of business men of the city of Washington and the District of Columbia, praying for the passage of the bill placing the police under the commissioners of the District. I do not know that the Senate has had official notice of the action of the House upon that bill. I think it would be better to lay this memorial on the table and perhaps have it read if the bill comes up for the consideration of the Senate.

The PRESIDENT *pro tempore*. The memorial will lie on the table.

Mr. LOGAN presented a petition of soldiers of Illinois, praying the passage of a law for the equalization of bounties; which was ordered to lie on the table.

He also presented a petition of citizens of New York, praying for the passage of the bill (H. R. No. 58) to equalize the bounties of soldiers who served in the late war for the Union; which was ordered to lie on the table.

He also presented two petitions of citizens of Illinois, praying for the passage of an act allowing pensioners arrears of pensions and that they receive in all cases pensions from the date of discharge; which were ordered to lie on the table.

Mr. MAXEY presented a petition of citizens of Elmo, Kaufman County, Texas, praying the passage of a law to enforce the act of July 24, 1866, to aid in the construction of telegraph lines, and for other purposes, and for cheaper telegraphic facilities; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CHAFFEE presented a petition of citizens of Colorado, praying that pensions may commence from the date of the soldier's discharge; which was ordered to lie on the table.

He also presented a resolution of the Legislature of the State of Colorado, praying Congress to graduate the price of public lands in that State not susceptible of irrigation; which was referred to the Committee on Public Lands.

Mr. SHARON presented a resolution of the Legislature of the State of Nevada, in favor of a law granting pensions to the surviving soldiers and sailors of the Mexican war; which was ordered to lie on the table.

Mr. MERRIMON presented the petition of J. A. Reagan, of Buncombe County, North Carolina, praying for an amicable adjustment of the questions arising out of the late presidential election; which was ordered to lie on the table.

He also presented the petition of R. G. Dyrenforth, examiner in the United States Patent Office, praying to be re-imbursed for money's expended for his defense against charges brought by George Olney, of Brooklyn, Long Island, in the matter of the interference of Olney *vs.* Martin in certain patent cases before the Commissioner of Patents; which was referred to the Committee on Patents.

He also presented the petition of Joseph W. Reford, praying that his letters-patent for an improvement in the apparatus and process of rectifying and oxygenating liquors may be antedated so as to take effect July 18, 1866; which was referred to the Committee on Patents.

Mr. WITHERS presented the petition of D. B. Conrad, of Virginia, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. WHYTE presented the memorial of Charles J. Holloway, of Maryland, protesting against the passage of the bill (H. R. No. 431) for the relief of the heirs of William A. Graham; which was referred to the Committee on Patents.

He also presented a memorial of citizens of Maryland in favor of the passage of the bill to equalize bounties, relating to pensions to soldiers of the Mexican, Florida, and Black Hawk wars, and in regard to arrearages of pensions; which was ordered to lie on the table.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had passed a bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes; in which it requested the concurrence of the Senate.

The message also announced that, the President of the United States having returned to the House of Representatives, in which it originated, with his objections thereto in writing, the bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia, and to transfer its duties to the com-

missioners of the District of Columbia, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same, and had passed it by a two-thirds vote, notwithstanding the objections.

The message further announced that the House had passed a resolution for the printing of 1,000 extra copies of the report of the board of health of the District of Columbia, for the year 1876, for use and distribution by said board.

The message also announced that the House had appointed Mr. HENRY B. PAYNE of Ohio, Mr. EPPA HUNTON of Virginia, Mr. JOSIAH G. ABBOTT of Massachusetts, Mr. GEORGE F. HOAR of Massachusetts, and Mr. JAMES A. GARFIELD of Ohio commissioners on the part of the House authorized by section 2 of the act of Congress entitled "An act to provide for and regulate the counting of 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.

The message further announced that the House had agreed to the amendments of the Senate to the joint resolution (H. R. No. 181) authorizing the Public Printer to bind in cloth the reserved and stitched copies of the House compilation entitled Counting the Electoral Vote.

ADMISSION TO THE CAPITOL DURING COUNT.

Mr. MERRIMON. The Committee on Rules, who were directed by a resolution of the Senate to inquire whether it be necessary to adopt any measures with reference to admissions to the Capitol during the counting of the electoral votes, have had the same under consideration. Yesterday that committee made a partial report. They have further considered the resolution in conjunction with the Committee on Rules of the House of Representatives, and have instructed me to report the resolution agreed to by the committee of the House of Representatives and the committee on the part of the Senate, and to ask that it be considered.

The PRESIDENT *pro tempore*. The Senator from North Carolina, from the Committee on Rules, reports a resolution, which will be read.

The Chief Clerk read as follows:

Resolved, That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed under the direction of the Committees on Rules of the two Houses.

Mr. HAMLIN. I move to amend the resolution by striking out, after the word "distributed," the words "under the direction of the Committees on Rules of the two Houses" and insert "equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives."

I only wish to say that by the resolution you may call upon the Committee on Rules on the part of the Senate to perform ministerial service, clerical service, or whatever you may choose to call it. I think it a more appropriate way, after the Houses issue these tickets, to put them in the hands of the Sergeant-at-Arms of each branch and let him deliver them to members instead of compelling the committee to do it. It disposes of the tickets precisely in the same way that they are now disposed of, only in another channel. I hope the Senate will excuse the committee from doing that service; if not, I shall regret it.

Mr. MERRIMON. The committee came to the conclusion that only about a certain number could be accommodated in the gallery of the House.

Mr. INGALLS. How many?

Mr. MERRIMON. About twelve hundred. That would allow each member about three tickets, allowing a larger number to certain officers whom it would be necessary should have some extra tickets, and it was thought better to have this matter under the direction of the two Committees on Rules. If it should be found that more persons could get into the galleries they might direct a larger number to be issued; if it should be found that they were too much crowded they would regulate that duly. A copy of this resolution was to be referred to the House of Representatives and I do not know whether they have sent their action to this body or not. Those are the considerations which move the committee to take this course.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Maine.

Mr. HAMLIN. The Senate will note that I do not propose in any way or manner to change the final result arrived at; I only ask that it shall be done through another channel, that the Senate will not impose upon a committee of this body the ministerial duty of distributing these tickets, but let our Sergeant-at-Arms do that for the Senate instead of compelling the committee to do it.

Mr. MORRILL. As has always been done heretofore.

Mr. HAMLIN. Then say so. My friend from Vermont says that has always been the way; then let us say that it shall be the way now.

Mr. CLAYTON. Let the resolution be reported as proposed to be amended.

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

The Chief Clerk read the resolution as proposed to be amended, as follows:

Resolved, That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers, except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. The resolution as reported was agreed to by a majority of the committees. It does not impose the duty upon the Committee on Rules of distributing these tickets. They are to be distributed under their direction, and the truth is that there will be very little embarrassment or trouble to anybody. The tickets will be prepared, the Senate's share of them, sent to the President of the Senate, the chairman of the Committee on Rules, and he will direct the Sergeant-at-Arms or some proper officer to distribute them through the mail so that there will be no trouble or embarrassment under it to anybody. It was thought wise to keep the matter under the direction of the Committee on Rules, because we may want to increase the number if we find there shall be room for additional persons or we may want to decrease the number if we find the galleries too much crowded.

Mr. HAMLIN. Before the Senator sits down I want to put a question to him, and before doing that I wish to state to the Senate that I was unavoidably absent from the meeting of this committee this morning, being compelled to attend the meeting of another committee. I want to know from the Senator whether this includes the gallery? It does not say so.

Mr. MERRIMON. O, yes; this includes the gallery. It embraces all that portion of the Capitol that is within the exclusive jurisdiction of the House of Representatives.

Mr. BLAINE. It does not say so.

Mr. MERRIMON. Let the resolution be read again.

The Chief Clerk again read the resolution.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Maine.

Mr. SAULSBURY. I should like to inquire of the Senator from North Carolina what part of the Capitol is under the exclusive control of the House of Representatives, for I confess I do not know. This proposition seems to exclude persons not only from the floor of the House and from the gallery, but from every part of the Capitol that is under the exclusive control of the House of Representatives.

Mr. MERRIMON. The Chamber of the House of Representatives, and galleries, and the cloak-rooms, and the rooms adjoining that Chamber, and perhaps it might also be construed to embrace the committee-rooms under the direction of the House of Representatives.

Mr. HAMLIN. If the Senator will allow me, I think the usual understanding has been that all south of the Rotunda is under the control of the House, and that all north of it is under the control of the Senate; I suppose the Rotunda is a sort of neutral ground where we both meet on equal terms.

Mr. SAULSBURY. I am not prepared to vote for exactly that resolution. There will be a great many persons, doubtless, here from various parts of the country, many of whom have never yet seen the capital of their country. Under the operation of this resolution, during the session of the two Houses in joint convention, they could not see a portion of this Capitol when it would not be the least inconvenient to the members of the Senate and House of Representatives for them to do so.

Now I am in favor of a resolution which, if not so broad in its terms as to enable the people to look down from the galleries upon the two Houses in Congress assembled, ought to give them the privilege of going to every other part of the Capitol outside, provided it is not inconvenient to the two Houses. In fact, this is a question which interests the whole country. We are to ascertain who is to be the Chief Executive of this country for the next four years, and it is a question in which the people of every portion of the country feel some interest. Let every man have a chance to go into the galleries. At least I am democratic enough to be in favor of letting every man go into the gallery who can get admission.

Mr. MERRIMON. That matter was considered, and the committee upon consideration determined that it would be wise to exclude everybody from the Capitol during the counting of the electoral vote. Every American citizen will have the right to come into the Capitol as he has to-day; but it was deemed perfectly right and proper that Congress should regulate how persons should come into the presence of the two Houses sitting in joint assemblage for the purpose of counting the votes. It would not be wise to have disorder there or to put things in such condition as that disorder could prevail there. True it is that everybody has the right to know what is going on in Congress while this vote is being counted; but everybody cannot be there; everybody cannot exercise his right to look upon the count. It is therefore deemed wise to allow the representatives of the people to have each a certain number of tickets to use as he pleases, inviting such of his constituents as he sees proper into the galleries to see the vote counted, so that the whole American people, through their representatives, shall see what is done there and have the advantage of being present. Only a number can be present anyhow, and we could not devise any means that was more just than to allow the representa-

tives of the people to decide who of the people should be present. Three tickets will be issued to each member of the House and each Senator, and each will invite whom he pleases to be present.

Mr. SHERMAN. There does not seem to be any difference of opinion about what ought to be done, but that portion of the resolution which speaks of the part of the Capitol under the exclusive jurisdiction of the House of Representatives is not clearly defined. I think it ought to be "the south wing" of the Capitol extension. If my friend will allow that amendment to be made, I think there will be no objection to it.

Mr. MERRIMON. What does the Senator suggest?

Mr. SHERMAN. I propose to insert instead of the words "that portion of the Capitol set apart for the use of the House and its officers" the words "the south wing of the Capitol extension." We know exactly what that means.

Mr. MERRIMON. I understood—and that was the understanding of the committee—that those portions of the Capitol that the House had control of were well ascertained, well defined, and that there will be no doubt about that. I will mention, furthermore, that it was not deemed wise to put into this resolution all the details the committee had an understanding about, how the tickets should be issued or what should be put upon them, or that a certain ticket should be provided. A portion was set apart for the diplomatic gallery, a portion was set apart for the President, but to the rest of the gallery everybody is to be admitted who shall have a ticket.

Mr. SHERMAN. My friend does not catch my idea. The Senator from Maine says that all south of the Rotunda is under the guardianship of the House of Representatives. That includes the old Hall of the House, the place where the statuary is to be found, and might exclude visiting citizens from seeing the ordinary sights in the Capitol. I do not think there is any intention to do that, and if the resolution is intended simply to protect the place where this ceremony is to go on it should be confined to the wing of the House and not to other portions of the Capitol, which ought to be open to the public.

Mr. MERRIMON. The wing of the House embraces I suppose the corridors around it, and the lobbies.

Mr. SHERMAN. Yes, it embraces those.

Mr. MERRIMON. I will mention to the Senator that the police force has been increased by a hundred additional police, who have been ordered for the purpose of keeping order through the Capitol and enabling everybody to see what may be seen outside of the Hall of Representatives and its galleries. Gentlemen who seem to be very familiar with the House of Representatives and its appendages thought the language of the resolution was the proper language to accomplish that purpose.

Mr. SARGENT. I should like to ask the Senator a question. I wish to understand if the words "Members of the House" are understood as including the Delegates?

Mr. MERRIMON. Yes, sir.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Maine, [Mr. HAMLIN.] Does the Senator from Ohio [Mr. SHERMAN] suggest an amendment?

Mr. SHERMAN. I will withdraw it for the present.

The amendment of Mr. HAMLIN was agreed to.

Mr. SHERMAN. I will now submit the amendment I suggested. I do it simply to define the part embraced. If the Senator objects to it I do not care anything about it.

Mr. MERRIMON. The purpose of the committee, I say again, was simply to take immediate control and exclusive control of the Hall of the House of Representatives and galleries.

Mr. SHERMAN. That my amendment will do. That will give the whole of that wing to the carrying out of that arrangement. I move to strike out the words "that portion of the Capitol set apart for the use of the House and its officers" and insert "the south wing of the Capitol extension;" so as to read:

That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be issued by the President of the Senate and the Speaker of the House, and that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. I suggest to the Senator from Ohio that that excludes persons from the corridors, from the restaurant-rooms, and from many places not connected with the Hall of the House of Representatives at all.

Mr. SHERMAN. The great trouble is that the words proposed by the Senator from North Carolina are indefinite and uncertain. According to the Senator from Maine they would cover all that part of the Capitol building lying south of the Rotunda, and would exclude the people of the United States who come here to see the Capitol from the Old Hall of the House and the restaurant and all those places. As I propose to amend the resolution I think it confines the operation of the rule simply to the Hall in which these proceedings are held. I do not want to interfere with a matter of this kind. If the Senator desires let him say "the Hall of the House of Representatives and the galleries," but make it as liberal as possible and let the people roam through this building as much as possible.

Mr. MERRIMON. I concur in that very heartily, but we thought we had accomplished that purpose exactly.

Mr. HAMLIN. And accomplished more.

Mr. MERRIMON. I wish to say that if this resolution is amended we shall have to change the form of it and make it a concurrent resolution so that our action may go to the House for concurrence.

Mr. SHERMAN. That would be better.

Mr. HAMLIN. Is not this a concurrent resolution?

Mr. SHERMAN. It does not purport to be.

Mr. HAMLIN. It ought to be. It is hardly proper that a resolution of this body should say what should be the action at the other end of the Capitol.

Mr. MERRIMON. If I may state the fact, a resolution like this will be reported to the House for the concurrence of that body.

Mr. HAMLIN. This resolution should be changed to a concurrent resolution.

Mr. MERRIMON. I have no objection to that.

Mr. HAMLIN. It should read, "Resolved by the Senate, the House concurring."

Mr. MERRIMON. I submit in that case it would require the approval of the President.

Mr. HAMLIN. No; it is a concurrent resolution, not a statute. It is simply a concurrent resolution, precisely like the resolution which we passed yesterday in reference to the increase temporarily of the police force.

Mr. MERRIMON. I take it that a concurrent resolution, technically speaking, is a joint resolution, and a joint resolution has the force and effect of a statute and must be approved by the President.

Mr. HAMLIN. This is a concurrent resolution which is in the nature of a rule. The President does not want to sign it to give it effect any more than he would have anything to do with the planetary system.

Mr. SHERMAN. It falls within the nature of a rule.

Mr. MERRIMON. So it does; but the Constitution provides that every resolution which requires the concurrence of both Houses shall have the approval of the President. I have no objection myself personally to any course that the Senate see proper to take. I presented the result of the deliberation of the two committees and I was instructed to report this result. I have done so and explained the ground upon which they acted, and I am content now to take such course as the Senate may see fit.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Ohio, to strike out the words "that portion of the Capitol set apart for the use of the House and its officers" and insert "the south wing of the Capitol extension."

The amendment was agreed to.

Mr. HAMLIN. I move to amend by prefixing the concurrent form to the resolution, so as to read:

Resolved by the Senate, (the House of Representatives concurring.)

The amendment was agreed to.

The resolution, as amended, was agreed to.

Mr. MERRIMON subsequently said: On scrutinizing the resolution which has just passed the Senate regulating the manner of issuing tickets on the counting of the electoral votes, I find it does not execute the purpose contemplated at all. On consultation with the Senator from Maine, [Mr. HAMLIN,] who had given the matter considerable consideration, he is content if the Senate shall consent to an amendment that I desire to offer. I move to reconsider the vote by which the resolution was adopted.

The motion to reconsider was agreed to.

Mr. MERRIMON. I move to amend the resolution as amended by striking out all after the words "Speaker of the House" where they occur last in the resolution, and inserting what I send to the Clerk's desk.

The PRESIDING OFFICER, (Mr. CLAYTON in the chair.) The amendment will be reported.

The CHIEF CLERK. It is proposed to amend the resolution by striking out the following words:

And that the tickets to be issued under this resolution shall be distributed equally to each Senator and Representative by the Sergeants-at-Arms of the Senate and House of Representatives.

And insert in lieu of those words the following:

And the tickets, as assigned by the Committees on Rules of the Senate and House of Representatives to be issued to Senators and Representatives and others, shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives.

So as to read, if amended:

Resolved by the Senate, (the House of Representatives concurring,) That during the counting of the votes for President and Vice-President no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be issued by the President of the Senate and Speaker of the House; and the tickets as assigned by the Committees on Rules of the Senate and House of Representatives to be issued to Senators and Representatives and others shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives.

Mr. MERRIMON. I will just make one remark. If the resolution stands as it was first adopted it would exclude the judges of the Supreme Court, the President, the General of the Army, and many other persons who ought to have tickets, from having tickets at all. The object of this amendment is to obviate that difficulty.

Mr. ALLISON. Under this resolution how are the tickets distributed, equally to the Senate and the House?

Mr. MERRIMON. Yes, sir; and to certain other persons who are embraced as well, the judges of the Supreme Court, Cabinet officers, and generals of the Army.

Mr. WINDOM. Are not those officials entitled to the floor now?

Mr. MERRIMON. They are entitled to the floor; but their families would not be entitled to the benefit of the gallery unless this amendment should be adopted.

Mr. WINDOM. I did not understand the argument of the Senator.

Mr. DAWES. Is it the understanding of the Senator from North Carolina that the tickets distributed among Senators and Representatives are to be distributed equally?

Mr. MERRIMON. Yes, sir.

Mr. DAWES. I did not hear that in the amendment.

Mr. ALLISON. I ask that the proposition as it will stand as amended be read again.

The PRESIDING OFFICER. It will be reported.

The Chief Clerk read the resolution as proposed to be amended.

The amendment was agreed to.

The resolution, as amended, was agreed to.

REPORTS OF COMMITTEES.

Mr. WINDOM. I am instructed by the Committee on Appropriations, to whom was referred the bill (H. R. No. 4473) for the relief of the destitute poor of the District of Columbia, to report it back and recommend its passage. I ask unanimous consent for its present consideration.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill?

Mr. COCKRELL. I object, and ask that it be placed on the Calendar.

The PRESIDENT *pro tempore*. Objection being made, the bill will go over.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 987) for the transfer of Paymaster Robert Burton Rodney from the retired list to the active list of the Navy, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 981) for the better protection of life and property at sea, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1028) for the relief of William Talbert, of Washington, District of Columbia, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (H. R. No. 1574) to provide for the repeal of all laws authorizing the appointment of civil engineers in the Navy, &c., reported adversely thereon; and the bill was postponed indefinitely.

Mr. JOHNSTON, from the Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Harriet de la Palm Baker, praying compensation for certain services rendered by their ancestor in the revolutionary war, submitted an adverse report thereon; which was ordered to be printed; and he asked to be discharged from its further consideration; which was agreed to.

Mr. COCKRELL, from the Committee on Claims, to whom was referred the bill (H. R. No. 3489) for the relief of Captain Samuel Adams, reported adversely thereon; and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1127) for the relief of J. B. McCullough, Mrs. L. S. Fountain, (administratrix of James Fountain) and John Howzo, surviving partner of the firm of Howzo & Hendricks, reported it with amendments, and submitted a report thereon; which was ordered to be printed.

Mr. COCKRELL. I am also directed by the same committee, to whom was referred the petition of Obadiah B. Latham and Oliver S. Latham, praying payment of balance alleged to be due them as contractors for the construction of the United States custom-houses at Buffalo and Oswego, New York, in compliance with the request of the claimants, to report back the papers to the Senate, and ask that the committee be discharged from the further consideration of the case without any prejudice to the claimants. The case was not considered at all; there was no time to act upon it at this session, and we simply report it back in order that the committee may be relieved from its further consideration.

The PRESIDENT *pro tempore*. The committee will be discharged and the petition will lie on the table, if there be no objection.

Mr. CLAYTON, from the Committee on Indian Affairs, to whom was recommitted the bill (S. No. 1142) to authorize and empower the Secretary of the Interior to adjust and settle the account of the Kaskaskia, Peoria, Piankeshaw, and Wea Indians, reported it with amendments.

Mr. WRIGHT, from the Committee on Claims, to whom was referred the bill (H. R. No. 492) for the relief of William G. Ford, of Tennessee, administrator of John G. Robinson, deceased, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

PRESIDENT'S MESSAGE ON ELECTORAL BILL.

Mr. ANTHONY. The Committee on Printing, to whom was referred a resolution to print 10,000 additional copies of the President's message, announcing his approval of the act to provide for counting the electoral vote, have instructed me to report it with an amendment. The amendment restricts the number to 2,500. I ask the present consideration of the resolution.

The PRESIDENT *pro tempore*. The resolution will be reported.

The CHIEF CLERK. The resolution as referred to the committee is in the following words:

Resolved, That 10,000 additional copies of the message of the President of the United States announcing his approval of the act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877, be printed for the use of the Senate.

The committee report to strike out "10,000" and insert "2,500."

Mr. THURMAN. Instead of 10,000 copies?

Mr. ANTHONY. Yes, sir.

Mr. THURMAN. I hope the amendment will not be agreed to.

Mr. SHERMAN. My colleague will remember that that message has been published in every newspaper in the United States; it has been published in every newspaper in Ohio.

Mr. MERRIMON. What is that?

Mr. SHERMAN. The President's short message approving the electoral bill. I have no doubt a million copies by this time have been printed, and it is merely a waste of the public money to print it at all in this form. I do not see any use in printing it; everybody has read it. It is short and will not occupy more than a page of the CONGRESSIONAL RECORD; yet you cannot send it out without paying a cent postage on it; and, as it has been printed in every newspaper in the United States, I think the printing of 2,500 copies is a useless expenditure, but it will not cost much.

The amendment was agreed to.

The resolution, as amended, was agreed to; there being on a division—ayes 27, noes 14.

ADVANCEMENT IN THE NAVY.

Mr. ANTHONY. I am directed by the Committee on Naval Affairs, to whom was referred the bill (S. No. 1068) to repeal certain portions of the Revised Statutes of the United States relative to advancement in the Navy, to report it without amendment; and I ask for its present consideration.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. WRIGHT. I should like to have the Senator from Rhode Island explain the bill.

Mr. ANTHONY. The present provision of law authorizes the President to nominate to the Senate for advancement in his grade any officer of the Navy thirty numbers for extraordinary heroism in the late war. The time has come when all the officers who manifested extraordinary heroism have been rewarded, and some who did not; and the opinion of the committee is that such applications should cease.

Mr. BOUTWELL. What is the section?

Mr. ANTHONY. Section 1506.

Mr. BOGY. I should like to know what is section 1506. I could not hear the Senator from Rhode Island.

Mr. SARGENT. As the Senator from Rhode Island has said, after the close of the war and with a desire to reward persons who had been exceptionally gallant in battle, Congress made a provision that naval officers might be advanced not to exceed thirty numbers provided they had shown such exceptional heroism. A good many years have elapsed since that time. Quite a number of persons, by the regulation of boards and otherwise and on the recommendation of the executive officers, have been advanced. Perhaps some cases have happened where persons not strictly coming within this definition have had the benefit of this statute. The committee have had cases of that kind before them for quite a long while and have almost uniformly reported against them. Occasionally cases still come up, very doubtful in propriety. Persons take advantage of the statute to urge their claims and to bring influences to bear upon the committees and the executive department, which ought not to be favorably considered. To avoid annoyance to the executive department in such cases and going before the committee, as there is very little more that ought to be done, and perhaps nothing more ought to be done in this direction, it is proposed that the law be repealed. It was intended for temporary operation, and it has perhaps performed all the beneficial results ever anticipated from it.

Mr. BOGY. Does this bill come from a committee?

Mr. SARGENT. It comes from the Committee on Naval Affairs.

Mr. BOUTWELL. In reading this section of the statute it does not appear to have had special reference to the late war. It says:

Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism.

It seems to me that is a section of law that ought to stand. I submit it is no reason for the repeal of the law to say that the Secretary of the Navy or the President or the Senate may be importuned for advancement by those who are not entitled to advancement or by the friends of such persons. It does seem to me that if we are to have a Navy there should be an opportunity for rewarding the persons by making them conspicuous among their associates and before the country for unusual courage in battle or extraordinary heroism

under other circumstances that might occur in time of peace, as disaster to a vessel or crews or individual men in danger who might be rescued by the extraordinary heroism of officers of the Navy. I shall feel compelled for one to vote against its repeal.

Mr. LOGAN. What is the proposition, to repeal that section?

Mr. BOUTWELL. The proposition is to repeal the section which reads thus:

Any officer of the Navy may, by and with the advice and consent of the Senate, be advanced, not exceeding thirty numbers in rank, for eminent and conspicuous conduct in battle or extraordinary heroism.

It does not relate to the late war.

Mr. LOGAN. The repeal of this section then leaves it in the hands of the Secretary of the Navy to make this advancement without the consent of the Senate?

Mr. ANTHONY. No.

Mr. LOGAN. What is it then?

Mr. SARGENT. It simply takes away the power. This act was passed April 21, 1864. It was passed in view of the war in which we were then engaged, and because some persons had shown exceptional gallantry. There was no other occasion to display exceptional gallantry except in that war; and if we allow the statute to remain in time of peace the effect will be to cause all the naval officers who might consider that they had rendered something a little out of the line of ordinary duty to try to get above each other, to emulate the example of persons at English fairs climbing a greased pole, where each is trying to pull down the other and climb over him, and it tends to demoralize the service very much more than it would to repeal a law which gives exceptional advancement for such conduct.

It is not the policy of the Navy or of the country in time of peace that such a statute should exist. It was passed for the exceptional purpose of rewarding persons who during the late war had shown unexampled gallantry or rendered unequaled service to the country. The date of the statute and the time at which it was passed show that that was its whole object. It has worked all the results that it was intended to work, and now it is applied, or attempted to be applied, to cases which would not commend themselves I think to the favor of the Senate.

It is not a mere question of avoiding annoyance to the executive officers or to Congress, but such things do slip through and there are some persons who avail themselves of opportunities of getting undue influence. It has been my observation that some persons not entitled to advancement are placed in advance of those entitled to rank which others have succeeded in getting over their heads, and thus getting far advanced on the lists to the prejudice of others who should not have been disturbed. It simply encourages lobbying on the part of naval officers in Washington in order to get this exceptional advantage. We not only advance by the act of advancement, but somebody else must be degraded, and to have a shifting naval list like that is injurious to the interests of the service. It creates jealousy among the officers; it creates a sense of injustice among those over whose heads men are advanced. The result of the law in my judgment has been disastrous so far as the operations of the last two or three years are concerned, and I think we ought to terminate a condition of things not calculated to benefit the Navy and strive to increase the self-respect and the sense of justice among the officers.

Mr. THURMAN. I call for the regular order.

Mr. SARGENT. I hope the vote will be allowed to be taken on this bill.

The PRESIDENT *pro tempore*. The Chair will lay before the Senate the unfinished business.

Mr. THURMAN. I will yield to further morning business.

BILL INTRODUCED.

Mr. PATTERSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1208) for the relief of William Talbert, of Washington, District of Columbia; which was read twice by its title, and referred to the Committee on Naval Affairs.

THE OSAGE INDIANS.

Mr. BOGY. I desire to offer an amendment to the bill (H. R. No. 4452) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1878, and for other purposes. This amendment was handed to me by the delegation of the Osage Indians, and I think is a most important amendment. Attaching great importance to it, I shall read it to the Senate:

Strike out all after and including the words "of which amount," in line 726, page 30, down to and including the words "*per capita*," in line 727, page 30, and insert the following:

And that no expenditure of any of the foregoing sums appropriated for the Osage Indians shall be expended except for such objects and in such amounts as the Osage national council shall, with the approval of the Secretary of the Interior, direct, and the proper officers are hereby authorized and directed to execute the resolution passed on the 26th of June, 1873, by the Osage national council and approved by the Commissioner of Indian Affairs on the 8th of July, 1874, for the payment of the balance of the debt as fixed and limited by said resolution out of the proceeds of the sales of the Osage lands now in the custody of the United States: *Provided*, The authorized authorities of the Osage Nation request the payment of the same: *And provided further*, That the agent of the Osage Indians shall not retain or appoint any person as an employé of his agency other than persons belonging to the Osage Nation except for sufficient reason, to be first certified to the Commissioner of Indian Affairs and approved by him.

The object of the amendment I will state. The Osage Indians have made some progress in civilization. A large proportion of their money which has heretofore been appropriated has been wasted. Within the last few years perhaps more than a million of dollars have been appropriated, and there is nothing to show for that large amount. While they desire hereafter that these expenditures shall be made by the Secretary of the Interior, they also wish to be consulted. I think it a most important step in the way of progress toward their elevation, and will give to them great protection from the rapacity and robbery to which they have heretofore been subjected.

I will state that the delegation now in the city, at whose head is the chief (governor) of the tribe, are intelligent men. The chief himself is an educated man, speaks good English, and is civilized and of very fine intelligence, and known to be a man of character and standing at home. I look upon this matter as very important. It is an object which I have been trying to accomplish for some years as the only way to secure some protection from misapplication of the money which is annually appropriated by Government for their benefit, and which has always been shamefully wasted.

There is another object. There is a claim pending against those Indians in favor of two persons named Vann and Adair. It has been pending against the Indians for a long time. They admit the claim to be legitimate, but they wish to be consulted as to the amount. They are fearful that it may be allowed without being consulted. They therefore pray that the Secretary of the Interior shall be authorized to pass upon this claim subject to their approval, and I think this should be done. They are anxious that the claim should be paid. They admit that they are indebted to these persons, who rendered very great service at a most critical time, and by which a very large sum of money was saved to them. Therefore, while they are willing that the Secretary of the Interior should pass upon this claim and make an allowance, they desire to be consulted as to the amount which may be allowed. As the matter stands now, it is competent for the Secretary to allow it at any time and pay it out of the Indian fund. I move that this amendment be printed and referred to the Committee on Appropriations.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had concurred in the resolution of the Senate providing for the appointment of special police at the Capitol to serve during the canvassing of the votes for President and Vice-President; and also in the resolution of the Senate relative to admissions to the south wing of the Capitol extension during the counting of the votes for President and Vice-President.

The message further announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 1558) to remove the political disabilities of Robert Ransom, of Virginia; and the bill (H. R. No. 2736) to remove the political disabilities of N. H. Van Zandt, of Virginia.

CHANGE OF REFERENCE.

Mr. WINDOM. I wish to make a change of reference of a bill referred by mistake. House bill No. 4554 for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes, was referred by order of the Senate last evening to the Committee on Appropriations. I think it was intended to have gone to the Committee on the District of Columbia. I move that the Committee on Appropriations be discharged from its further consideration and that it be referred to the Committee on the District of Columbia.

The motion was agreed to.

PACIFIC RAILROAD ACTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 984) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. WEST. Mr. President, the argument of the Senator from Ohio [Mr. THURMAN] yesterday was interrupted somewhat toward its conclusion by proceedings of which the Senate is cognizant. I understand from him that he scarcely had the opportunity to make an explanation in regard to one of the sections of the bill of the Committee on the Judiciary such as he desired, and I yield to him now to give him that opportunity, but shall claim the floor at the conclusion of his remarks.

Mr. THURMAN. Mr. President, I do not want to trespass upon the politeness of the Senator from Louisiana too much, and therefore I shall speak very briefly. I beg the attention of Senators to what I shall say, and I shall take very little time about it. I am induced to speak because I find by conversation with some Senators that the statement made by me yesterday was misunderstood, and it is important that that misunderstanding should be removed. I was understood as saying that the Judiciary Committee bill takes 25 per cent. of the net earnings of these railroad companies and puts that 25 per cent. in a sinking fund. I did not intend to make any such statement as that. The bill does not take 25 per cent. of the net earnings of the roads

for a sinking fund but a much less per cent. than 25 per cent. To understand this, it is necessary to advert to the provision of the existing law. Under the law as it now stands each company is to pay to the Government annually 5 per cent. upon its net earnings and that money thus paid, to wit, 5 per cent., is applied by the Government immediately toward re-imbursing the Government for the interest which the Government paid for these companies on the bonds it has loaned them, and thereby saves the Government from the loss of interest upon so much of the money which it has paid for these companies. In the same way as the law now stands it authorizes the Government to retain one-half of the transportation account, as it is called, that is, the account which these companies have from year to year against the Government for services rendered to it in the transportation of soldiers and munitions of war and property of all kinds, and one-half of the transportation account is also presently applicable to the re-imbursement of the Government for the interest which it pays annually for the companies.

The bill now under consideration does not alter those provisions of law in the slightest degree. To take that 5 per cent. and the one-half of the transportation account, which under existing law is immediately applicable to re-imburse the Government for the interest it pays for these companies, would be to make the Government lose interest upon the amount of those two sums from now until the maturity of the bonds in 1898, a period of twenty-one years. So this bill does no such thing as that, but it preserves those two provisions of the existing law, and then requires that in addition to those payments such further payments shall be made to be credited to a sinking fund as with those payments now provided for by existing law will make 25 per cent. of the net earnings of the companies, with a proviso in effect that with respect to the Union Pacific they shall not in any year be required to pay more than $1,500,000, counting the money which is immediately applicable to refund the Government, its payment of interest, and also the amount which has to go into the sinking fund. I can make this very clear to everybody's comprehension, who will listen to me, in one moment. Let us take the Central Pacific Company and suppose its earnings to be in round numbers what they have been for some years, $8,000,000, 25 per cent. of that would be $2,000,000.

Mr. WEST. If I do not interrupt the Senator, he certainly includes in that amount the total earnings of the entire length of the Central Pacific Railroad, only two-thirds of which has ever been subsidized by the Government.

Mr. THURMAN. It will answer for my illustration.

Mr. WEST. I only want to take exception to that statement.

Mr. THURMAN. I am not going into the mooted question whether or not it is 5 per cent. of the entire earnings of the company or 5 per cent. only of the earnings of that portion of the road which is bonded and subsidized.

Mr. WEST. This is for illustration, I understand?

Mr. THURMAN. For illustration, and it will answer just as well upon either interpretation of the charter, suppose the net earnings of the Central Pacific to be $8,000,000, 25 per cent. of that would be $2,000,000. Now we do not require the company to pay $2,000,000 into the Treasury; we require it in a case like that only to pay one million and a half of dollars. How are those one million and a half of dollars to be paid? What elements compose it? In the first place there would be $400,000 in 5 per cent. on its net earnings, which $400,000 would be applied under our bill just as it is under the present law, to the immediate re-imbursement of the Government of so much interest paid by it for the Government. Then there would be another half of the transportation account which, under the existing law, is also immediately applicable to the payment of the interest. That is $240,000. I only take that for convenience, because that will make just exactly 3 per cent. Then you would have 8 per cent. of its net earnings which that company, under existing law, is required to pay and which is immediately applicable by the Government to re-imburse itself the interest it has paid for the company. That would take 8 per cent. of its earnings. Now we require the company to pay 17 per cent. more for a sinking fund, making 25 per cent. which would be in the case supposed $860,000 which the company would have to pay. In this $860,000 is included half the transportation account for the Government which under the existing law is to be paid over to the Government. It may all be called as part of its net earnings. It is no use to distinguish them at all. So you see that the bill of the Judiciary Committee leaves the law to stand, so far as that law requires payment, which would go to the re-imbursement of the Government for interest paid by it, and it saves the Government from loss of interest upon just that money for the twenty-one years or the twenty-two years that these bonds have yet to run, and that the amount of their net earnings which we take from them out of which to create a sinking fund would not in all probability in respect of any one of those companies amount to more than 17 per cent. of their net earnings. I hope that that explanation makes the provisions of the bill perfectly clear and corrects the misapprehension that I created yesterday in the haste of speaking by perhaps an unguarded expression.

Now, Mr. President, one word more before the Senator from Louisiana proceeds. My colleague [Mr. SHERMAN] suggested an amendment which I think on reflection he will hardly press, because the effect of it would be to deprive the Government of the right to apply the 5 per cent. which it is now entitled to receive and immediately apply, and the half-transportation account which it is now entitled to retain and immediately apply to re-imburse itself. His amendment would transfer that 5 per cent. and that half-transportation account to the sinking fund, and would thereby deprive the Government of interest upon just the amount of those two sums for twenty-one years. Of course my colleague did not intend that, and I do not think he will press the amendment.

One word upon the funding scheme of the Railroad Committee's bill. I said yesterday that that postponed the payment of this debt indefinitely. A Senator said to me, "You are mistaken, because it provides for a sinking fund by an accumulation of interest, interest compounded, and it would take but a small sum of compounded interest to pay off the national debt in a very short period of time, especially if you are to add the principal of that sum every year, as the Railroad Committee bill proposes." But, Mr. President, of all the curious devices that ever I have seen for paying a debt, with great respect to that committee, their plan is the most curious. There is an old play that has amused many of us in reading and also in seeing it acted, called "A New Way to Pay Old Debts," but the author of that play never in his fertile imagination conceived so fine a way to pay old debts as I humbly submit is this plan of a sinking fund, according to the bill of the Railroad Committee. How is it? I shall speak but a few minutes longer in order to show you. We pay for these railroad companies in interest over $3,000,000 every year, and we get no interest upon the amount which we thus pay; and, unless my interpretation of the law should be incorrect, when the final settlement comes at the maturity of the bonds, then we shall be entitled to that interest upon these installments of interest paid by us for the time they were paid respectively; but that is a mooted question. I am free to say it is not a question perfectly free from doubt; but at all events, whether I am right or whether I am wrong in that, for twenty-one years we get no interest upon these $3,000,000 which we each year pay. The Railroad Committee bill says to the Government, "You pay for us $3,000,000 in this year of grace 1877, and we will pay you no interest upon the $3,000,000 which you thus pay, but we will make a partial payment of that sum; we will pay one million and a half of dollars, and you shall put that to our credit in the Treasury and allow us compound interest upon it every six months, and thus by that kind of computation we will have paid off our debt by the time the twenty-one years have expired." I think very likely you would, but of all the ways of paying a debt that ever I saw in my life, the idea that you shall take the principal of a debt and compute no interest on it, and take each partial payment and put compound interest on that—I say of all the modes of paying debts that ever I have seen that is the most novel and to me the most frightful. I have said all that I desired to say.

Mr. WEST. Mr. President, I approach the consideration of this subject with both embarrassment and anxiety: anxiety that legislation involving so large an amount shall be wise and judicious, maintaining the interests of the Government, and, in the language of one of the statutes itself, "having due regard for the rights of the companies" affected; embarrassment that within my experience this is the first occasion where two committees of this body have been intrusted with the consideration of a similar and indeed the same subject, and reported diametrically diverse propositions on a fundamental principle, as I shall proceed to show. The real features of this bill, the real results to be attained by the adoption of either one or the other projects, differ but little; and as much money will accrue to the credit of these companies for the liquidation of their indebtedness to the Government of the United States by one bill almost as by the other, I am also somewhat diffident of being assigned by virtue of my position on this committee the laboring oar in maintaining a cause both of law and fact against that committee which stands pre-eminent in the existence of this body for its legal acumen and opinion. In what I shall say I shall ask the consideration of the Senate more to the authorities I shall offer than to any original ideas I may myself advance. If I controvert the attitude and position taken by the Judiciary Committee of to-day, I shall find myself sustained by a preceding opinion of that same committee diametrically opposite to what they now recommend. If I controvert the position assumed by the Law Committee of this body, I shall be sustained by the opinion of the highest tribunal in the land, that tribunal to which this nation now appeals for security in its hour of distress and tribulation: the Supreme Court of the United States. Not to me will I ask Senators to listen, but I ask them to listen to the edicts and mandates of the highest court in the land, which I contend has virtually decided this question.

No remark that fell from the Senator from Ohio perhaps had as much weight with all of us as when he said we should approach the consideration of this subject with extreme care; that if we ventured upon either its consideration or to vote upon it without due reflection, ample time to think and to examine, we might commit a very grave error. What were his words? Speaking of the disposition and action of the Committee on Railroads, he says:

> I know their ability; I know their disposition to see that justice is done to the Government; but I know another thing, that this subject is one that requires long and careful study, and that he who undertakes to frame a bill upon it without long and careful study, and without familiarity with all its details, will necessarily fall into some error like this.

To that opinion, Mr. President, there can be no dissent, and although in the agitation of the moment the Senate is little disposed to give its attention to the remarks that may be submitted to it by either one Senator or the other, yet before we vote upon this question we should consider with ourselves how far we are rightfully protecting the interests of the Government of the United States, and whether we are not, by the very action that is recommended by the Committee on the Judiciary, actually imperiling the whole of this debt, absolutely putting it beyond the power of the Government of the United States ever to be refunded one single dollar of this $150,000,000 that will be owing to us by these companies.

It was the conclusion at which the Committee on Railroads arrived that the legislation which they recommended was the only legislation that would enable the Government to recover this money; that if the bill of the Committee on the Judiciary was passed the companies must be compelled to resist its being put into effect, and if the decision was adverse to the Government—which we had reason to believe it would be from the pregnant outgivings of the Supreme Court—that this money would be irrecoverably lost by improvident legislation.

The two bills, the one of the Judiciary Committee and the other of the Committee on Railroads, differ in these respects: The first provides a measure of forcing the companies against their will to create a sinking fund for the payment of indebtedness not yet due; the second proceeds on the principle of procuring the companies voluntarily to agree to provide such sinking fund. That is the fundamental difference between the bills of the two committees, although in absolute and actual fact the amounts to be paid by the different processes differ, as I shall show, very little. Now, there are some principles of law that cover this matter which I desire to refer to somewhat briefly.

There is a vast difference between a franchise granted by a State or by the United States to a corporation simply for corporate purposes, to enable it to act as a corporate body, or a simple grant of a right of way and right to build and use a railroad or other work of internal improvement, where the only benefit to the granting power is the general benefit to the public, and the case of such grants to a corporation created or assisted for the express purpose of benefiting the granting power. In the first case the grants are for the sole benefit of the corporation, and, under all the decisions, the acts containing the grant are to be construed strictly against the grantee. But in the second case two elements enter: one, that of the franchise to act as a corporation or to use a right of way or other substantial right granted, and the other a contract in which, in consideration of the franchises and rights conferred upon the grantee, it agrees to do certain acts and perform certain services for the benefit of the grantor. In granting the franchises the Congress of the United States or the State Legislature acts as a sovereign power. In so far as the acts are contracts, the sovereign power is relinquished and the sovereign becomes a contractor, puts itself on a par with its subject, becomes a party to the agreement, and is bound by the same rules of law and is subject to the same duties and obligations as the other party to the contract.

There is something pertinent to that proposition, Mr. President, in an opinion that I hold in my hand delivered by Mr. Justice Grier, the predecessor of Justice Strong on the Supreme Bench, in a case in New Jersey. The justice, in alluding to the sovereignty of the United States and its exercise in like premises, uses this language:

> The Government of the United States, though limited in its powers, is supreme in its sphere of action. But its rights as a sovereign and its prerogatives as such are co-extensive with the functions of government committed to them, and extend no further. Its position as to prerogative is anomalous, owing to our peculiar institutions.
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> In the mere exercise of a corporate right the Government of the United States cannot claim the prerogatives or immunities of a sovereign. She cannot compel a mortgagee to the hopeless remedy of a petition to Congress to redeem.

That is what this bill does most assuredly. It compels the first mortgagees, holding the first lien upon the property of these companies, to depend upon such subsequent action of Congress as it may seem wise and judicious to adopt to re-imburse them their money.

Thus—

The justice continues to say—

> when the Government of the United States becomes a partner in a trading corporation—

I shall contend, Mr. President, that the Government of the United States did enter into partnership with these railroad companies to build the railroad for the benefit and interest of the Government of the United States, and the Government thereby became a partner under limitations in a trading corporation "such as the United States Bank, it divested itself so far as concerned the transactions of that company of its sovereign character, and took that of a citizen."

The cases that have been cited by the Judiciary Committee in support of their view of the law in this case have no analogy whatever to the circumstances attending the organization and the existence of these companies. There never has been an instance, either in State or national legislation within my knowledge, where the Government became a partner in a railroad company until this one, and every case that they cite is a case outside of the interests of the Government and where the Government has intervened to adjudicate between two conflicting interests, in which the sovereign power had no concern. There is not one of the cases that is cited by the Committee on the Judiciary that has such elements in the organization of the companies as those I have mentioned.

Now, Mr. President, I desire to show the gain and advantage derived from the construction of this road. I desire to show that it is admitted by the courts that have adjudicated this question that such was the fact, and to maintain the proposition that I have laid down that the Government became a copartner in these roads and so has abandoned its rights of sovereignty.

But these acts of 1862 and 1864—

Says the Court of Claims in its decision of what is known as the Union Pacific Railroad case—

> contain something more than provisions to create a corporation and confer upon it franchises and grants. The statutes really embody both a charter and a compact. As to those provisions which create the corporation, which limit its rights and franchises, which prescribe its obligations to the public, and confer grants and benefits upon it, the statutes are nothing more than a charter; but as to those provisions which bind the Government to do something, which cast distinct obligations upon it, which carry it into the region of mercantile transactions, and make it take a financial part in the enterprise, the statutes belong to that class of legislation which is to be so construed as to carry out the liberal and just intent of the Legislature.

I shall now read somewhat at length from the opinion of the Supreme Court in this case, rendered in the October term, 1875, which has presented to the consideration of Congress the relations with these companies in an entirely different phase from what had hitherto been contemplated. The opinion of that court alone read from this place, and given proper attention to by the Senate, is an ample refutal itself of the propositions contained in the bill of the Committee on the Judiciary. It is scarcely compiled with that system that enables the reader to condense its opinion upon any one particular question; and as I read it to the Senate I shall not confine myself to the text consecutively, but I shall take such portions of it as bear upon the view that I desire to maintain. I know the Senate would much rather hear what the opinion of the Supreme Court is upon this question than they would hear mine.

> Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which surrounded Congress when the act was passed. The war of the rebellion was in progress, and the country had become alarmed for the safety of the Pacific States, owing to complications with England. In case these complications resulted in an open rupture, the loss of our Pacific possessions was feared, but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes its citizens. It is true that threatened danger was happily averted, but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country, and furnish a cheap and expeditious mode for the transportation of troops and supplies. And if it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the execution of a plain duty, could not justly withhold the aid necessary to build it. And so strong and pervading was this opinion that it is by no means certain the people would not have sanctioned the action of Congress, if it had departed from the traditional policy of the country regarding works of internal improvements, and charged the Government itself with the direct execution of the enterprise.
>
> This enterprise was viewed as a national undertaking for national purposes, and the public mind was directed to the end to be accomplished rather than the particular means employed for the purpose. Although this road was a military necessity—

The assumption on the part of the Judiciary Committee is, that this road was built for the railroad companies. This road was built for the Government of the United States to meet its necessities—

> Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers which was practically worthless without the facilities afforded by a railroad for the transportation of person and property. With its construction the agricultural and mineral resources of this territory could be developed; settlements made where settlements were possible, and thereby the wealth and power of the United States essentially increased. And there was also the pressing want, in times of peace even, of an improved and cheaper method for the transportation of the mails and supplies for the Army and the Indians.
>
> It was in the presence of these facts that Congress undertook to deal with the subject of this railroad. The difficulties in the way of building it were great, and by many intelligent persons considered insurmountable.
>
> Although a free people, when resolved upon a course of action, can accomplish great results, the scheme for building a railroad two thousand miles in length, over deserts, across mountains, and through a country inhabited by Indians jealous of intrusion upon their rights, was universally esteemed at the time to be a bold and hazardous undertaking. It is nothing to the purpose that the difficulties in the way of the undertaking, after trial, in a great measure disappeared, and that the road was constructed at less cost of time and money than was considered possible. No argument can be drawn from the wisdom that comes after the fact. Congress acted with reference to a state of things supposed to exist at the time, and no aid can be derived, in the interpretation of its legislation, from the consideration that the theory on which it proceeded turned out not to be correct. The project of building the road was not conceived for private ends, and the prevalent opinion was that it could not be worked out by private capital alone. It was a national work, originating in national necessities, and requiring national assistance.
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> The policy of the country, to say nothing of the supposed want of power, stood in the way of the United States taking the work into its own hands.

The United States, desiring the construction of the road and Congress being of opinion that it could not constitutionally enter upon this work, made a contract with the railroad company, and availed itself of its corporate existence to construct that road for the benefit and use of the people of the United States, and not for the benefit of a railroad company:

> Even if this were not so, reasons of economy suggested that it were better to enlist private capital and individual enterprise in the project. This Congress undertook to do, and the inducements held out were such as it was believed would pro-

cure the requisite capital and enterprise. But the purpose in presenting these inducements was to promote the construction and operation of a work deemed essential to the security of great public interests.

It is true the scheme contemplated profit to individuals, for, without reasonable expectation of this, capital could not be obtained, nor the requisite skill and enterprise; but this consideration does not in itself change the relation of the parties to this suit. This might have been so if the Government had incorporated a company to advance private interests, and agreed to aid it on account of supposed incidental advantages which would accrue to the public from the completion of the enterprise. But the Government proceeded on a wholly different theory. It promoted the enterprise to advance its own interests, and endeavored to enlist private capital and individual enterprise as a means to an end, the securing a road which could be used for governmental purposes.

* * * * * *

Indeed, the whole act contains unmistakable evidence that, if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its course of action.

* * * * * * *

Of necessity there were risks to be taken in aiding with money or bonds an enterprise unparalleled in the history of any free people, which, if completed at all, would require, as was supposed, twelve years in which to do it. But these risks were common to both parties.

I particularly ask attention to that phrase that "these risks were common to both parties." Who ever heard of a government or a sovereign state risking anything in conferring a franchise upon a railroad company? It is evident that the Supreme Court takes an entirely different view of this case:

And Congress was obliged to assume its share and advance the bonds or abandon the enterprise, for obviously the grant of lands, however valuable after the road was built, could not be available as a resource with which to build it.

We have the same reasons in reports made to the Senate, besides the general opinion given by the Supreme Court that these roads were necessary to maintain the unity of the Government. We have some financial and monetary reasons, some reasons in the direction of frugality and of economy that instigated the Government to this action when it passed those bills and created those companies and subsidized them with lands and with bonds.

In a report of the Senate, No. 374, Forty-first Congress, third session, after going into detail at large of the expenses of maintaining communication with the Pacific coast, in discussing the charge that was entailed upon the Government by the transportation of its mails, its munitions of war, its troops, and in maintaining surveillance over the Indian tribes, the report shows that the absolute expenditure for transportation alone was $8,000,000 a year. Then in order to relieve the Government of such an excessive and onerous charge in that direction, the Government aided these roads, became a partner in the transaction of their business, with limitations, and to-day the expense is only 10 per cent. of that amount. The Government has received the benefit of a reduction from $8,000,000 annual expenditure to $800,000 now for the same objects. Did not the Government, in the language of Mr. Justice Grier, become "a partner in a trading corporation;" and in the language of the Supreme Court, "for its own interest, for its own objects, and for its own benefit?"

The Senate Judiciary Committee in the same volume, and indeed in the next report, No. 375, admit—the honorable Senator from Ohio who last addressed the Senate on this subject [Mr. THURMAN] was then a member of this committee, and he admitted then that this was a work of national importance by the language of this report, and certainly that proposition cannot be controverted by him now.

Now, Mr. President, the question was asked very dogmatically yesterday, what did Congress intend by reserving to itself the power to alter, amend, or repeal; and the Senator from Ohio said that if this power to alter, amend, and repeal did not extend to these particular provisions which are now at issue, what did it extend to? The act incorporating these companies and the second amendatory act, which contains the direct power without qualification to alter, amend, or repeal printed in this pamphlet, fills twenty pages, a bill of twenty-three sections, and the questions at issue now before the Senate only occupy twenty-three lines of those twenty pages and twenty-three sections. Consequently there must have been some other provisions in this bill that Congress intended to apply the repealing power to, and that it did so intend, that it had other means and objects in reserving to itself that power, is evidenced by the fact that in subsequent legislation, to the extent of ten acts, it has altered and amended and repealed the act of 1864, two of those amendatory acts only referring to the subject now at issue and the other eight acts being in regard to the general management of the road. Surely there is scope and power enough there, there is field and exercise enough for that power to answer the question as to what Congress intended and which has shown what it did intend by acting upon this power.

But it is contended, Mr. President, that Congress by that reservation reserved to itself the option to make the bonds granted to these companies payable before maturity. On that subject I desire the Senate to listen to what the Senator from Ohio said in 1871 in a report presented from the Judiciary Committee of this body, in answer to a resolution asking them "to inquire and report whether the railway companies which have received aid in bonds of the United States are lawfully bound to re-imburse the United States for interest paid on such bonds before the maturity of the principal thereof, and, if so, what legislation, if any, is necessary to compel such re-imbursement."

Can any language be more positive, more direct, more unequivocal than that in which this statement is presented for consideration by the Senate? The committee say:

It is evident, from the statutes themselves, that the company is not bound to make any payment in money on account of these bonds, except the 5 per cent. of net proceeds, until the maturity of said bonds, thirty years from their date. And it is equally evident, from the debates in both Houses of Congress when these acts were passed, that it was the intention of Congress so to frame them as to accomplish such result.

That Congress in framing this act was so particular as to put it beyond the power of the Government to ever precipitate the payment of these bonds before maturity. There is the opinion of the committee in 1871, and now they are here with a proposition to compel payment of the bonds at once.

Further the committee say:

The debates in the House are equally instructive; and it is apparent that the company was not expected to pay the interest as it should become due.

Not only did the letter of the law require that they should not be paid, but it was the intention as evidenced by the debates that Congress should throw such safeguards around its legislation that it would never after have the power to require a precipitate payment of these bonds before their maturity.

Further what do the committee say:

It is questionable, however, whether, in a case like this, where the Government, by its legislation, has encouraged the investment of capital in a work of national importance, it would be quite honest, or becoming the dignity of the Government, to shelter itself behind this technical rule of judicial construction. The stockholders of this company might well say that they understood these acts as they were understood by the two Houses of Congress at the time of their passage. It would be rather harsh treatment to twist out of these acts, by refinement of criticism, a construction unfavorable to the company, and directly opposed to what everybody in Congress and out of it understood to be their meaning at the time they were passed and the money invested. But, however this may be, there is ambiguity enough surrounding this act to take it out of the judicial rule before mentioned, and to place it in that class of cases as to which even the judicial courts seek the aid of extraneous circumstances.

Now, Mr. President, the law proposed by the Judiciary Committee of this body may be the legislation that we should like to see put into effect as against these companies; but, after all, although we are the law-making power, the law-adjudicating power controls, and controls the result of our acts. From the forum of legislation I appeal to the tribunal of adjudication and determination, and the edict of that tribunal must be respected by everybody in this land. If Senators will take this decision, as I before remarked, and read it, it alone is a complete refutation, an unanswerable refutation, of all the propositions that have been discussed by the committee. Let me say that this committee, except in one instance, in all attempts at legislation against these companies have invariably been overruled by the courts of the land. And now here is one more effort to precipitate us into legislation, involving time, that may result if adversely determined by the courts against the Government of the United States in the absolute loss of all this property; and to that point I will have occasion to refer in the course of my remarks. The Supreme Court say:

The words "to pay said bonds at maturity" do not bear the sense which is sought to be attributed to them. They imply, obviously, an obligation to pay both principal and interest when the time fixed for the payment of the principal has passed; but they do not imply an obligation to pay the interest as it accrues and the principal when due. It is one thing to be required to pay principal and interest when the bonds have reached maturity, and a wholly different thing to be required to pay the interest every six months and the principal at the end of thirty years. The obligations are so different that they cannot both grow out of the direct words employed, and it is necessary to superadd other words in order to extend the condition so as to include the payment of semi-annual interest as it falls due. Neither on principle or authority is such a plain departure from the express letter of the statute warranted. And especially is this so when the construction leads to so great an extension of a condition to defeat a grant.

Now, Mr. President, here again is the opinion of the Supreme Court of what was the intention of Congress with reference to the re-imbursement that should be made by these companies of the advances made to them by the Government.

In addition to all that has been said, there is enough in the scheme of the act, and the purposes contemplated by it, to show that Congress never intended to impose on the corporation the obligation to pay current interest. The act was passed in the midst of war, as has been stated, when the means for national defense were deemed inadequate to the wants of the country, and the public mind was alive to the necessity of uniting by iron bands the destiny of the Pacific States with those of the Atlantic. Confessedly the undertaking was outside of the ability of private capital to accomplish, and only by the helping hand of Congress could the problem, difficult of solution under the most favorable circumstances, be worked out. Local business, as a source of profit, could not be expected while the road was in course of construction, on account of the character of the country it traversed; and whether, when completed, as an investment it would prove valuable, was a question for time to determine. But vast as the work was, limited as were the private resources to build it, the growing wants of the country, as well as the existing and future military necessities of the Government, demanded that it be completed. Under the stimulus of these considerations Congress acted. It did not act for the benefit of private persons, nor in their interest, but for an object deemed essential to the security of the country, as well as to the prosperity of the country.

Confirming again the sentiment expressed by Justice Grier, which I quoted here, that Congress became a partner in a trading corporation to protect and provide for its own interests. I shall read further from the opinion of the Supreme Court as to whether Congress parted with its power to provide this sinking fund or not. The language of the Supreme Court is significant of the fact that Congress had in its power once the opportunity to provide for a sinking fund, but it did not choose to do it. In language as plain as can be spoken the court say:

But, if the words "to pay said bonds at maturity" do not give notice that this exaction was intended, neither do the other provisions of the sixth section. They

created no obligation to keep down the interest, nor were they so intended. The proposition to retain the amount due the company for services rendered, and apply it toward the general indebtedness of the company to the Government, cannot be construed into a requirement that the company shall pay the interest from time to time and the principal when due. It was in the discretion of Congress to make this requirement, and then, as collateral to it, provide a special fund or funds out of which the principal obligation could be discharged.

In other words, saying that it was in the discretion of Congress, had it seen proper to exercise it, to provide for the creation of a sinking fund; but it failed to do it by its legislation, because the court say:

This Congress did not choose to do—

Congress did not choose to provide for the creation of a sinking fund—

but rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest of the bonds delivered to it.

It did not rest satisfied with the power to alter, amend, and repeal that is contended for by the Judiciary Committee. If such a power had remained in Congress after the passage of the act of 1864, would the Supreme Court have used this language? No; but they say Congress did not choose to do it, but by its legislation it forever debarred itself of the opportunity to require these companies to make a sinking fund otherwise than what was provided by the law itself.

Mr. CHRISTIANCY. I would inquire of the Senator from Louisiana whether he insists that that decision which he has quoted decides anything of that kind?

Mr. WEST. By inference and implication it does. It is pregnant with the opinion of the Supreme Court, to my mind, whatever weight it may have with other Senators.

Mr. CHRISTIANCY. If I may interrupt the Senator, I will ask him whether it is possible the court could have decided any case of that kind when it did not have it before it?

Mr. WEST. The case was before them; and we can judge by the language what was in their minds when they rendered their opinion. I do not say the court did decide it; but I say with such an intimation from the Supreme Court shall we venture upon legislation which if decided adversely to the interests of the United States places those interests absolutely at the mercy of these companies?

When this question was up before, in 1871, the Senator from Ohio in sustaining this report said the law was not as he would like to have it, but the question must be determined according to the letter of the law, however adverse it might be to the interests of the Government, and the Senator from Vermont who usually sits at my right [Mr. EDMUNDS] used this language:

I should be very glad indeed to have the Supreme Court of the United States determine what the law is on this question. If it determines it in favor of the companies, *there is an end of the question;* if it determines it in favor of the United States—

And with his usual sarcasm he says—

as we cannot suppose it will after the report of our learned brethern on the Judiciary Committee—

He dissented from that report—

then of course there will be an end of the question, and all parties will be satisfied.

But it seems, although the question whether these companies should be called upon to pay anything before the maturity of the bonds has been decided adversely to the United States, some other method must be brought up and considered for the purpose of flanking the decision of the Supreme Court of the United States.

Mr. President, a good deal has been said about the act of 1864, that while it conferred additional benefits upon the companies it also imposed limitations and restrictions upon them that more than counterbalanced the advantages which were received by them; and the Senator from Ohio took occasion to say that in 1864 the companies came to Congress and prevailed upon Congress to legislate further in their behalf. I find no record of the companies appealing by petition or otherwise to Congress for this remission in their behalf; but it became evident that the great interests of the Government connected with the vast Pacific coast were paralyzed for want of a connection, and the Government stepped forward itself and said to these companies, "If you will carry out this work of national design and importance and consequence, we will grant you additional facilities; we will grant you further aid, and will make our terms and restrictions upon you less onerous than they were by the original act." The Judiciary Committee in 1871 said:

Two years after the passage of this act the company came again to Congress, and represented its inability to build this road without yet more favorable provisions at the hands of Congress; and the debates in both Houses, while the act of 1864 was under consideration, clearly show that Congress understood the effect of the act of 1862 to be that before stated. And in the fifth section of the act of 1864, for the purpose of making more favorable terms to the company, it was, among other things, provided as follows:

"Only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads."

It is a well-settled rule of construction that statutes in *pari materia* are to be construed together, and the provisions of one may be referred to for the explanation of provisions in the other. Bearing in mind that Congress by the former act designed to encourage investment of capital in this work, and that the act of 1864, as appears from all its provisions, was intended to be yet more favorable to the company, the provision above quoted can be understood in no other sense than that Congress intended to relieve the company from applying more than half of the compensation for services to the payment of bonds, and that the other half should be paid to the company. What possible benefit would this have been to the company if the company was bound to pay that, and a much larger sum, immediately back to the Government to satisfy accruing interest on the bonds?

Now I ask the question what possible benefit could it have been to these companies to enable them to issue a first-mortgage bond having precedence over the mortgage in favor of the Government, if in that very same act the Government had in direct terms reserved to itself the privilege of making its mortgage the first? That is the construction put upon it by the Judiciary Committee, that notwithstanding these companies obtained from the governor a waiver of its rights to the extent of a first mortgage, the Government in the same act that conferred that benefit and advantage upon them reserved to itself the power, as it now proposes to do, to make its mortgage take precedence of that granted in the first instance. On this subject the Supreme Court say, in their decision:

Notwithstanding the favorable terms proposed by Congress the road languished, and the effect of this was the amendatory act of 1864. By this the grant of lands was doubled, a second in lieu of a first mortgage accepted by the Government, and a provision inserted that "only one-half of the compensation for services rendered for the Government by said companies (meaning this and the auxiliary companies incorporated at the same time) shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said road."

This amendment was, without doubt, intended merely to modify the provision in the original act so as to allow the Government to retain only one-half of the compensation for services rendered instead of all. Although the requirement in this provision is that the compensation shall be applied to "the payment of the bonds," and in the former "to pay the bonds and interest," yet it cannot be supposed Congress intended to relinquish the right secured in the former act to make the application in the first place to the interest and then to the principal. The purpose of Congress could have been nothing more than to surrender on behalf of the Government the right to retain the whole of the company's earnings and to accept in lieu of it the right to retain the half, leaving unaffected by this change any right touching this subject secured in the former act. The change was a very material one, and intended, doubtless, as a substantial favor to the companies.

Can you grant a substantial privilege to anybody and take it back again in the same terms? How much substantial favor could be conceded by this legislation to these companies if in the very same act you reserved the power to retake into your own hands that substantial favor? But, says the Supreme Court:

But on the principle contended for it would prove, instead of this, to be of no value. Of what possible advantage could it be to these companies to receive payment for one-half their earnings, if they were subject to a suit to recover it back as soon as it was paid? And this is the effect of the provision on the theory that the companies are debtors to the Government on every semi-annual payment of interest. They could not, in the nature of things, have accepted the stipulation with an understanding that any such effect would be given it. If the Government consents to the diminution of its security, so that only half of the prices due for services are to be applied to the payment of the interest or principal, what is to become of the other half? Surely there is no implication that the Government shall retain it, and, if not, who is to get it? Manifestly the companies who have earned the money.

I ask again, what possible benefit could it be to the railroad companies that the Government should in one act make its lien for credit loaned a secondary one and in the same act reserve by implication the right to make its lien take priority?

Having detained the Senate now, Mr. President, with the authorities in this matter by references to the reports of a committee of this body and to the decisions of the Court of Claims and the Supreme Court, I will say a few words in regard to the provisions of the bill that has been offered by the Judiciary Committee, and offer incidentally, also, a few remarks in connection with the bill that has been presented by the Committee on Railroads.

In his remarks this morning the Senator from Ohio was somewhat facetious, or disposed to be, over the ingenious method that the Committee on Railroads had discovered to pay old debts, using the phrase so well known in comedy, "a new way to pay old debts;" but it was evident that it is impossible for him to dismiss from his mind the idea that has been stamped out of existence by the Supreme Court, that these companies owe anything to the Government of the United States until the maturity of the bonds. When you propose to liquidate a debt that is not due until 1898, and you begin to pay on account of that debt to-day, whoever does pay on account of such a debt is entitled to the accumulating advantages of that payment. If I owe the Senator from Ohio $10,000 due in 1898 and he cannot call upon me for either principal or interest until its maturity, and I consent to pay and he consents to receive some payment on account during the current years pending its maturity, I am entitled to the advantages of the interest on those payments and he concedes it when he accepts it from me. He may be sound on his law, but the Supreme Court has decided for him and for us; but he is scarcely sound in his finance.

We have a debt sufficiently onerous in all conscience hanging over this country, some $2,000,000,000. The annual interest upon that debt is $100,000,000; and yet the scheme of the Finance Committee of this body, enacted into a law by Congress, that we can liquidate that debt by an annual sinking fund of 1 per cent. for thirty years and a total payment of $500,000,000 in that term, is conclusive. So if you can liquidate a debt of $2,000,000,000 in thirty years by daying 1 per cent. annually when the debt is not due until a certain maturity of the obligation, can you not liquidate another debt by a deposit in the Treasury of the United States of 1 per cent. annually, the interest in both cases compounding upon the amount so deposited?

As I here take up the report of the Committee on Railroads and refer to it, I remark that the reason the committee has not pretended to provide for the administration of the affairs of the other companies named in the original Pacific Railroad acts, is because all those companies, except the two named, are in difficulties and cannot pay the interest on their first-mortgage bonds. Here is a proposition to-day from the Judiciary Committee to compel the

companies to pay 25 per cent. of their net earnings into the Treasury of the United States when those companies are not competent from their accruing revenues even to pay the interest on their first-mortgage bonds. So we deal with but two companies. There will be due from the two companies, the Union Pacific and the Central Pacific Railroads, principal and interest, in the year 1898, or about that average, at the maturity of the bonds, the sum of $157,268,137. It is proposed by the bill reported by the Committee on Railroads that there shall be annually deposited in the Treasury of the United States prior to and up to the maturity of that debt, 1 per cent. of the amount which, with accruing interest, will, at a certain period of time, liquidate both principal and interest disbursed by the Government of the United States.

You will observe, Mr. President, that in no event by the bill of the Judiciary Committee can more than 25 per cent. of the net earnings of these two companies be required to be paid into the Treasury of the United States. Now, from all the data we have before us, that is just what the other bill provides. The Senator from Ohio and other Senators, and the Judiciary Committee and the Committee of the House in the report laid upon our tables, have seen proper always to consider the net earnings of the entire road incorporated under one title as the earnings of the roads that were aided by the Government of the United States. So far as our information extends, the Central Pacific Railroad Company of California was aided by the Government only to the extent of two-thirds of its length, and the one-third of the road that was not aided by the Government is asserted to be the most profitable portion of it. But the Committee on Railroads have looked into the earnings of these companies, and on pages 4 and 5 of their report you will find them compiled with this result: The average annual net earnings of the Union Pacific Railroad, independent of some casual dividends that they have made one year or some other year, are $2,918,000. The average annual earnings of that portion of the Central Pacific Railroad of California that was aided by the Government are $2,894,693. Now 25 per cent. of either of these amounts is less than the amount that the Railroad Committee propose that they shall pay into the Treasury of the United States. Therefore I said at the outset that the same design was undertaken by both committees, to pay into the Treasury of the United States an amount that would liquidate their debt. The Committee on the Judiciary say 25 per cent. We do not say any particular per cent., because there is no telling whether the earnings of these railroads will increase or diminish, but we do say a specified sum, and we show by a reference to the reports of these companies that that specified sum is 25 per cent. of their present earnings.

What more? After there has been paid in $1,000,000 by each company immediately and the $750,000 annually in semi-annual payments, there will have accumulated to the credit of those companies, at the maturity of the bonds, the sum of $58,000,000. That amount will be in the Treasury any way without dispute. A former Secretary of the Treasury, in submitting this matter to Congress in Executive Document No. 25, of last session, takes occasion to express his opinion that it is well to make some arrangement for a specific payment by the companies annually "with their consent." Why should he use that language? Why should he, as the highest financial officer of the Government, a man renowned for his erudite learning as a lawyer, take occasion to say to Congress that it would be well to make an arrangement with the consent of the companies? Because he saw, as others who studied this subject, that in the contingency of adverse decision by the Supreme Court of the United States in no possible event could the Government recover the amount that it has loaned these companies. The bill of the Judiciary Committee invites that issue; necessarily these companies must contest it; because if they once concede that you can encroach upon their receipts and divert them to any purpose, the Government can determine what it pleases. If you take 25 per cent. you can take 50; if you can take 50 you can take all; and I ask any Senator what is your recourse if you put such a matter on the hazard of a die? If you submit that to the decision of the Supreme Court with the intimation that its decision and language have already given you, what assurance have you that you can ever recover one dollar from those companies? Mr. President, I do not mean to say that they will be dishonest; but they will be independent of us if we should be met by an adverse decision of the Supreme Court. Their stock is upon the market in Wall street. The moment such a decision is rendered, it will be taken up eagerly, and it will go into the hands of speculators who will have no regard for the interests of the United States, and there could be no possible recovery of the sums due the Government. Such will be the result most unquestionably, if a decision should be rendered against us. Is it worth while to hazard that? When these companies voluntarily come forward and agree to pay almost the same amount that you propose to compel them to pay, is it worth while to invite perilous jeopardy and possibly ruinous disaster?

The Senator from Ohio made a comparison between one of the provisions of the bill that he was supporting and the action to be had under it with the course pursued by a chancellor in marshaling the assets of an estate: that they should be so marshaled and distributed as interest might appear on the part of the several creditors of the estate. But did he ever hear of a case where the chancellor himself was a sovereign? Did he ever hear of a case where the chancellor himself was the largest creditor of that estate? Did he ever hear of a case where the assets, once marshaled, were marshaled into the strong-box of that chancellor himself, to be held and distributed as he might in his wisdom, independent of law, determine; for no law can control the Congress of the United States, except the law of its own action under the Constitution. Look at the provision of this bill in sections 7 and 8. I will read from section 8:

> That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies, respectively, lawfully paramount to the rights of the United States.

This bill is advocated upon the pretext that it protects the interests of the first-mortgage bondholders, whereas the Railroad Committee's bill proposes to protect the interests of the Government, but it says that the money accumulating in this sinking fund shall be put into the Treasury of the United States subject to such liens and claims as shall be declared lawfully paramount to those of the United States; and the Senator who advocates that proposition in the same address states that he believes that, when that money shall have accumulated there, there will be a further charge against it of the interest upon the interest that has been paid out by the United States, so that this money accumulating in the Treasury of the United States is to be held by that sovereign power until it shall determine who is rightfully entitled to it; until it shall at its pleasure act and direct its distribution. Is there any appeal here for the holders of first-mortgage bonds for such an action as that? Do you suppose that they will consider that their interests are subserved by locking up in the Treasury of the United States the money that belongs to them, subject to such legislation as Congress in its sovereign power may subsequently enact?

Mr. Justice Grier, in the decision I have before referred to, says:

> In the mere exercise of a corporate right the Government of the United States cannot claim the prerogative or immunities of a sovereign. She cannot compel a mortgagee to the hopeless remedy of a petition to Congress to redeem.

After you have marshaled these assets into the Treasury of the United States, how are they to be gotten out of the Treasury of the United States? In compliance with the law? By suit at law? No, sir; but those bondholders will be compelled to meet a Congress twenty years from now that will put its own construction upon the proper use and legally rightful disposition of that money. You do by this very act do that very thing that Justice Grier says you cannot do; you compel the mortgagees to the hopeless remedy of a petition to Congress for re-imbursement.

After the Judiciary Committee, of which the honorable Senator from Ohio is such a distinguished member, has recommended to and obtained the passage of an act by Congress requiring that the question of the 5 per cent. upon the net earnings shall be submitted to the adjudication of the court, he proposes now to make that definition by law outside of the court. He says:

> It would be no objection to me to the first section of this bill if the Supreme Court were to decide to-day that the company's interpretation of "net earnings" is the true interpretation.

In other words, if the Supreme Court decided that the first section of the bill was wrong, in his opinion there would be no objection to it. I scarcely think that proposition can be sustained. There is a reference in some part of the Senator's remarks as to the cost of this road. I quote from the Senator from Ohio:

> The companies went on and built these roads, and now I affirm that if anything is capable of proof, this is capable of proof and has been proved before one committee of the Senate, proved before two committes of the House of Representatives, that the Government subsidy in land and the proceeds of the Government bonds were all-sufficient to build every mile of these roads that was built; that in point of fact not one mile of these roads was built by the expenditure of the money of individual stockholders.

There is a fund of information in regard to the cost of these roads which is somewhat variant, and the Senator scarcely stated the whole of the presentation of the case. The cost of the Union Pacific as reported by that company in its last report to the Secretary of the Interior—the law requires that these companies shall make a report; it says an annual report of the cost of their road—the language is somewhat ambiguous and it is differently construed by the officer at the head of the Interior Department and by the companies, but at all events in one of the reports they made they say the road cost $112,596,252. Then a commission was appointed by the Secretary of the Interior who rendered a report in October, 1874, and they say that the road cost $115,214,787.79. An official commission appointed by the Secretary of the Interior on behalf of the Government of the United States report to him that that road cost $115,000,000, and the subsidy granted by the Government of the United States was in bonds $27,000,000.

The two statements disagree very widely. There is other testimony in regard to that. In report No. 78 of the House of Representatives, Forty-second Congress, third session, the Committee on the Credit Mobilier say that the road cost in round numbers $50,000,000. There is a committee of Congress reporting that the road cost $50,000,000, and the aid of the Government was only $27,000,000. Then in the Credit Mobilier testimony on pages 636 and 637 Benjamin F. Ham, assistant secretary and treasurer of the Credit Mobilier, states that the cost of the Union Pacific Railroad to the company, including the profits of the Credit Mobilier, which the committee found were about forty-

three millions, amounted to $114,000,000, and the same gentleman gave the actual cost of the road at $71,000,000, nearly 200 per cent. advance upon the amount that the Government aided the company with. And yet we are told that the amount the companies got from the Government would be sufficient to build the whole road.

I scarcely think, Mr. President, that the Senator from Ohio did himself justice when he called the attention of the Senate to the sad calamity that might occur to the interests of this country when these railroad companies had succeeded in paying off their entire indebtedness to the Government. There is a provision in the bill recommended by the Committee on Railroads that when these companies have fully discharged all their obligations, pecuniary and otherwise, to the Government, then they shall be released from further requirement. What is that further requirement? The Senator says it is to maintain the road in good order and condition. We are left to infer thereby that the Committee on Railroads have made a provision that just so soon as these companies have gotten out of debt and have re-imbursed to the Government of the United States every dollar that ever was advanced to them, then they intend to resign business and let their vast and valuable property go to wreck out of sheer negligence; and so it would be a great calamity to the Government of the United States if these companies should succeed in paying their indebtedness to the Government. Such an idea, I am sure, could never enter the brain of anybody. The Senator did not think so, I scarcely suppose, when he said it.

In the course of this discussion and the action which will be had by the Senate it will be requisite to discuss more in detail the provisions of the bill that has been recommended by the Committee on Railroads, and which will be offered as a substitute for the bill now under consideration. I shall take occasion to explain more at length its features and provisions; but I say in a summary way that it will yield to the Government of the United States by consent of the companies quite as much per annum as the bill that is recommended by the Judiciary Committee. The Senator from Ohio says that in no event shall more than 25 per cent. of the earnings of these companies be put into the Treasury of the United States for the creation of a sinking fund. Am I correct about that?

Mr. THURMAN. Twenty-five per cent. of the net earnings. Yes, that is correct.

Mr. WEST. He figures the net earnings from some untenable proposition. I contend that their net earnings will yield only $750,000. He thinks they will yield $1,500,000. So it is a question of figures; it is a question of amounts. Both committees desire the same thing, but the Senator figures the earnings of these companies upon a basis that I scarcely think we shall be able to maintain; and I again ask, suppose we do not, will any Senator tell me what recourse the Government of the United States will have against this property before the maturity of the bonds if the bill of the Senator from Ohio is submitted to the Supreme Court of the United States and an adverse decision is rendered thereon?

Mr. THURMAN. I cannot suppose such a thing.

Mr. WEST. I very well remember, and I quoted to-day where Senators have stood upon this floor and said that they could not suppose the Supreme Court would ever be guilty of such an absurdity as to say that no interest or principal was due upon these bonds until their maturity. That absurdity has been nailed to the counter by the unanimous decision of the Supreme Court of the United States. Look over the debates on that question. Senators have risen in their places over and over again and said such a decision by the Supreme Court of the United States was out of the question; it was an absurdity. But we are met here to-day face to face by the naked positive fact that that decision has been rendered, and rendered unanimously by that court. Startling as it may seem we are brought face to face with the proposition that we have no recourse except to comply with the contract and agree to the letter of the contract. Now, sir, shall we once more rush into that litigation that we have been recommended to over and over again by this very Judiciary Committee? Shall we once more lock horns again with these powerful and potent companies and be defied once more by the decision of the Supreme Court? Shall we put all on that issue? No. Never mind, if the Senator's law is better than that of the Supreme Court the Supreme Court's law is more potent than his. Put it all on that issue and where are your $150,000,000? Gone, gone like smoke before the breeze; and that is the thing that the Committee on Railroads desire to guard against. They have followed, and this Senate has followed the lead of the Judiciary Committee over and over again. On this railroad question we have been led over and over again to defeat. Now shall we stake all once more upon their adjudication? I say not.

Mr. THURMAN. Did I understand the Senator to say that the Senate has been led by the Judiciary Committee over and over and over again? Do I correctly apprehend the Senator? I should like to have an instance, just one instance.

Mr. WEST. The interest.

Mr. THURMAN. The interest! Why, the Judiciary Committee made a report which received the approbation of the Court of Claims and then of all the judges of the Supreme Court. I should like to know, then, how the Judiciary Committee has led the Senate into error.

Mr. WEST. So they did; but the Judiciary Committee induced us by legislation to submit that question to the Supreme Court, and the Supreme Court decided against us.

Mr. THURMAN. Is it any fault of the Judiciary Committee that they submitted that question to the supreme judicial tribunal of the country?

Mr. WEST. No, but it will be their fault if it goes there this time again and we get another adverse decision.

So, Mr. President, it is a question, as the Senator said at the outset of his remarks a few days ago, whether Congress shall wisely and judiciously legislate for the preservation of one hundred millions of property; it is a question whether we shall in good faith make an agreement with these companies that will attain the same result, or whether we shall undertake to compel them to do so, and therefore force them into an attitude of resistance that must necessarily follow the provisions of such a bill. In defense of their own rights, for self-preservation absolutely, as soon as the signature of the President of the United States is dry upon such legislation, they must arm themselves for the contest. Years will pass by; money will be kept out of the Treasury that is now ready to be paid into it, subject to a decision that we cannot afford to risk when we have an alternative that is equally advantageous.

Mr. President, I know, notwithstanding the great weight and importance of this subject, how dry and uninteresting it is, and in closing I only repeat the admonition that was made by the Senator from Ohio in his opening remark, that if we cannot frame a bill on this subject without grave consideration, certainly we ought not to pass any bill without an equal gravity of consideration. Senators scarcely seem, and have not throughout this debate, to attach the proper importance and interest to it; but we are playing to-day in this bill for a stake of $100,000,000 on behalf of the Government of the United States, and we must be careful that we do not, by inconsiderate and injudicious legislation, jeopardize its safety.

Mr. BOGY. Mr. President, it is not my intention to dwell at length on the merits of the bills pending before the Senate. I wish principally to call the attention of the Senate to the great difference which exists between the acts of 1862 and 1864. By the act of the 1st of July, 1862, a subsidy was voted in lands and bonds to a certain company to build a railroad from the valley of the Mississippi to the Pacific Ocean. The amount of bonds provided for in that law was $16,000 a mile. These bonds were secured on the road and all its appurtenances by a first mortgage. By the act of 1864 this first mortgage was converted into a second mortgage. The amount of bond subsidy remained the same for the extent of country lying east of the base of the Rocky Mountains and from the west base of the same mountains to the Pacific Ocean, increasing the subsidy across the mountains for a distance of three hundred miles (by the law not to exceed three hundred miles) from $16,000 to $48,000 a mile and authorizing the company to put upon the road and secure by a first mortgage an equal amount of bonds. By the first law the amount of bonds which would have been furnished by the United States for building the road from the waters of the Missouri River to the Pacific Ocean would have been about $32,000,000. That is, $16,000 a mile, the distance being about two thousand miles, would be just $32,000,000; yet the amount of bonds which has been issued for the building of this road and branches is just double this amount. It is $64,000,000. In my estimation the speculation, or, if you please, peculation, made by the corporators or the owners of the corporation took place in this increased subsidy across the mountains. Taking the distance to be three hundred miles, it is a plain matter of figures that, at $48,000 a mile, the amount would be $14,400,000 of bonds for this distance. In addition to this an equal amount of first-mortgage bonds of the company was authorized to be issued and to be secured on the road. It made, therefore, an amount of $96,000 a mile for building those three hundred miles of road. I do not know as a matter of perfect accuracy, but I think I am justified in saying that for this distance of three hundred miles the road was built perhaps for not to exceed $48,000 a mile. The consequence was that the amount of $14,400,000 of United States bonds furnished as a subsidy for building this portion of the road was a clear profit to the persons who were the owners of this corporation.

We have heard much in modern times of what was called the Credit Mobilier. I never was able to find out where the Government lost anything by the so-called Credit Mobilier. I do not wish, however, to be understood as vindicating this famous or infamous Credit Mobilier; the whole of it was prompted by bad and corrupt motives, to accomplish equally bad and corrupt ends; but the Credit Mobilier transactions, such as they might have been, were all after the act of 1864, and truly took nothing from the Government in the shape of lands or bonds. While the Credit Mobilier transactions were simply infamous, nevertheless the public mind has never been directed to the real point of the peculation or speculation that did actually take place. It took place by the operation of the act of 1864, which increased the subsidy in lands to double the amount, but yet provided that only one-half of the receipts from transportation should be retained by the Government toward repaying the interest on the bonds in lieu of the whole, as provided in the first law. Therefore, by the act of 1864 this was reduced to one-half, while the amount of subsidy in lands was increased to double the amount; and, in addition to this, for the distance of three hundred miles the subsidy in bonds was increased from $16,000 to $48,000 a mile, and secured only by a second mortgage. The owners of the road beyond all reasonable doubt real-

ized as a clear profit for those three hundred miles all the bonds paid by the Government of the United States, being $14,400,000, and here was the peculation, here was the loss to the Government. It grew out of the act of 1864, not by any subsequent transactions, because the subsequent doings, no matter what they might have been, bad and corrupt as they were, did not increase the subsidy furnished by the Government in any way, shape, or form. That remained the same. It was on that portion of the road crossing the mountains for a distance of about three hundred miles that the Government lost by way of subsidy some $14,400,000.

I look upon the building of the road from the waters of the Missouri River to the Pacific Ocean, at the time particularly in which it was built, during the war, as perhaps the greatest achievement of the human race on the face of the earth. I am old enough to remember when the scheme of a railroad from the waters of the Missouri to the Pacific Ocean was looked upon as a wild dream, as a thing nearly impossible if not entirely impossible of accomplishment. Yet it was accomplished, and in truth and in fact it was accomplished at comparatively small cost to the Government. The lands donated to the road were not worth a cent without the railroad. The Government had an empire lying west between the waters of the Missouri and the Pacific Ocean; an empire which has sprung into great States and Territories from that day; a country which has become of great advantage and which would have been utterly valueless without the railroad. It has also bound to this portion of the confederacy the Pacific coast with bands of iron, and no one can tell what might have been the destiny of that section during the war if it had not been for this railroad.

While all these things are true, and no one is disposed more than myself to legislate in the most liberal manner to protect those roads, and not to cripple them, at the same time I can very well see that with these large subsidies, not so much in lands, because they were of no value—of very little even at this day—but with the large subsidies in bonds, there has been an immense amount of money made by the companies. I give to the men who originated and carried through this great enterprise all possible credit for doing a great thing at a very critical moment in a very short space of time; nevertheless I can very well see that the amount of money which they have realized under the legislation of Congress has been enormous. On the portion of the road from the east base of the Rocky Mountains to the west base of the same mountains, the Government having only a second mortgage and the company having a first mortgage of $48,000 a mile, I hold that the Government has at this day no security at all of any value. The second mortgage on that portion of the road is not worth a cent, because the first mortgage is too large. Hence, I am in favor, if we can do it constitutionally and legally, of the passage of any bill which will compel these parties to do substantial justice. I believe the bill proposed by the Committee on the Judiciary to be a constitutional bill. I believe that these persons can very well afford to comply with this bill with the large profits which they are now making; I speak of net profits because there are no other profits than net profits. They are able to pay 25 per cent. of those net profits into a sinking fund without serious injury. I see no objection constitutionally against their being compelled to do so. Hence I will support the bill offered by the Committee on the Judiciary, because I think it reasonable and because I believe it does not in any way cripple those companies. I would vote for no measure tending to cripple them, because I believe that it is of the greatest public importance that a connection should be kept up between the waters of the Missouri River and the Pacific Ocean. I look upon this road as of great public importance; but, while I believe it of public importance and would do nothing to cripple or to weaken the companies in any way, yet I can see no reason why they should not be compelled to pay an amount of money equal to 25 per cent. of their net profits, provided, as is provided in the bill, that this does not deprive them of the ability to pay the interest upon their first-mortgage bonds.

The Senator from Louisiana argued at great length that by taking 25 per cent. from them you thereby prevented them from paying the interest on their first-mortgage bonds. The bill is plain on this subject. If by taking 25 per cent. the profits are not sufficient to pay the interest on the first-mortgage bonds, then a deduction is to be made from the 25 per cent. In other words, the interest on the first-mortgage bonds must be paid first; not that the interest should be deducted from the amount of the net profits, but making a calculation of net profits, say they amount to $2,000,000, shall pay that amount and the balance goes into the Treasury and then on condition that this shall not exceed $1,500,000 a year. We know from reports made that the profits of the Union Pacific Railroad last year were about $6,000,000 net, and the profits of the Central Pacific were about $8,000,000 net, exclusive of course of the interest on their first-mortgage bonds. That being so, and no man can deny those facts, it is not unreasonable, and there is nothing wrong in requiring these men to pay an amount equal to 25 per cent. of their net profits, provided that this 25 per cent. does not in any case exceed $1,500,000 a year. At this time 25 per cent. of the net profits of both these roads exceeds that amount. When it is apparent that these men have realized on the bonds of the United States millions of dollars—and this is beyond all controversy—it is but just that something should be done to protect the Government for its large advance of bonds, carrying very near four millions a year of interest.

It was supposed at the time the act of 1864 was passed, and more so when the act of 1862 was passed, that a road from the Missouri River to the Pacific Ocean over the supposed insurmountable Rocky Mountains was a work of great engineering difficulty if not impossible. These mountains were known in our geographies as the Rocky Mountains, full of deep cuts and immense and steep elevations with deep valleys to be spanned, when in point of fact for hundreds of miles from the Missouri River to the base of the Rocky Mountains the country is as level nearly as any portion of Illinois. The ascent is so gentle that you do not perceive it when traveling in the cars. In the Rocky Mountains themselves, although in some portions the ascent is steep, the work was not expensive, not as expensive as making a road from the city of Baltimore to the Ohio River. Hence when these persons were authorized to place a mortgage of $48,000 a mile on that portion of the road across the mountains, they were enabled to build that road with this $48,000, and the $48,000 of Government subsidy was a clear profit to them under the provisions of that law of 1864. There can be no doubt about that. Therefore, sir, I think it but justice to the Government to protect itself and take care of itself and to require that these persons shall pay a proportion of their great profits, provided they are thereby not crippled in such a way as not to be able to pay the interest on their first-mortgage bonds. The object of this bill is to accumulate a fund for a wise purpose; not for the profit of the Government, but to accumulate a fund, bearing regular interest, subject to the payment of the obligations of the corporation on the maturity of the bonds, not only the obligations due to the Government but their first-mortgage bonds. If they are unable to pay their first-mortgage bonds, these assets accumulated in the sinking fund are to be marshaled, to use a law phrase, so as to be divided *pro rata* between the debt due to the first-mortgage bondholders as well as the debt due to the Government for the bonds voted to the road by way of subsidy. There can be nothing fairer. The only question—and that question I do not pretend to be able to decide—is one of legal ability.

The Senator from Oregon argued the other day, and I admit argued with ability, the constitutional point, the right of this Government to impair what he calls the obligation of a contract. If the case came within that boundary called a contract, that you could not impair of course, and his argument would be conclusive; but I think my friend from Ohio explained that perfectly well. Under the power retained to amend and to alter you cannot divest the individuals who may claim property under the corporation or the stockholders who have interests in the stock; you cannot divest them of any vested right; yet you can control to a certain extent the assets of the company so as to protect the Government for the bonds advanced under the law. I believe this to be constitutional, and I am very certain it is perfectly just. You cannot confiscate those assets; you cannot say "We shall take those and put them in the Treasury for our benefit." That would be impairing the obligation of the contract, and would be spoliation. But in view of the fact that a large and enormous grant was voted to these roads, in view of the known fact that these men realized millions of profit under the act of 1864, I can see no objection to compelling them to accumulate a fund, it being theirs all the time, not belonging to the Government—it is their own and kept for their purposes, to pay their debts, and when these debts are fully paid, if there be a remainder left in the sinking fund, it will belong to them—I can see no objection to that. I do not regard it as impairing the obligation of the contract. After having heard all the arguments, nevertheless I cannot see any constitutional objection to the bill proposed by the Committee on the Judiciary.

I had an object in speaking to-day. It was to draw the attention of the Senate and of the public to the fact which, it seems to me, has always been overlooked, that the speculation in the Pacific Railroad really had its origin in the act of 1864, and was confined pretty much to the three hundred miles across the mountains. Here was the great profit of that enterprise. I believe that the amount of bonds authorized to be issued by the company, and which were made a first mortgage by law, was ample to build the three hundred miles of road over the mountains. Hence the amount of bonds voted to the company by way of subsidy was a clear profit to them. By the act of 1862 they were entitled to receive $16,000 a mile on the completion of forty miles of the road, and by the act of 1864 it was on the completion of twenty miles of the road; and the evidence of completion was to be a report made by commissioners appointed by the Government. These commissioners were not required to state the cost of the road; they were only required to state the simple fact that twenty miles of the road, from such a place to such a place, were finished; and although it might have been true, as was often the case, that the road had not cost more than the amount of bonds authorized to be issued by the corporation and secured by a first mortgage, nevertheless upon that certificate being received by the Secretary of the Interior they were entitled to receive $16,000 per mile for that portion of the country lying on this side of the mountains and for the portion lying on the other side of the mountains, and $48,000 a mile for that portion over the Rocky Mountains, regardless of the cost of the road. If the law had been that they could only receive an amount of money equal to the amount expended for building the road, many millions of dollars could have been saved; but that was not the law; they were to get an amount of money regardless of the cost of the road, which amount over the mountains was entirely too large when you consider that they were authorized themselves to issue first-mortgage bonds.

I hope, therefore, Mr. President, that the bill reported by the Committee on the Judiciary will be passed by the Senate. There may be some doubt about it. The Senator from Louisiana this morning said with some force, and the Senator from Oregon has suggested that it may lead to a lawsuit, this company may resist this thing; but I think it is better that the effort should be made and let the Supreme Court pass upon the question again. So it is that something has got to be done, if it be possible, to secure the Government against this immense indebtedness, which is augmenting every day from the fact that these corporations do not pay their interest. We know that one-half the Government transportation is too small to meet the amount of interest which has to be paid on the Government bonds semi-annually by the Government. It must not be overlooked also that they have entirely failed to pay the 5 per cent. on their net profits. It is a question between the Government and these large corporations; and I am not willing to yield to them without at least making an effort to protect the public interest.

The PRESIDING OFFICER, (Mr. CLAYTON in the chair.) The Senator from Ohio [Mr. SHERMAN] yesterday proposed an amendment.

Mr. SHERMAN. I drew that amendment hastily, and I do not think it exactly carries out the purpose I had in view. Therefore I shall withdraw it in its present form. Perhaps the language of the committee in section 4 of the bill carries out the general object that I also wish to advance.

Perhaps I might as well now, briefly, for it will take but a few moments, state my own view in regard to this important bill. I look upon it more in the financial aspect of it, as an effort to relieve the Government of the United States without crippling these railroads rather than undertake a discussion of the legal principle involved as to the right of Congress to change and alter the laws creating these corporations. I shall only refer to the money aspect of the bill.

If I understand my colleague, this bill intends to require all these railroad companies to pay one-half of the cost of the Government transportation into the Treasury of the United States and also 5 per cent. of the net earnings of these roads into the Treasury of the United States to aid it in carrying on the ordinary operations of the Government, to aid it also in meeting the interest on these railroad bonds, so that so far as this bill is concerned it makes no burden whatever upon the railroads that is not admitted by them to be imposed by the laws of their creation.

I have thought, although my opinion is worth nothing against the opinion of the Supreme Court, that the Supreme Court put an erroneous construction upon this law. But they have decided that the railroad companies are not bound to refund to the Government of the United States the money advanced by the United States as interest on its bonds until the expiration of thirty years. That was not my understanding of the law when it was passed, and I think the debate shows that clearly enough. But there is no doubt whatever that by the law as it stands the railroad company are compelled to apply and pay to the Government one-half of the cost of Government transportation. That is admitted on all hands. It is also admitted on all hands that these companies are bound to pay 5 per cent. of the net earnings, which they never have yet done. I ask my friend if I am not correct about that; if these railroad companies have ever paid to the Government of the United States one single cent from the net earnings of their roads, either of them?

Mr. WEST. I do not know that they have; but the Government has retained the whole of the transportation as an offset against their 5 per cent., subject to the adjudication of the courts. There is now an accumulation to the credit of each of these two larger companies of the sum of $1,000,000 subject to that issue.

Mr. SHERMAN. I understand it. The railroad companies have never, to the extent of one dollar, paid to the United States what it is clearly and palpably their duty to pay by the terms of both laws; that is, 5 per cent. of the net earnings.

Mr. WEST. The Senator ought to take off the unfavorable edge of that proposition by admitting that the Government has retained the amount, and therefore there was no necessity for the companies to pay it.

Mr. SHERMAN. I will come to that. I again repeat, and it is a fact that I want to make prominent, that although it is the clear mandate of the law as plainly written as the authority which incorporated these companies, they never have paid to the Government of the United States one dollar of the 5 per cent. fund which they are required to pay on the net earnings of their roads; and if they were dealing with any other creditor but the United States of America they would have found that a pretty serious allegation. While the Government of the United States is paying $3,600,000 a year for the benefit of these corporations, now growing wealthy, they never have complied in the slightest degree with any stipulation made in favor of the Government of the United States.

Mr. MERRIMON. May I ask the Senator whether in the mean time they have declared dividends?

Mr. SHERMAN. I believe they have; the Central Pacific has.

Mr. THURMAN. The Central Pacific 8 per cent. and the Union Pacific, if my memory is correct, 6 per cent.

Mr. CONKLING. Six per cent. on what?

Mr. THURMAN. Six per cent. dividends on the stock.

Mr. SHERMAN. I did not know that.

Mr. THURMAN. And I will say now, if I do not interrupt my colleague, that the Judiciary Committee bill, if it become a law, will leave sufficient means to these two great companies to pay from 3 to 4 per cent. dividends on the market value of their stock at a time when not twenty railroads in the whole United States pay any dividends at all.

Mr. SHERMAN. Now I will go on. I want to get the simple elements of this case first.

Mr. PADDOCK. May I be allowed one word?

Mr. SHERMAN. Certainly.

Mr. PADDOCK. It is due to these companies to say that there has been a question as to the date upon which these roads were considered legally to have been completed.

Mr. SHERMAN. I was coming to that.

Mr. PADDOCK. And there has been a controversy between the Government and the roads in respect to that question, and because of the pendency of that controversy and because there has not been an arrival at a conclusion satisfactory on both sides in reference to that date, the question of the 5 per cent. has not been settled.

Mr. SHERMAN. I intended to come to that, because I mean to show the mode in which these railroad companies have looked on their obligations to the Government of the United States. The Supreme Court have declared, and the law is plain without the declaration of any court, that these railroads were bound to apply one-half of the receipts for Government work to the payment of this interest. It is also clear that they were bound to pay 5 per cent. on their net earnings from the completion of the roads; and here come the claims made by the companies. I want to present them as they appear to me. This is the only obligation imposed by the law, according to the decision of the Supreme Court, upon these railroads, and not one of them has complied with it in the slightest degree except as they have been compelled in the mode I will mention. That is rather remarkable. We have already given them bonds to the amount of $64,000,000, and we have paid in money from the Treasury of the United States some eight or ten years' interest, how much precisely I do not know. Does my colleague remember the amount of interest?

Mr. MITCHELL. I should like to ask the Senator from Ohio a question right there.

Mr. SHERMAN. I do not want to be drawn into an argument; but I will yield.

Mr. MITCHELL. Suppose it is all true as stated by the Senator from Ohio that these railroad companies have not paid any part of the 5 per cent. on their net earnings since the completion of the roads, I do not pretend to question the statement now; but the reason, I suppose, is as stated by the Senator from Nebraska, that there has been a controversy as to the time when the roads were completed, and that controversy is now pending in the courts. But suppose it is all true, does that alter the power or change the power of Congress in reference to this matter one way or the other?

Mr. SHERMAN. I must argue one question at a time. First I want to know whether it is true, and then I will talk about the materiality of it. I have here the simple statement, and I want again to impress it on the Senate, to show that they are dealing with a question of vast magnitude; that not only have we issued bonds to the sum of $64,000,000 to these railroads, but that the Government of the United States has paid besides, as interest on these bonds, at the time the document before me was made up, a year or two ago, $30,141,513, money collected in the form of taxes from the people of the United States.

Mr. BOUTWELL. A portion of it must have been re-imbursed, I think.

Mr. SHERMAN. Some of it by the application of one-half of the Government transportation, and I intended to allude to that. But we have paid out of the Treasury of the United States, according to this document, which is a year old—it is Judge LAWRENCES'S report made April 25, 1876, $30,141,513. The railroad companies have paid to the Government of the United States not one dollar; but in pursuance of law the Government has retained one-half the cost of transporting Government supplies over their roads, the amount of which precisely I do not know.

Mr. PADDOCK. I should like to inquire of the Senator from Ohio if it is not true that the Government has practically retained all?

Mr. SHERMAN. I will come to that, but my friend would hurry me. I want to know now how much has been the whole amount of the share of transportation the Government has retained. I am not so familiar with these books as I ought to be, but at any rate I should like to give credit for the precise amount.

Mr. PADDOCK. I dislike to interrupt the Senator from Ohio, but I think if we make these figures correct as we go along, we shall have a better knowledge of the subject.

Mr. SHERMAN. The public debt shows it. These railroads have never paid one dollar, but have done service for the United States to the amount of $6,851,349.77; so that the Government of the United States, besides issuing its bonds to these railroads, has paid in money over and above all services rendered by these railroads nearly twenty-four million dollars in cash.

Mr. WEST. Are those figures on the debt statement?

Mr. SHERMAN. Yes, sir; on the debt statement. I have it here. So far as the application of one-half of service for the Government is concerned, that obligation has not been controverted. No money has been paid, but these railroads have rendered services to the Government to the amount of six or seven million dollars, and the Gov-

ernment has paid in interest, actual outlay, thirty-odd million dollars. Besides that, there is a stipulation in the law which has been read by both the Senators that the Government of the United States is to receive from the completion of the road 5 per cent. of the net earnings. Here there were two elements. When was this road completed? Never, and it never will be——

Mr. PADDOCK. I think it is hardly fair to make that statement.

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Nebraska?

Mr. SHERMAN. Yes, but I am interrupted just in the midst of a sentence.

Mr. PADDOCK. I beg pardon.

Mr. SHERMAN. I said never, and never will be according to the construction which may be given as to any railroad. No railroad is ever completed in one sense; but a railroad is completed in the ordinary plain sense of common men when its track is completed through and it connects and runs as a completed line between the terminal points; and that is the plain meaning of the law. Therefore, the very moment this road as a continuous line commenced earning money and had net earnings, that moment it was completed, and by honor as well as by the plain language of the law the companies were bound to pay that 5 per cent., small though it might be; yet they never have done it. They said the road was not completed. When was the road completed? It has been decided.

Mr. PADDOCK. I am not able to give the Senator the information exactly; but this is true, that the Government appointed a commission of eminent citizens who went and examined the road to ascertain if it was completed, and they reported that it was not, and upon that report it was required of the Union Pacific Company alone that it should expend some million and a half of dollars, which it did thereafter, and the Central Pacific as I remember a corresponding amount.

Mr. SHERMAN. I understand all that.

Mr. PADDOCK. So that if there were any proceeds before that time it was necessary undoubtedly that they should go to help up the million and a half of dollars which was required to complete the road when that report was made; and thereupon the sum required was expended and the road was put in that condition which afterward was determined by a commission to be a completed road. Then, as I understand, the company was ready from that date, from that report, to pay 5 per cent.; and that is the controversy between the Government and the company.

Mr. SHERMAN. When was that date?

Mr. PADDOCK. I am not able to tell you the date exactly. There was probably a year and a half's difference.

Mr. WEST. As the Senator from Ohio wishes to know something definite——

Mr. SHERMAN. I just want to know the date.

Mr. WEST. I will then give it from an official document, from the report of a commission on behalf of the United States appointed by the Secretary of the Interior.

Mr. SHERMAN. Just give me the date.

Mr. WEST. I will give it to you. Here are the words:

This commission has therefore decided that the road was completed as required by law by the report of the former commission and to comply with the instructions of the Interior Department, October 1, 1874, at a total cost of $115,214,000.

Mr. SHERMAN. What is the date?

Mr. WEST. October 1, 1874.

Mr. SHERMAN. Very well. Now I have got it. The construction which the railroad companies put on this is, that as long as they could put off complying with their part of the contract the road was not done; as long as there was a single bridge that was not built according to the language of the law or a single tie that was not laid sufficiently close to the next tie; as long as a single portion of any item of their work remained incomplete, the road was not done; and as a matter of course it was their interest to make that time as remote as possible. But the road was reported as completed in October, 1874; and yet we all know that people went over that road, that it had earnings five years before that; and yet upon that kind of construction they have postponed paying to the Government one single dollar of what are called "net earnings."

Mr. President, this shows that in dealing with these corporations we must make the language so plain and precise, and must make the duty of the officers so clear that there can be no doubt about the interpretation. There is just the condition in which we are placed.

But that is not all on the point of the completion of the road. Mr. President, they completed the road by sections of twenty miles; when one section of twenty miles was completed and certified to by Government inspectors they drew their bonds, and when the last section was completed they drew their bonds upon a completed road because they were only entitled to draw bonds as the road was completed. When the road was completed and the last bonds were drawn, then not only the equity of the law but the plain meaning of the law required them to pay 5 per cent. of the net earnings.

That is not all. What are net earnings? That is a somewhat indefinite term; but most people know what "net earnings" are. Most people know that when a man has an income of a thousand dollars a year and spends $999 he is happy, because he has one dollar to his credit over and above his expenses. If it is the other way, he is very unfortunate. These railroads soon made net earnings in one sense; but they claimed to deduct from their net earnings all the interest on bonds—not only on bonds that were prior in their right to the bonds of the United States but those subsequent to the bonds of the United States; in other words, if they manufactured and issued what are called water-bonds they deducted that and claimed that until the last interest on the last of these bonds should be paid there could be no net earnings. By that rule there are no net earnings in more than thirty or forty railroads of the United States, because the great body of the railroads in the United States have made no net earnings in that view; and yet according to their reports there are plenty of net earnings, a large mass of net earnings. Why? Because by the common language of plain railroad men net earnings mean that balance which is left after taking from the gross earnings the cost of running the road; not the cost of constructing new bridges, not the cost of paying interest on debts, not the money that is paid to stockholders either in the form of interest or in the form of dividends, but the mere running expenses of the road. Therefore, if a road earns $8,000,000 and pays out $4,000,000 for the running expenses, the other $4,000,000 are net profits, although every dollar may go to the bondholders to pay the interest on the bonds. That is the plain meaning of "net earnings."

Mr. WEST. I merely rise to ask the Senator whether there has ever been a judicial decision on the question as to what constitute net earnings of the road, and whether that very question in this case has not been remitted by act of Congress to the United States courts, because we were all at loss about this sum?

Mr. SHERMAN. Let me state frankly that in my judgment the men who own these railroads, now enormously valuable, ought to be prompt and eager to do their duty by the Government of the United States. They ought not to await the long delays of a lawsuit, or the interminable delays of a final judgment in the Supreme Court of the United States to tell them what "net earnings" mean. The intelligent gentlemen, among the ablest and best in our land, some of them the shrewdest men in our land, who are stockholders and managers of these roads know mighty well what "net earnings" are when they come to divide dividends and profits and collect interest. When they are dealing with a government which has been so liberal to them in the management and building up of a great property, they ought not to wait for a final decision of the Supreme Court of the United States to know what "net earnings" are, or to learn when their road was completed. The worst thing that has ever been said about these railroad companies is the fact that although the Government has been bounteous to them, not only in bonds but in money, they seem to hang on to the last leg and to the most harsh construction of the law against the very Government whose credit alone enabled them to build their roads. That is what I complain of. The court has already decided in their favor on one point; and although I think the court did not catch the meaning of the law, probably it was because we were faulty in passing the law; yet even the law as it stands has not been complied with in that spirit in which a generous government ought to have been dealt with, when it gave, I may say, large bounties, large aids to these railroad corporations.

Mr. HITCHCOCK. Will the Senator allow me to ask him a question?

Mr. SHERMAN. Yes, but I am prolonging my remarks longer than I intended.

Mr. HITCHCOCK. I desire to ask the Senator whether he considers the delinquency of the companies, the failure to pay the 5 per cent. required by the law, any more to be condemned than the delinquency of the Government in the failure to pay the half compensation required by law?

Mr. SHERMAN. I think the Government not only was justified, but it was its bounden duty to hold on to this money to compel them to pay what was due. That is all there is of it. Here is my friend from Massachusetts who was the Secretary of the Treasury at the time——

Mr. BOUTWELL. I am responsible for it.

Mr. SHERMAN. He says he is responsible. He never denied that the United States owed these roads one-half the Government transportation account; but he turned around like any other debtor would and said "these people owe me twice as much under another plain provision of the law, and I will not pay what is due to them until they pay what is due to me."

Mr. WEST. What did the Supreme Court say to that?

Mr. SHERMAN. I do not care what the Supreme Court say about that. I think that is simply plain honesty; and on that question I think the Senator from Massachusetts was exactly right in dealing for the Government. Certainly I would have done it if I had been in his position. It must be remembered, therefore, that all that this bill reported from the Judiciary Committee, in rather vague language I admit—for I cannot yet get into my head the fourth section—does is to require that these railroads shall still pay to the Government of the United States one-half of the cost of transportation and also 5 per cent. of the net earnings; that is, all that goes to the benefit of the United States, every dollar under the bill reported from the Judiciary Committee. My friend from Louisiana shakes his head. Let me see what they are. This sinking fund is not for the benefit of the Government. This sinking fund pays the debt of the railroads; but there is a kind of idea that what these companies are to pay a million and a half of dollars into the sinking fund, we are making them pay it to

the United States! Not at all. That sinking fund is the property of the companies. It goes to pay their debts, to diminish their liabilities, but not one dollar of it goes to the Treasury of the United States. I say now that as in the law of 1862 and 1864 there was no provision made for a sinking fund, it is the plain and manifest duty of Congress to provide for a sinking fund not only to pay off gradually the bonds issued by the United States but also to pay off the first-mortgage bonds. Every State government that is well managed, all the Northern States, have in their railroad laws provision for a sinking fund. I know in the laws of Ohio—I do not know how it is in regard to other States—there is some provision for the payment of the debts of a railroad company always inserted in the railroad law. There must be a sinking fund. Wherever a debt is made a provision of a suitable character ought to be made to pay the debt. That must be the case in New York and in Massachusetts. I think that in all the States whenever a railroad is chartered and bonds are authorized to be issued, there is a provision in the law for a sinking fund. Congress is the law-making power here. Whether the right to change or alter this law was reserved in the act or not, Congress as part of the law-making power might provide for a sinking fund as to either of these companies.

Mr. MITCHELL. I should like to ask the Senator if there is any limit to the extent of that power?

Mr. SHERMAN. No. Legislative power may be greatly abused, but the provision for a sinking fund is not a power likely to be abused. A sinking fund is merely to secure the payment of the debts of a corporation. But there is no question about it here, because the right to alter, amend, or repeal clearly gives the power.

Mr. PADDOCK. Is it not true that there is no controversy between any of us in respect to the sinking fund; only as to the amount of it; one party maintaining and insisting that Congress should provide for it and another insisting that the provision should be only such a one as the company may deem proper?

Mr. SHERMAN. I am very glad my friend has come to that, because that saves me the necessity of going further. It is admitted, therefore, that a provision for a sinking fund is a proper provision in a law. One is provided in either of these bills. The next question is how much. There are two elements only to consider. In the next place the sinking fund must be sufficient to secure the payment of debts when they mature. That is the first principle of a sinking fund. The next principle is that it must not affect the rights of creditors. Therefore it would not be right to provide a sinking fund for a second-mortgage creditor that would impair the vested rights of a first-mortgage creditor. If this bill affects the rights of a first-mortgage creditor in providing a fund for the second-mortgage creditor, I would say it was in violation of a contract and ought not to be done. The Judiciary Committee seem to have had this general principle in view, because, after stating how much shall be provided for a sinking fund, they have stated that in no event shall this provision affect in any way the right of using sufficient money even out of the sinking fund to pay the interest on the first-mortgage bonds. Is not that the proposition?

Mr. THURMAN. Yes, sir.

Mr. SHERMAN. Very well; that is right. Then when you go beyond that the next lien is the lien of the Government. The lien of the stockholders and all the subordinate bondholders is nothing. The lien of the Government is the next lien, is admitted to be on all hands. Now what is a reasonable sinking fund for the lien of the Government? It seems to me that if anything the committee have fallen short of what is requisite, because they have not required this sinking fund to be sufficient to pay the interest as it matured, so that there is plainly, notwithstanding the passage of this bill, an increasing debt due by these companies to the United States of America. The mode provided for of a million and a half does not pay all the interest that the Government is to pay. Consequently the debt of the Pacific Railroads to the Government is constantly increasing. Under the bill of the Judiciary Committee, as I take it, with the exception of two principal roads, the other roads are not able to pay. I suppose the Kansas Pacific is not able to pay.

Mr. WEST. That is in the hands of a receiver.

Mr. SHERMAN. It is in the hands of a receiver; therefore it is not able to pay, and hence that provision as to it is practically nugatory. But take the two great corporations that pay. The provision for the sinking fund is of a less sum than the annual addition to the debt of the United States, the interest being, I believe, something like three millions two hundred and odd thousand dollars, and the sinking fund provided is only $3,000,000.

Mr. WEST. Your sinking fund for the national debt is $20,000,000 and your interest is $100,000,000.

Mr. SHERMAN. That may be, but there is a very great difference. Here this debt has got to be paid in thirty years. A large amount of interest has accumulated, so that, even if these two principal companies pay the full amount provided by this bill, their debt to the United States will be increasing year by year, so that it is not unreasonable, unless they are not able to pay. As to their ability to pay I know nothing except what I see in all these documents. I see that the net earnings of the Central Pacific are $8,031,498. My friend from Louisiana said that that was too much, or that there ought to be deductions from that. I did not understand him exactly.

Mr. WEST. In those estimates of the running of that road they include the total line of the road of the Central Pacific, twelve hundred and nineteen miles, whereas only eight hundred and sixty-six miles of that road have been aided by the Government of the United States, and the one-third that was not aided is, I am told, the most profitable part of the road. Therefore it is manifestly unjust to take the earnings of the whole road to make a calculation of earnings that are due to the Government.

Mr. THURMAN. Will my friend allow me to interrupt him?

Mr. SHERMAN. Certainly.

Mr. THURMAN. Does the Senator from Louisiana include in that the Western Pacific, which is a bonded and land-subsidy road?

Mr. WEST. O, no; the Western Pacific is in the twelve hundred and nineteen miles, but the Oregon and California Pacific is a very different thing, and there are lateral branches in all directions. In other words, the actual report of the proceeds and operations of the Central Pacific Railroad included four hundred and odd miles that are not aided by the Government of the United States.

Mr. SHERMAN. I take these figures from the reports. There has been probably some delay in making these reports. I have often heard the matter a subject of conversation. It was very difficult to find out the exact earnings of the Pacific Railroad. That has been a matter of talk among business men, but these are the figures they give. How much ought to be deducted I do not know, nor is it material to my argument. I would as lief take the figures of the Senator from Louisiana. If he would tell us how much the subsidized railroad earns I would take his figures and work out the problem. I take the figures I have given from their report of the net earnings of the Central Pacific. There is, first, the interest on first-mortgage bonds. That is $1,671,340. That is given precisely. The next is this sinking fund, because the railroads are practically released from paying the interest to the Government by the operation of this sinking fund. They do not have to pay anything to the Government at all. That is fixed by this bill at $1,500,000, so that the total amount to be paid on the first and second mortgage bonds, including the sinking fund, is $3,171,340, leaving $4,860,158 surplus to pay the interest on both classes of bonds, nearly $5,000,000 of profits to be divided to the stockholders who paid nothing for their stock or bonds that were issued, all subsidiary liens to the liens of the United States. It seems to me that if the committee have erred they have erred in not making the amount greater. It seems to me out of this surplus and net earnings they ought to acquire a pretty large sum as a sinking fund for the later bonds. If we were legislating for these railroads, to advance their interests, to place them higher in the market, to raise their stocks and bonds, we ought in addition to a sinking fund for the first-mortgage bonds to provide a sinking fund for the second-mortgage bonds, so that the debt may be gradually diminished, leaving the property of the stockholders advancing day by day and year by year. That is the course which is pursued in regard to other railroads. It is the course that ought to be pursued. It is to their interest to pursue it, and it is a mistake to leave to the future to settle all these vast sums of money which are increasing year by year. The earnings ought to be applied to the interest on the first-mortgage bonds, second, to the interest on the second-mortgage bonds, and third, to a sinking fund for both mortgages.

Mr. WEST. If the Senator will permit me, both companies have provided a sinking fund for the first-mortgage bonds, and it is accumulating now.

Mr. SHERMAN. Where is it provided?

Mr. WEST. Provided by their own action, by the board of directors.

Mr. SHERMAN. That shows that what I have said is correct. The law is faulty in not requiring them to have a sinking fund. My friend says that the wise men who manage this branch are already doing what the law ought to have required them to do. Therefore, it would be no hardship for us to step in and say that they should have a sinking fund to diminish the first-mortgage bonds, so as to provide for the second-mortgage bonds and preserve the property of the stockholders when thirty years roll around. It seems to me a very plain proposition; and when you apply these same figures to the Union Pacific it is full of the same kind of meaning. It is admitted on all hands, I believe—I have heard no controversy about it—that the net earnings of the Union Pacific are $6,148,365. The first-mortgage interest is $1,634,190. The sinking fund provided in that case is a million and a half, making the amount of interest and sinking fund $3,134,190. This, deducted from the net earnings of the road, leaves a balance of net earnings of $3,014,175. In my judgment, it is for the interest of these corporations, for the interest of the stockholders as well as others, and it would be wise to take a million out of those $3,000,000 and apply it for the sinking fund for the first-mortgage bonds. My friend says that they have done something of that kind, but how much I do not know. There is no evidence about it that I know of; I have never seen it in the papers.

Mr. WEST. If I do not interrupt the Senator, I should like to ask him a question.

Mr. SHERMAN. Certainly.

Mr. WEST. If he were the holder of a first mortgage on a railroad would he allow the creditors who owned the second mortgage to control independently of law the sinking fund of the first mortgage?

Mr. SHERMAN. We are not exactly in the light of creditors, the United States it is true is a creditor, but the United States is the United States of America, and the Congress is the law-making power,

not only for the States and people of the United States, but for these corporations as well.

Mr. WEST. It never pays anything without an act of Congress.

Mr. SHERMAN. The railroad company will not pay without an act of Congress. There is the trouble, and we are trying to make a law. There is no difficulty about it. My friend from Louisiana says these railroad companies are already establishing sinking funds, and that shows the wisdom of the managers of them. So with all these great corporations. They do it as a matter of course. I know of great railroads in this country now that are very profitable indeed, whose debts are gradually being eliminated by the operation of sinking funds wisely and carefully conducted; and soon these great corporations will be entirely free from debt and will be the property of their stockholders alone without bonds whatever, and that process ought to go on with the Pacific Railroad.

I say, therefore, that this bill stops short, so far as the sinking fund is concerned, of what would really be for the interest of the stockholders of these roads. Not only should the sinking fund provided for be sufficient for the first, but for the second mortgage bonds. Then this railroad, growing gradually with the strength of the country, gradually increasing the stock, would be gradually advancing in value. I think, then, you might as well dismiss from this problem the idea that this million and a half goes to the United States. It does not do it at all. It is for the benefit of the road, and every dollar of it is applied to buy up the bonds of the road or to be invested in United States bonds as a sinking fund, and these United States bonds or Pacific Railroad bonds, whatever they are, are the property of the road in the form of a sinking fund to be used for their benefit.

It does seem to me that section 4 of the bill is open to some criticism for ambiguity; I yet cannot get it through my head; but the general purpose of the bill is right, that is, that these railroads should now from this time forward commence paying the 5 per cent. on net earnings, and also give to the Government one-half of the transportation account, and do so in the form of taxes, and pay this interest, and then they should provide a sinking fund, I think, sufficient to pay the interest. I would rather increase it. I believe it would be better for the railroads, so that this debt would not be increasing, and I would be perfectly willing to vote for a proposition that would go a little further and gradually pay the first-mortgage bonds, and thus protect this property in the hands of the stockholders. The interest of the people of the United States and of all parts of it is largely concerned in the wise management and prudent care with which these great corporations are conducted; but it is not wise or prudent for them or for their stockholders to divide large sums of surplus earnings when they have enormous debts to pay. It is far better for them that a portion of this surplus should be applied to the gradual liquidation of those debts. As I believe this bill will do it, I shall vote for it for want of a better measure.

I do not care about criticising the other bill which has been introduced and is now presented, because, perhaps, my views are sufficiently shown by what I said on this bill. I regard this other bill, Senate bill No. 1134, as a practical surrender of the right of the United States under its second mortgage. The accumulations of a sinking fund of $1,000,000 for the benefit of the road is simply a surrender of the right of the United States to the road. According to that bill I do not see any provision where the United States gets anything. If my friend will show any section here by which the Treasury of the United States gets any money out of the road, I should like to know where it is. As I understand the bill, all the money now agreed to be paid to the United States goes into the sinking fund for the benefit of the railroad company, and we might better at once end the matter by giving up our right.

Mr. THURMAN. Mr. President, I am compelled to go to another room in the Capitol. The hour has passed at which I ought to have been there. I shall, therefore, only make two observations in regard to what has been said, and then submit to the Senate whether we shall come to a vote on this bill to-day or not. First, in regard to the fact that these companies have never paid the 5 per cent. on all net earnings which it is admitted they are bound to pay. The excuse is that the Government and the companies differ as to what is 5 per cent. of the net earnings. That is no excuse for the companies not paying into the Treasury what they admit to be 5 per cent. of the net earnings. They were bound to pay at least into the Treasury what they admit they owe, and if the Government claims more than that, all that they could say is, "We will resist what you claim over and above what we admit we owe."

One word more. The Senator from Louisiana has said that there is only a certain portion of the Central Pacific Railroad upon which the earnings are to be calculated and 5 per cent. paid into the Treasury, to wit, about eight hundred miles out of twelve hundred miles. I do not so read the charter at all. If I am not mistaken, there is not one mile of the Central Pacific Railroad from San Francisco to its union with the Union Pacific Railroad that is not a land-subsidy and bonded road.

Mr. WEST. I do not believe anybody disputes that.

Mr. THURMAN. Very well.

Mr. WEST. The other four hundred miles run to other parts of the country, to Oregon.

Mr. THURMAN. If it is the four hundred miles which run to Oregon, if the Senator does not know it, I think he can find out by the least inquiry that it has made no net earnings at all, and of the net earnings the whole eight millions have been made by that part of the road which is confessedly bound to respond to the Government by 5 per cent. of its net earnings. I think the Senator will find, if he will make inquiry, that so far from this four hundred miles having produced net earnings to that company they have been a load to the company, and therefore the whole amount of these eight million and odd dollars of net earnings of that company have been by the operation of that part of its road which the Government contributed to build by its land subsidy and by its bonds. Therefore there is no reason whatever for deducting from those $8,000,000 any portion whatever in ascertaining what are the net earnings of that road.

We made in the Judiciary Committee the most careful estimate whether this bill would be so oppressive to the roads that they could not live under it, and so far from that being the case, on the best estimate that we could make, if this bill becomes a law, even in the present depressed state of business, the two principal ones, the Central Pacific and the Union Pacific, can pay from 3 to 4 per cent. annual dividends to their stockholders upon the market value of their stock at a time when not twenty roads in all the United States are paying any dividends at all. Take the great State of Ohio. I know of but one single road in Ohio that is paying dividends to its stockholders. There is a larger number in the New England States, but I certainly am correct in saying that in the years 1874 and 1875 not forty railroads in the United States paid dividends to their stockholders, and I think I would be in fact correct if I were to say that not twenty did it.

Our bill does not require of these railroad companies as much as the Government annually pays interest on its loan to them, and that leaves them so much of their net earnings that they can distribute from 3 to 4 per cent. dividend on the market value of their stock, and yet it is talked about as a bill that is oppressive to these companies, to companies that have been in default from the very moment that their obligations accrued to the Government! No, sir, that will not do. This bill is simply to determine whether these companies shall continue to set the Government at defiance, it is simply to determine whether the Government is to lose more than $200,000,000, or whether by making these companies comply with the obligations which they solemnly assumed that sum shall be saved to the Government.

Mr. President, I would be very glad indeed, as I must be out of the Senate for several days, and as this bill was put in my charge by the Judiciary Committee, if we could take a vote upon it to-night. If the bill is to pass, as I said before, it cannot pass too soon; if it is to be defeated it cannot be defeated too soon; so that the time of Congress may not be wasted further upon it. The appropriation bills will be here in a day or two. If this bill is to pass over, they will take precedence of it, and it is gone for this session. I therefore hope that the Senate is prepared to vote upon it now. At least I hope that that question will be decided. I hope that some Senator will make a motion that will test the question whether the Senate will vote on this bill this day. It can be done by a motion to go into executive session, or to adjourn, or any other motion. I hope that that motion will be made so that we may know whether we are to go on and finish this bill to-day or not.

Mr. WITHERS. I move that the Senate proceed to the consideration of executive business. The Senator from Georgia [Mr. GORDON] I know is exceedingly anxious to be heard on this bill. He is confined to his room by severe indisposition, and he is particularly anxious that the vote shall not be had to-night, so that he may be afforded an opportunity of being heard upon the bill now under consideration. In order to afford him that opportunity and to test the sense of the Senate, I move that the Senate go into executive session.

The PRESIDING OFFICER. The Senator from Virginia moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; there being on a division—ayes 35, noes 9.

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

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 31, 1877.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

CORRECTION OF RECORD.

Mr. BUTTZ. I observe that in the CONGRESSIONAL RECORD I am recorded as having voted yesterday for only four of the commissioners appointed by the House. I am not recorded as having voted for Mr. ABBOTT. I voted for Mr. ABBOTT as well as for the other four commissioners.

The SPEAKER. The RECORD will be corrected.

ELECTORAL VOTE COMMISSION.

The SPEAKER. The Chair lays before the House the following communication.

The Clerk read as follows:

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

Pursuant to the provisions of the second section of the act of Congress entitled "An act to provide for and regulate the counting of 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, the undersigned, associate justices of the Supreme Court of the United States assigned to the first, third, eighth, and ninth circuits, respectively, have this day selected Hon. Joseph P. Bradley, the associate justice assigned to the fifth circuit, to be a member of the commission constituted by said act.

Respectfully submitted.

NATHAN CLIFFORD,
SAM. J. MILLER,
STEPHEN J. FIELDS,
W. STRONG,

Associate Justices of the Supreme Court of the United States assigned respectively to the First, Third, Eighth, and Ninth Circuits.

WASHINGTON, *January* 30, 1877.

ADDITIONAL TEMPORARY POLICE.

Mr. WILSON, of Iowa. I desire to call up for action at this time the concurrent resolution of the Senate now on the Speaker's table in regard to the appointment of one hundred men to serve as a special police at the Capitol during the counting of the electoral vote. I have been instructed by the Committee on Rules of the House to offer a similar resolution. I believe this is a question of privilege.

Mr. GARFIELD. I hope the gentleman from Iowa will yield for a few moments to allow some requests for unanimous consent.

Mr. KASSON. I presume there will be no objection to the resolution called up by the gentleman from Iowa.

The SPEAKER. The Chair thinks there should not be any.

Mr. BANKS. This is a privileged question. It concerns one of the highest privileges of the House.

The SPEAKER. The Chair so rules. The Clerk will read the concurrent resolution:

The Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring,) That the Sergeants-at-Arms of the Senate and House of Representatives respectively be, and they are hereby, authorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such portion of said time as they shall deem necessary, said special police to be paid equally from the contingent fund of the Senate and of the House of Representatives.

Mr. WILSON, of Iowa. I move that the House concur in the Senate resolution with an amendment substituting the word "counting" for the word "canvassing," and I shall call the previous question on the concurrent resolution with that amendment.

Mr. HOLMAN. This is subject to the point of order.

Mr. WILSON, of Iowa. I think not.

Mr. HOLMAN. I reserve the point of order.

Mr. BANKS. Make your point of order.

Mr. HOLMAN. I desire to make some inquiries in regard to this; and if I find that the resolution is in accordance with the precedents I shall not insist that it shall be considered in Committee of the Whole. I do not remember that it has been found necessary heretofore to create so large a police force in connection with the inauguration of the President.

The SPEAKER. The Chair would state to the gentleman from Indiana [Mr. HOLMAN] that this money is to be paid out of the contingent funds of the two Houses already appropriated.

Mr. HOLMAN. Certainly; but the rule covers moneys to be taken out of an appropriation already made or which shall be made. But I do not wish to make the point of order.

The SPEAKER. The gentleman from Indiana does not make the point of order.

Mr. HOLMAN. I do not wish to make the point of order; but I wish to reserve it. If this appointment is conformable with the practice hitherto, I shall not insist on the point of order. The gentleman from Massachusetts [Mr. BANKS] perhaps can tell us whether it has been customary to place the Capitol to this extent under surveillance or not. I do not wish to see a new rule established at this time increasing a quasi-military force about the Capitol unless there is some necessity for it.

Mr. WILSON, of Iowa. The Committee on Rules have considered this question and have instructed me to report a resolution similar to that received from the Senate. We know very well that the American people generally on occasions like this behave themselves. They had excellent order during the centennial exhibition—but with eight hundred police. We do not anticipate any difficulty, but we thought it wise that the officers of the two Houses should have power to keep a way clear between the Senate and the House, so that the Senate on retiring to consult may have the opportunity of passing to their Chamber without difficulty. It is possible also that there may be a class of men known as pickpockets here, and we desire to protect those who come to witness the proceedings. I ask the previous question on the resolution.

Mr. HOLMAN. I thought that this report was made by the gentleman from Massachusetts, [Mr. BANKS,] but I observe now that it was made by the gentleman from Iowa, [Mr. WILSON,] and I should like to know from him whether it has been found necessary heretofore to create this quasi-military force about the Capitol on the occasion of counting the electoral vote, and whether it has been done heretofore.

Mr. WILSON, of Iowa. I understand that it has.

Mr. HOLMAN. If this is in conformity with what has been found prudent and necessary heretofore I shall not object.

Mr. WILSON, of Iowa. The gentleman will remember that the police force about the Capitol has been very largely reduced and that the police of the city are, at present, in a state of demoralization.

Mr. BANKS. There never has been an occasion where the votes for President and Vice-President have been counted when the force of the Capitol was so small as it is now. It was suggested to the Committee on Rules in such a manner that they could not overlook it, but while it was not absolutely necessary it would be very wise to take this precaution, and the committee could not do otherwise than make this report to the House. The police force of the Capitol is not now so large as it has been on occasions of this character. I do not limit it to the counting of the vote, but to any occasion of great interest when the two Houses have been called together. Now every one knows that this is a time of great interest in regard to counting the vote, and it is a small matter for the two Houses to provide for additional force to preserve order in the Capitol.

Mr. WILSON, of Iowa. I have been informed by members of the House that our doorkeepers, on yesterday, for example, were almost overpowered by disreputable citizens, or men perhaps not worthy the name of citizens. They have made complaint that they are scarcely able to maintain order in the galleries, and we consider the passage of this resolution as imperatively necessary.

Mr. HOLMAN. The American people in managing their affairs generally conduct themselves in good order, and the gentleman from Massachusetts [Mr. BANKS] will remember that in 1861 there was not so large a police force about the Capitol as there is now. Since then I admit that the Capitol police has been largely increased, but it is now diminished, and diminished as it is, it is larger than it was in 1861 or prior to that time. I have never heard of the necessity for increasing the force on the counting of votes for President and Vice-President, and I have witnessed quite a number of such counts.

Mr. WILSON, of Iowa. The officers of the House complain now of disorder and they are almost overpowered.

Mr. BANKS. The situation is very different to-day and will be to-morrow from what it has been ever before.

Mr. WILSON, of Iowa. I call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the resolution of the Senate was concurred in.

Mr. WILSON, of Iowa, moved to reconsider the vote by which the resolution of the Senate was concurred in; and also moved that the motion to reconsider be laid on the table.

ADMISSIONS TO THE HOUSE.

Mr. COX. I rise to a privileged question. I submit from the Committee on Rules the following resolution:

Resolved, That during the counting of the votes for President and Vice-President no person besides those who now have the privilege of the floor of the House of Representatives shall be admitted to that portion of the Capitol set apart for the use of the House and its officers, except upon tickets to be issued by the President of the Senate and the Speaker of the House of Representatives, and that the tickets to be issued under this resolution shall be distributed under the direction of the Committee on Rules of the two Houses.

Our rules designate the persons who shall have the privilege of the floor. The rule is as follows:

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

A MEMBER. That rule has not been observed.

Mr. COX. The rule has not always been observed, but it is the right of every member to call for its observance. Owing to the throng of people who will be in this Hall to-morrow, the Committee on Rules thought it advisable to provide that the persons eligible to admission to the Hall of the House, which includes the list I have read, shall be included in the resolution. The resolution cuts off all the clerks of committees, both of the Senate and the House, for our rules do not allow the clerks of committees to be on the floor, but the rules of the Senate allow the clerks of committees of that body to be upon the floor; so that we adopt language referring to the privileges of the House alone. The committee also propose under their own regulation, as they are providing for the order of the day to-morrow, that tickets shall be issued, three to each of a certain class of officers and three to each of the Members and Senators, and three only. These are tickets for the galleries, and we understand authoritatively that these galleries can only seat eight hundred persons. There have been twelve hundred persons packed into these galleries, and we propose the twelve hundred tickets shall be issued, and only twelve hundred. We can make no other provision to provide for proper decorum in the proceedings to-morrow.

Mr. KASSON. I would like to ask the gentleman from New York [Mr. COX] whether, in view of this being a joint session in which both the Senate and House will participate, there ought not to be some joint provision made by the two Houses, or the Senate may provide a rule of admission different from ours?

Mr. COX. I would say to my friend from Iowa [Mr. KASSON] that the Committee on Rules of the Senate met to-day with the Commit-

tee on Rules of the House and a similar resolution will be offered in the Senate.

Mr. KASSON. I only wanted to avoid any question of privilege on the part of the Committee on Rules of the Senate.

Mr. SINGLETON. Does this resolution apply to any but the galleries for the families of members?

Mr. COX. To all the galleries except the diplomatic gallery, which is controlled by a special rule of the House.

Mr. THORNBURGH. I desire to ask a question. Is it the intention of the committee to issue tickets for each day, or to issue tickets for the entire number of days that the count may progress?

Mr. COX. Each day a new ticket will be issued; every day the count goes on each member will receive three tickets. We do not know how these galleries may be packed, and we have therefore limited the number for the first day to three tickets to each member. If we find that we can issue more tickets we will do so. I hope the House will leave that to the discretion of the committee.

Mr. HALE. How do the members get these tickets?

Mr. COX. They will be sent to each member and reach him by his mail to-morrow morning; they are being printed now.

Mr. O'NEILL. They should be sent to members before to-morrow morning.

Mr. COX. We are doing our best to forward the matter.

Mr. O'BRIEN. How many persons will each ticket admit?

Mr. COX. One only. I now call the previous question.

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

The latter motion was agreed to.

COMMISSION ON ELECTORAL COUNT.

Mr. HUNTON. I offer the resolution which I send to the Clerk's desk, upon which I call the previous question.

Mr. HOLMAN. I give notice that, after this resolution has been disposed of, I will call for the regular order.

The Clerk read the resolution, as follows:

Resolved, That the members of the commission on the part of the House of Representatives appointed under provisions of the bill entitled "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," have permission to sit as members of said commission during the sessions of this House.

Mr. KASSON. Is that necessary, in view of the provisions of the act itself? The act imposes the duty. Of course there is no objection to the resolution if it is deemed necessary.

The SPEAKER. The gentleman offering it is a member of the commission, and the Chair supposes it is necessary.

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

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

The latter motion was agreed to.

DISTRICT POLICE INVESTIGATION.

Mr. MILLIKEN, by unanimous consent, submitted the following resolution; which was read, considered, and adopted:

Resolved, That the testimony taken by the select committee of the House investigating the affairs of the board of police of the District of Columbia be printed and recommitted.

Mr. KASSON. Not to be brought back by a motion to reconsider.

The SPEAKER. That is the understanding.

ORDER OF BUSINESS.

Mr. HOLMAN. Quite a number of gentlemen have propositions which they wish to bring before the House, and which will not give rise to debate, and I will not for the present insist upon my call for the regular order.

REMOVAL OF POLITICAL DISABILITIES.

Mr. HUNTON. I ask consent to report from the Committee on the Judiciary certain bills for the removal of political disabilities.

The SPEAKER. The bills will be read, after which the Chair will ask for objection.

Mr. HALE. Are they personal bills?

Mr. HUNTON. They are.

Mr. GARFIELD. Individual bills, not personal bills?

Mr. HUNTON. Individual bills.

The first bill was House bill No. 1558, with Senate amendments, to remove the legal and political disabilities of Robert Ransom, of Virginia.

The amendments of the Senate were to strike out the words "legal and" in line 2 of the bill, and in lines 3 and 4 strike out the words "act of July 2, 1862, and the" before the words "fourteenth amendment to the Constitution of the United States;" so that the bill would read:

That all the political disabilities imposed by the fourteenth amendment of the Constitution of the United States upon Robert Ransom, &c.

The amendments of the Senate were concurred in.

The title was amended so as to read:

An act to remove the political disabilities of Robert Ransom, of Virginia.

The next bill reported from the committee was House bill No. 2736, with a Senate amendment, to remove the political disabilities of N. H. Van Zandt.

The amendment of the Senate was to strike out the words "act of July 2, 1862, and the."

The amendment of the Senate was concurred in.

Mr. HUNTON. I ask consent to report for consideration at this time, from the Committee on the Judiciary, a bill to remove the political disabilities of Thomas Conner, of South Carolina.

Mr. HURLBUT. Let the petition be read.

The Clerk read as follows:

To the honorable House of Representatives of the United States:

The petition of Thomas Conner, a citizen of the State of South Carolina, respectfully shows that he was United States attorney for the district of South Carolina in the year 1860, and prays to have any disabilities which attached to him by reason of holding said office removed.

JAMES CONNER.

Mr. CONGER. I cannot see that any political disabilities attached to the person by the reason of holding such an office. If that is the character of the petition it does not meet what is required.

Mr. HURLBUT. That certainly is not a proper petition.

The SPEAKER. There being objection, the bill is not before the House.

THOMAS KEARNEY.

Mr. HANCOCK, from the Committee of Ways and Means, submitted a report in writing upon the bill (H. R. No. 1747) for the relief of Robert Kearney; which was ordered to be printed and recommitted, not to be brought back on a motion to reconsider.

INVESTIGATION OF RAILROAD ACCIDENTS.

Mr. GARFIELD. I ask unanimous consent to introduce and have referred to the Committee on Railways and Canals a bill to provide for the more thorough investigation of accidents on railroads. No member of the House needs to be reminded of the dreadful railway disaster that occurred at Ashtabula, in my district, a few weeks since, surpassing in its accumulation of horrors any that has ever occurred in the history of railroads. The bill provides for means to inquire generally into the causes of such accidents, and to obtain such information on the subject as may enable the engineers of the country to devise new safeguards for the traveling public. I understand the committee has the general subject under consideration. The bill was drafted at my request by Charles Francis Adams, jr., of Massachusetts, who is perhaps more thoroughly acquainted with the great questions connected with railways than any other American. I submit with the bill a letter from Mr. Adams, which I think will be of value to the committee and to the House.

It has been suggested that a special bureau should be created by Congress to procure statistics upon the subject. But I do not think that is necessary. It has been a fault in our legislation in recent years that we have multiplied bureaus too much. The bill I offer assumes no authority over railroads and creates no new national office. It requires a board of officers of Army engineers to examine and report upon such accidents especially as result from constructions of engineers. I should be equally well pleased if the duty were enjoined upon the commission recently created for the purpose of testing iron and steel. Up to the present moment, the cause of the Ashtabula disaster does not appear to have been ascertained. The questions of practical engineering science involved in that accident are of the highest importance, and I hope Congress will aid in making such inquiries as may solve it. I ask that the bill and letter may be published, and I move that the Committee on Railways and Canals may have leave to report on the subject at any time.

There being no objection, the bill (H. R. No. 4558) to provide for the more thorough investigation of accidents on railroads was read a first and second time, ordered to be printed, referred to the Committee on Railways and Canals, with authority to report at any time, and ordered to be printed in the RECORD with the accompanying letter. The bill and letter are as follows:

A bill to provide for the more thorough investigation of accidents upon railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and requested to appoint a board of three commissioners, who shall be officers of engineers of the Army, to inquire into the number, causes, and means of prevention of accidents on railroads in the United States, the number of persons killed or injured thereby, and the most approved means of preventing the occurrence of the same. And it shall be the duty of said commissioners to hereafter investigate such accidents on railroads as may in their judgment be accompanied by circumstances of an unusual or unexplained character, and specially report upon the same.

SEC. 2. That the commissioners appointed under this act shall, in addition to their pay as officers of engineers of the Army, receive compensation for actual travel and other necessary expenses incurred in the duties herein designated.

SEC. 3. That, in addition to all special reports from time to time made, the commissioners herein provided for shall at the close of each year forward to the Secretary of the Treasury a general report upon the subject of accidents upon railroads in the United States during that year, which report, together with any special reports which the commissioners may have made during such year, shall be submitted to Congress.

COMMONWEALTH OF MASSACHUSETTS,
BOARD OF RAILROAD COMMISSIONERS,
Boston, January 27, 1877.

DEAR SIR: In compliance with the suggestions contained in your favor of the 20th instant, I herewith send you a draught for an act establishing a national commission to inquire into accidents upon railroads; a national railroad accident commission, in fact.

You will notice that the draught is very simple, and my object has been to carefully avoid all disputed points. I have taken the inspectors of the British board of trade as the model and appointed Army officers, so avoiding the creation of any new offices.

The commissioners have no executive powers whatever. They can only investigate and report. That is all the British inspectors can do, and all that the Massachusetts commissioners can do, and experience shows that that is enough. They are able to locate responsibility and give publicity.

They cannot summon witnesses, take evidence under oath, or institute any legal proceedings. The commissioners in Massachusetts cannot either, but they have never found these powers necessary.

They cannot call on railroad corporations for reports of accidents or for returns; they must rely for information on State officials, on the newspapers, on the voluntary co-operation of railroad officials. This is a practical defect in the act. It would not, however, be overcome without raising the dangerous question of jurisdiction and State rights. This I thought best to avoid. No one questions the right of the General Government to investigate anything and everything; and where not only citizens of other States, but the United States mails, are continually destroyed through accidents on railroads, the propriety of the United States instituting investigations into the causes of such accidents ought not to be questioned.

Finally my object has been to carefully avoid trying to draw up a complete and comprehensive measure. That can only develop itself in its own way. This is simply a seed. If anything comes of it, it can easily be developed in any way which practical experience shall show to be necessary or expedient. New powers can be given as they are practically found to be needed. United States commissioners can be authorized to conduct investigations, summons, witnesses, &c. All this and many other things which will at once suggest themselves could readily be put in the bill; but I think it is much better without them; they will come as they are needed.

As it stands the act will meet the case, and I do not see how any one can object to it. I sincerely hope you will have the opportunity as well as inclination to press it. Should you offer it, and should it go to a committee, I should be obliged to you if you would hand this letter to its chairman, as I would like to be in communication with him on the measure.

I remain, &c.,

CHARLES F. ADAMS, JR.

Hon. JAMES A. GARFIELD,
Washington.

REPRESENTATIVE FROM COLORADO.

Several members called for the regular order.

Mr. HOLMAN. I believe that the first business in order is the unfinished business coming over from last evening. If not, I wish to move that the House resolve itself into Committee of the Whole to consider the legislative appropriation bill.

The SPEAKER. The business unfinished at the adjournment of the House yesterday was a matter of the highest privilege. The Clerk will read the resolution reported from the Committee on the Judiciary and now pending.

The Clerk read as follows:

Resolved, That Colorado is a State in the Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to a seat as such.

The SPEAKER. In addition to this being unfinished business, the Chair considers it a question of the highest privilege. The gentleman from Ohio [Mr. HURD] is entitled to the floor.

Mr. HOLMAN. I would like to inquire how much time this debate is expected to consume.

The SPEAKER. Four hours, so far as the Chair is informed. Is that the understanding?

Mr. HOLMAN. Three hours, as I understood the other day.

The SPEAKER. Three hours of debate, to be followed by the calling of the previous question, which would allow another hour for debate.

Mr. HOLMAN. Yesterday I believe one hour or more was occupied in reading the report. Time is now of great value on account of the present condition of the appropriation bills. I trust it will be understood that the time occupied last evening in reading the report is to be regarded as a portion of the four hours.

The SPEAKER. The Chair understood the gentleman from Kentucky [Mr. KNOTT] to give notice that there were to be three hours of debate, and that then the previous question would be called, giving a fourth hour.

Mr. HOLMAN. But the gentleman occupied at least an hour yesterday in reading the report.

The SPEAKER. The Chair is not aware that it has been usual to regard the reading of a report as coming out of the time alotted for debate; but if the point should be raised and insisted upon, the Chair would be obliged to rule that the reading of the report was in the nature of debate.

Mr. HOLMAN. I understood the gentleman from Kentucky to say yesterday (though it was not said while he was on the floor) that the reading of the report was in lieu of his speech.

The SPEAKER. The Chair thinks that the reading of the report is in the nature of debate. The gentleman from Ohio [Mr. HURD] is on the floor.

Mr. HURD. I desire in the first place to have read by the Clerk the first, third, fourth, and fifth sections of an act approved March 3, 1875, entitled "An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States."

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the Territory of Colorado included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said Territory, a State government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever, as hereinafter provided.

SEC. 3. That all persons qualified by law to vote for representatives to the General Assembly of said Territory, at the date of the passage of this act, shall be qualified to be elected, and they are hereby authorized to vote for and choose representatives to form a convention under such rules and regulations as the governor of said Territory, the chief-justice, and the United States attorney thereof may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said Territory in proportion to the vote polled in each of said counties at the last general election as near as may be; and said apportionment shall be made for said Territory by the governor, United States district-attorney, and chief-justice thereof, or any two of them; and the governor of said Territory shall, by proclamation, order an election of the representatives aforesaid to be held throughout the Territory at such time as shall be fixed by the governor, chief-justice, and United S ates attorney, or any two of them, which proclamation shall be issued within ninety days next after the 1st day of September, 1875, and at least thirty days prior to the time of said election; and such election shall be conducted in the same manner as is prescribed by the laws of said Territory regulating elections therein for members of the house of representatives; and the number of members to said convention shall be the same as now constitutes both branches of the Legislature of the aforesaid Territory.

SEC. 4. That the members of the convention thus elected shall meet at the capital of said Territory, on a day to be fixed by said governor, chief-justice, and United States attorney, not more than sixty days subsequent to the day of election, which time of meeting shall be contained in the aforesaid proclamation mentioned in the third section of this act, and, after organization, shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said Territory: *Provided*, That the constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence: *And provided further*, That said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State, first, that perfect toleration of religious sentiment shall be secured, and no inhabitant of said State shall ever be molested, in person or property, on account of his of her mode of religious worship; secondly, that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

SEC. 5. That in case the constitution and State government shall be formed for the people of said Territory of Colorado, in compliance with the provisions of this act, said convention forming the same shall provide by ordinance, for submitting said constitution to the people of said State for their ratification or rejection, at an election, to be held at such time, in the month of July, 1876, and at such places and under such regulations as may be prescribed by said convention, at which election the lawful voters of said new State shall vote directly for or against the proposed constitution; and the returns of said election shall be made to the acting governor of the Territory, who, with the chief-justice and United States attorney of said Territory, or any two of them, shall canvass the same; and if a majority of legal votes shall be cast for said constitution in said proposed State, the said acting governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinances; whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress.

Mr. HURD. Mr. Speaker, on the last day of the Forty-third Congress the act containing the foregoing provisions was passed by the House of Representatives. It was passed without discussion under the operation of the previous question and in the midst of the excitement usually attendant upon the closing hours of a session. As will be observed, one of its sections provided that the people of Colorado should call a convention for the purpose of forming a State constitution, and after its adoption that an election should be held at which a Representative for Colorado should be chosen to a seat in the Congress of the United States. The convention was held as provided by law; the election was held as authorized by the constitutional convention; and Mr. Belford at that election received a majority of the votes cast for Representative in Congress, and presents to this House a certificate signed by officers assuming to act as officers of the State of Colorado. It is not disputed, Mr. Speaker, that the election was regularly held, nor that the certificates are in proper form; but it is insisted that Colorado is not a State in the Union, and that therefore Mr. Belford is not entitled to a seat upon this floor.

There is no one who will dispute the proposition that unless Colorado be admitted into the Union Mr. Belford is not entitled to his seat. The question thus presented upon the credentials that have been referred to the Judiciary Committee is, has Colorado been admitted as a State into the Federal Union? First, Mr. Speaker, what is admission into the Union? It is the permission of an organized body-politic to enter into the political association created by the Constitution of the United States. On the part of the people of the State seeking admission it involves the organization of a State government and the establishment of a form of institutions which will permit the State when in the Union to stand in it on an equal footing with the other States. On the part of the United States it involves the ascertainment of the facts necessary to constitute admission and the declaration of the result in the methods fixed by the Constitution. The people of the new State obtain from the people of the United States the right to enjoy the privileges and exercise the powers which the latter possess under the Constitution. This change in political condition can only be effected by the consent of both the United States Government and the people of the State, and that consent is to be expressed by admission of the State into the Union.

How then, Mr. Speaker, is a State to be admitted into the Union? The language of the Constitution is clear and distinct on this point, "The Congress of the United States may admit new States into the Union." The Legislature of the United States, created by the Con-

stitution, admits States. They must be admitted by the forms of legislation, in the methods of legislative proceedings prescribed by the Constitution itself. From the very phrase of the Constitution it is apparent that in the discharge of this duty Congress must exercise the same discretion which it is bound to use as to every other measure of legislation. There are three particulars as to which this discretion is required: First, the Congress of the United States must decide that the government which has been created by the new State is republican in form, because the language of the Constitution is that Congress may admit new States into this Union; and as this Union is a union of republics, the State which seeks for admission into the Union must be a republic, and therefore must have a republican form of government. Secondly, Congress must see to it that the new State shall stand in the Union on an equal footing with the other States, for that cannot be called a union in which there is inequality in the rights enjoyed by its members. In the third place, it must be ascertained that a State government has been formed, with proper officers to administer it, for the language is, "new States may be admitted into the Union." Therefore the State must be complete in its governmental form, in its ability to exercise its governmental functions, and with officers to perform them.

It will follow from these propositions that if Congress must exercise discretion as to these three matters, the State government must be first formed and the constitution first adopted before that discretion can be exercised.

It seems to me the very statement of the proposition must carry conviction to every mind; for if the judgment of this House be invited as to the question whether a State government has been formed in Colorado, must not the House know whether a government has been formed there or not? If this House is called upon to determine whether the constitution and government of Colorado are republican in form, must not the constitution and government have been framed in the first instance before Congress acts, in order that Congress may intelligently determine the questions so submitted for decision? This, Mr. Speaker, will be more clear from the very words used in the Constitution, "Congress may admit new States into the Union." It is not "new States may enter into the Union;" it is not that by the mere formation of a constitution, as is claimed by the majority in their report, a State *ipso facto* becomes a member of the confederation of the States; but it is that there shall be an act of admission on the part of the Congress of the United States. If I extend an invitation to a gentleman to my house, to be admitted at the door upon presentation of a card which he is to offer to the servant standing there who has the right by my authority to permit him to enter, he who stands at the door must inquire whether the condition which I have imposed has been complied with. If an individual is to be admitted into an organization upon certain conditions, he has no right to enter until the organization has determined that the conditions have been performed. And as the Constitution in this case has devolved upon Congress the power and duty of admitting into the Union upon the conditions contained in the Constitution, Congress must examine the constitution of the State and the form of government to determine whether the conditions have been complied with or not.

Mr. Speaker, this right involves the submission to Congress of the constitution and government of a new State, and I had supposed, since the great Missouri case, there would be no dispute on this subject on the floor of this House. In that case the State of Missouri adopted a constitution under the terms of her enabling act. It was submitted to the Congress of the United States, and for months one of the most brilliant discussions which ever occurred in the Congress of the United States continued, in which many of the ablest men of the country participated.

It was insisted upon the one side that by the very adoption of the constitution of Missouri it became a State in the Union. On the other it was insisted that it was the duty of Congress to examine the constitution and government, and that Missouri could not be regarded as in the Union until Congress had passed a law admitting it. All the precedents which had occurred before that time were carefully and thoroughly examined; and the conclusion arrived at after all that discussion by a decided vote was that Missouri was not admitted into the Union by reason of the adoption of the State constitution, and that its form of government must be accepted by the Congress of the United States. A law was then passed approving the constitution of Missouri and imposing a further condition upon the State, and from that day to this, excepting, in the case of Nevada in 1864, no State has been admitted into the Union until after its constitution and government have been submitted to the Congress of the United States and a law been passed by the legislative power declaring it to be a State in the Union.

This doctrine is well fortified by authority. Cooley, in his work on Constitutional Limitations, page 30, says:

> There are always in these cases questions of policy as well as of constitutional law to be determined by the Congress before admission becomes matter of right: whether the constitution is republican in form; whether the proper State boundaries have been fixed upon; whether the population is sufficient; whether the proper qualifications for the exercise of the elective franchise have been agreed to; whether any material evil exists in the Territory which is now subject to control, but which might be permitted under a State government. These and the like questions, in which the whole country is interested, cannot be solved by the people of the Territory for themselves, *but the final decision must rest with Congress, and the judgment must be favorable before admission can be claimed or granted.*

In Wisconsin this exact question arose, and it was decided (in 2 Pinney's Wis. Reports) in these words:

> The State constitution was adopted in March, 1848, but the Territory was not admitted by act of Congress as a State until May 20, 1848. *Held*, that the adoption of the constitution by the people of the Territory did not create it a State, and that such political change could be effected only by the action of Congress admitting it.

Now, Mr. Speaker, if these propositions be correct, this is the condition of the argument: Congress must exercise a discretion to determine whether a republican form of government has been established in Colorado and whether its constitution complies with the conditions which are imposed by the Constitution of the United States and by the enabling act. Congress can only do this upon the submission to it of the constitution and of the frame of government which the people of Colorado have adopted.

I come now to the question, Has Congress passed upon the constitution and government of the State of Colorado? What action has it taken upon this subject? It is not claimed that the Forty-fourth Congress has acted upon this subject at all; but it is insisted that the provisions of the act which were just read by the Clerk have admitted Colorado into the Union before the constitution was adopted and before the government was framed by the people.

That act, Mr. Speaker, was passed by the Forty-third Congress. The first section authorized the people to form a constitution and government; the third section imposed certain conditions; that the people of Colorado should adopt a constitution and government republican in form and not inconsistent with the provisions of the Declaration of Independence, a constitution which should guarantee perfect religious toleration to every person within the limits of the State, and which should provide that the people outside of the State, and citizens of the United States, should not be taxed at a higher rate than the people who lived within the State. The last section provided—and to this I desire to call the attention of the House particularly—that on the convention assembling it should approve the Constitution of the United States or accept it, and should then form a constitution and government, and, upon that constitution being adopted and being in accordance with the Constitution of the United States and with the conditions of the enabling act, that it should proceed to submit the same to the people, and that, when that instrument had been submitted to the people, the result of the vote should be ascertained by the governor of the State, who should send the result, if favorable to its adoption, to the President of the United States with a copy of the constitution, and that then the President of the United States should issue his proclamation declaring the State admitted into the Union, and that thereupon Colorado should be *ipso facto* a State in the Union without any further action on the part of Congress whatever.

Mr. Speaker, on this act I observe as follows: First, that it does not itself undertake to admit the State of Colorado at once. It simply provides for the formation of a constitution and government and declares that upon the fulfillment of certain conditions it shall be admitted into the Union. It arranges for its future admission. In the next place it does not seem to contemplate any further action on the part of Congress. Indeed the very language of the law is that on the proclamation of the President being issued the State shall be admitted without further action of Congress.

Now, I submit in passing that the Forty-third Congress had not the power by this action to prevent any subsequent Congress from doing its duty in this regard. If without this proviso in the law of the Forty-third Congress the Forty-fourth Congress would have had the right or power to decide whether the constitution of Colorado was republican in form, nothing done by the Forty-third Congress can deprive this body of that right, and the act in that regard is wholly null and void. Thirdly, Mr. Speaker, this act authorizes either the President of the United States or the convention which is held in the State of Colorado to decide whether the conditions imposed by the enabling act have been complied with. The language is that the President shall issue his proclamation and thereupon the State shall be admitted. The further expression in the fifth section is that, upon the convention adopting the constitution which shall comply with the conditions of the act, the question as to the adoption of the constitution shall be submitted to a vote of the people. No other power is called upon to decide whether those conditions have been complied with except the convention of the people of Colorado in the first instance and in the next the President of the United States.

From the consideration of this act it appears then, first, that the Forty-third Congress did not admit Colorado directly; next, Colorado has not been admitted by the Forty-fourth Congress, because the action of the Forty-third Congress made it unnecessary that the constitution of Colorado should be submitted to it; and thirdly, that upon the proclamation of the President, and upon that alone, this State was to be admitted into the Union. That proclamation, it is conceded, has been issued. I desire to call the attention of the House especially to the last clause contained in it:

> And therefore, I, Ulysses S. Grant, President of the United States, do declare and proclaim the fact that the fundamental conditions imposed by Congress upon the State of Colorado have been ratified and accepted and that the admission of the said State into the Union is now complete.

Here the President has undertaken to perform the duty which I have shown can be performed only by Congress. He has decided that the government of Colorado is republican in form. He has determined that the constitution of Colorado is not inconsistent with

the Declaration of Independence and that it guarantees within its territorial limits equal religious liberty. He has adjudged that the other provisions contained in the enabling act have been complied with. These grave constitutional questions, involving the exercise of the highest legislative functions, Congress has not even considered, and their decision has been transferred from the authority established by the Constitution to determine them to the chief executive officer of the United States. The proposition thus presented is, had Congress the right to delegate to him the power to decide the questions which in themselves involve all there is of the admission of a State? This brings me to the question whether Congress can delegate to others legislative authority.

Upon the general proposition that legislative power cannot be delegated, I think there will be no dispute.

In Cooley's Constitutional Limitations, page 116, it is said:

One of the settled maxims in constitutional law is that the powers conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain, and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism these high prerogatives have been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

That expresses the general rule on the subject; and when the Congress of the United States has a duty devolved upon it by the Constitution in express language to admit a State, it must perform that duty itself; it cannot delegate the authority to any other tribunal or to any individual.

By the act under consideration, Congress declared that Colorado should be admitted on the happening of a certain event to be declared by the President. Both the event on which the admission was contingent, and the declaration of the President, required the action by others, which it was the duty of Congress to take. While admitting the general proposition as to the delegation of power, the majority of the committee insist that Congress has power to pass laws to take effect upon the happening of some future or contingent event, and that it was, therefore, competent for Congress to pass such an act as this. Now I do not dispute the proposition that Congress has the power to pass conditional laws; but it has not the power to pass laws to take effect upon every contingency. On this question I quote the language used in the case of Rice *vs.* Foster, 4 Haw., (Del.,) 88, as follows:

Doubtless the Legislature may pass many conditional laws, but there are many conditions which would make the law inoperative.

And consequently the question, in a given case, is not whether Congress can pass a conditional statute, but whether the conditions are such as are permitted by the rules of the law. I shall undertake to show that the conditions in the case are such as to render the law inoperative.

And right at this point I desire to call attention of the House to a few thoughts upon this subject expressed in a speech recently delivered in the Senate by one of the most gifted orators of the age, who discussed this question incidentally in his masterly argument upon the bill creating the electoral commission. He said that—

The President had made that proclamation evidential of that contingency, and the act of Congress speaking afresh when the condition is complied with, Colorado is as complete in her rights as a member of the Union as is the proudest or most ancient State in all the sisterhood. * * * That court—

The Supreme Court of the United States—

long ago held in the embargo case that such legislation in advance, incomplete, inconclusive, and inoperative until the happening of an external contingency, is competent and becomes effectual when the contingency occurs.

I refer to these remarks to call attention to the decision made in the embargo cases to which the distinguished Senator alludes. I do not propose to discuss those cases, but to refer to a commentary made upon one of them by the supreme court of Pennsylvania. In Parker *vs.* Com., 6 Barr, 531, it was said:

In the case of The Aurora *vs.* The United States, 7 Cranch, 382, the right of Congress to enact this law was called in question, but the Supreme Court of the United States held that Congress might extend and revive the act of 1809 conditionally, upon the occurrence of subsequent events, to be ascertained by the President's proclamation. It is plain the revival or continued suspension of the act of 1809 was not made to depend upon the proclamation, but upon independent facts, of which the proclamation was evidence, after which the statute operated *proprio vigore.*

It will be seen that the embargo cases are not precedents for the act admitting Colorado, unless the condition on which Colorado is admitted consists of a fact independent of the law-making power, of which the proclamation merely furnishes the evidence, and unless the act when passed, containing the condition, was complete as an expression of the legislative will. That the law under discussion does not fall within these distinctions, and that unless it does it must be held inoperative, a further consideration of the authorities will more fully show.

In Barto *vs.* Himrod, 4 Selden, 490, it was said:

But such a statute when it comes from the hand of the Legislature must be law *in præsenti* to take effect *in futuro*. If the observations already made are correct, the act of 1845 was not such a statute. But if by the terms of the act it had been declared to be law from the time of its passage, to take effect in case it should receive a majority of votes in its favor, it would nevertheless have been invalid, because the result of the popular vote upon the expediency of the law is not such a future event as the statute can be made to take effect upon, according to the meaning and intent of the Constitution.

The event or change of circumstances on which a law may be made to take effect must be such as in the judgment of the Legislature affects the question of the expediency of the law—an event on which the expediency of the law depends. On this question of expediency the Legislature must exercise its own judgment definitely and finally. When a law is made to take effect upon the happening of such an event, the Legislature in effect declares the law inexpedient if the event should not happen, but expedient if it should happen. They appeal to no other man or men to judge for them in relation to its present or future expediency. They exercise that power themselves, and then perform the duty which the constitution imposes upon them. But in the present case no such event or change of circumstances affecting the expediency of the law was expected to happen. * * * *The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the Legislature to decide. The Legislature has no power to make a statute dependent on such a contingency, because it would be confiding to others that legislative discretion which they cannot delegate or commit to any other man or men to be exercised.*

In the same case, page 490, Willard, J., said:

The future event gives no additional efficacy to the law, but furnishes the occasion for the exercise of its power.

In Rice *vs.* Foster, 4 Harr., (Del.,) 492, it is said:

A law, when passed by the Legislature, is a complete, positive, and absolute law in itself, deriving its authority from the Legislature, and not dependent for the enactment of its provisions upon any other tribunal, body, or person. It may be limited to expire at a certain period, or not to go into operation until a future time, or the happening of some future event, or until some conditions be performed. * * * All such laws are complete and positive in themselves when they pass from the hands of the Legislature, and are not to become law by the creative power of other persons. But the legislators are invested with no other power to pass an act which is not a law in itself when passed, and has no force or authority as such, and is not to become or be a law until it shall have been created and established by the will or act of some other person or body.

In the same case, Harrington, justice, said:

It is conceded by all that legislative power cannot be delegated. That case assumes that the Legislature may pass a conditional law. Both of these propositions are true. The error in the argument is in supposing them to be alternative or inconsistent. Doubtless the Legislature may pass many conditional laws, but there are many conditions which would make the law inoperative. * * * But a law declaring an offense, or prescribing a punishment, or repealing an existing law, on condition that the governor or any other individual shall assent to it, is as plainly unconstitutional. It substitutes for, or rather adds to, the legislative will another will, which it makes necessary to the existence of the law. This is unconstitutional.

In Parker *vs.* Com., 6 Barr, 526, it is said:

These remarks are applicable to our own act of assembly, and to them may be added an instance of another and vital distinction between it and the legislation of Congress. In the latter instance, the power which created the law was exerted by the Federal Legislature, looking to no external aid, but the production of our senate and house of representatives came forth maimed, impotent, functionless, until inspired by the popular breath. In the one case the decree is, this statute shall take effect in action or its operation be suspended upon the occurrence of a particular event. In the other, this act shall be inoperative unless otherwise willed by the people. In the first case the law remains quiescent until the happening of the appropriate event stirs it into activity; in the last the so-called law was altogether without the power of motion of itself when it left the hands of the law-makers. And this is the distinction between a conditional law, properly so denominated, and an act of the law-making power seeking to transfer its functions to another; the one leaves nothing to be done to perfect the rule of action; the other but molds the clay into shape, leaving to third persons the task of breathing into its frame the energy of life.

In Santo *vs.* Iowa, 2 Iowa, 203:

The General Assembly cannot legally submit to the people the proposition whether an act should become a law or not; and the people have no power in their primary or individual capacity to make laws. * * * There is no doubt of the authority of the Legislature to pass an act to take effect upon a contingency. But what is a contingency in this sense and connection? *It is some event independent of the will of the law-making power as exercised in making the law, or some event over which the Legislature has not control.* * * * The will of the law-maker is not a contingency in relation to himself. It may be made in relation to another and external power, but to call it so in relation to himself is an abuse of language. Now, if the people are to say whether or not an act shall become a law, they become or are put in the place of the law-maker. *And here is the constitutional objection. Their will is not a contingency upon which certain things are or are not to be done under the law, but it becomes the determining power whether such be the law or not.* This makes them the legislative authority, which, by the constitution, is vested in the senate and house of representatives, and not the people.

Now, without wearying the patience of the House by reading other authorities, I submit that the following conclusions may be derived from them as to the nature of the condition which it is proper to incorporate into a law: 1. The contingency or condition upon which a law is to take effect must be some event independent of the will of the law-making power as exercised in making the law, and over which the Legislature has no control. 2. The condition must be one which operates in the execution or suspension of the provisions of the law, but not in the creation of such provisions. 3. The contingency cannot be one which involves the exercise by any other power of that discretion which the Legislature itself must exercise. 4. The law must come complete and positive from the Legislature; and the contingency upon which the act is to take effect, whether it happens or not, must be such as, relating only to the future execution of the law, leaves it in all respects as it was enacted: a complete expression of the legislative will.

By applying these propositions to the present case, I maintain that the condition is not one upon the happening of which a law may take effect. It must be recollected that the legislative act to be performed is the admission of Colorado, the condition upon which the act is to take effect is the adoption by the people of a constitution and government of a certain character, and the proclamation by the President of the fact, declaring the State to be admitted into the Union.

In the first place, I say that this is not a condition independent of the

legislative will, but entirely dependent upon it and over which the Congress has complete control. Would the proclamation of the President have admitted the State of Colorado into this Union or would the action of the convention of the Territory of Colorado have done so if Congress had not enacted a law declaring to that effect? Could not the Congress in an hour after it had passed the law have repealed it, taking from the President the power to issue the proclamation and from the convention which framed the constitution the power of determining whether the conditions of the enabling act had been complied with? It is a condition created by legislative authority, by Congress, and not independent of it in any sense whatever. It is substantially making the will of the law-maker, expressed by extra constitutional methods, a contingency in reference to itself.

Secondly. It is not a condition which operates in execution of a law previously passed, but it is a condition which operates to create the provisions of the law. The issuing of the proclamation of the President does not carry out any provision of a law which has previously admitted Colorado; but it completes the law, for Colorado is only admitted when the President so declares. The proclamation could not have been issued in the execution of an act of Congress admitting the State, for there was no such law to be executed until after the proclamation had been published.

Thirdly. The condition is one which involves on the part of the President of the United States the very same discretion which Congress is required to exercise. Congress, not the President, is to determine whether the conditions have been complied with; Congress, not the President, is to determine whether the constitution of the State is republican in form and whether a State government has been established. This act delegates to the President the very power, the very authority which Congress itself must exercise; and this is plainly prohibited, as I have shown, in the great case from New York. The legislative authority has no power to make a statute dependent upon an event which involves the decision of the identical question which the constitution makes it the duty of the Legislature to decide.

Fourthly. Did this law come complete and perfect from the hands of the law-making power, as is required by the fourth limitation to which I have referred? No, sir; it was imperfect, inchoate. The State was not in the Union; it possessed no rights, no powers, no privileges as a member of the Union until after the proclamation of the President had been issued.

Suppose, Mr. Speaker, that the President of the United States had refused to issue this proclamation, either Colorado would not be in the Union or it would be. If it be not in the Union when he fails to issue the proclamation, then the proclamation becomes necessary to its entering the Union, and the legislative power has invited an extraneous authority to aid in the discharge of the legislative obligation. If it be in the Union when the President fails to issue the proclamation, then it is in the Union in violation of a law of Congress and not in accordance with the law of Congress, for that power has provided that it shall not be in the Union until the President has issued his proclamation. Whether, therefore, you say that the proclamation is not necessary or is necessary, the law, in the latter case, is incomplete and inchoate, because it required the act of another to consummate it; and in the former case the law is a nullity, for no act of legislation can become effective as a law in violation of the method fixed by its own provision.

I maintain, Mr. Speaker, upon this review of the authorities and ascertainment of the limitations upon the doctrine of conditional legislation, that the condition imposed in this law falls within the prohibited ones, and that it was not competent for the Congress of the United States to pass such a conditional law; that it amounted clearly to a delegation of legislative authority, which is prohibited in all civilized and constitutional governments.

If these propositions be correct, Colorado has not been admitted into the Union. It is not possible that it could have been admitted into the Union under the provisions of the act passed by the Forty-third Congress. I call attention to the fact with which every member of the House is familiar, that at the last session Colorado was a Territory, and was then represented here by a Delegate. If it has ceased to be a Territory it must be because of some act which has been performed by the Forty-fourth Congress, and yet it is known that this Congress has not acted upon the subject at all. Can it be possible that the action of any other Congress prior to this can admit a State into the Union at a time when the Forty-fourth Congress is in full power, with full capacity and ability to determine every question relating to the nature of the government which the people of Colorado may form? I say not. To do that is by conditional legislation of this sort, by transfers of legislative authority, by delegations of legislative power, to enable one Congress to tie the hands of subsequent Congresses for all time.

Mr. Speaker, it is claimed that there are precedents for the admission of States into the Union in the manner in which Colorado is supposed to have been admitted, and the acts of admission of Michigan, Missouri, Nebraska, and Nevada are cited. Now, in order that a case should be a precedent, it must involve two things: first, that the examination and approval of a State constitution by Congress after it has been adopted are unnecessary; and secondly, that the power to determine as to the form of the constitution and government may be delegated to some other authority or tribunal. Now I deny that any precedent which can be cited covers these propositions. In the case of Michigan there is no analogy whatever between its facts and those in the present case. There, after the constitution had been adopted, and it had been approved by Congress, a further condition was imposed relative to its boundaries. After the condition had been adopted a second act of admission was passed, reciting the fact that the condition imposed had been complied with. Congress examined and approved the constitution, and after having imposed further conditions, decided by an act of legislation that they had been complied with when the people of Michigan reported their action on the subject. The case of Missouri is also cited. Why, Mr. Speaker, it is a case directly in point in establishing the proposition which is here maintained. The Congress of the United States, as I have before stated, engaged for months in the discussion of the questions as to its powers under the Constitution in admitting States, and particularly whether it was required to pass upon the constitution of the new State. The decision reached was that it was the duty of Congress to approve the form of government submitted. In that case, disapproving it, Congress imposed a new condition, requiring the Legislature to give a certain interpretation to a clause of the State constitution, and providing that upon the passage of the law giving such interpretation the governor of the State should certify the fact to the President, who should issue his proclamation declaring it, and that thereupon Missouri should be a State in this Union.

It is manifest that the case of Missouri affords no precedent for the method of admission adopted for Colorado. (1) The constitution and government formed were examined and approved by Congress in the one case, and not in the other. (2) The Missouri act admitted the State to the Union, and only delayed the taking effect of the law until a certain condition had been performed. In the Colorado case there was no legislative act admitting the State, except through the President's proclamation. (3) The proclamation of the President in the Missouri case was issued to announce the fact that he had received a copy of a certain act of the Missouri Legislature within a certain time. The proclamation in the Colorado case was issued not to announce merely that a copy of a constitution had been received, but to declare Colorado admitted into the Union. In the first case the act was purely a ministerial one to announce a fact, in the second case it was a legislative one to decide as to the form of the constitution and government which the people had adopted, and to admit a State.

What has been said in relation to Missouri applies with equal force to the admission of Nebraska. After the people in that case had formed their constitution and government, they were submitted to Congress, whereupon an act was passed accepting, ratifying, and confirming said constitution and government, and declaring that the said State of Nebraska was thereby admitted into the Union. Another section of the act declared that it should not take effect until the Legislature should determine in favor of equal suffrage, and that when a copy of an act of the Legislature should be received by the President, he should issue a proclamation announcing the fact. Here the condition was, as in the case of Missouri, one which related only to the taking effect of a law which, when it had been passed by Congress, was complete and perfect as an expression of the legislative will upon the subject-matter.

I admit, Mr. Speaker, that the State of Nevada is a precedent against the view I have maintained, but Nevada was admitted in 1864 in the midst of war. There was little discussion on this constitutional question which is now presented. I believe there were only four democratic Senators at that time in the Senate of the United States. In that discussion one distinguished gentleman, Senator Garret Davis, of Kentucky, opposed the bill upon the ground that it amounted to a delegation of legislative power, and said that it was useless for him then in that excitement to make any objection to the bill, but nevertheless that he desired to be put upon the record against it.

I submit, Mr. Speaker, this precedent born in the midst of civil war, in the excitement attendant upon it, with the heats and passions then aroused and developed, without any regard on the part of many of the people of the country for the obligations of the Constitution, shall not outweigh all the other precedents of the Government from the beginning as to the duty of Congress in admitting States, and as to the manner in which it shall be discharged.

It is objected to this bill that in the Senate the Senators from Colorado have been admitted to their seats, and that therefore this House is bound to admit Mr. Belford. Mr. Speaker, the action of the Senate well considered would be regarded, I have no doubt, as of high authority by this House; but when, as here, there was no discussion on the particular question involved in the reports now under consideration, when the action was taken hastily at the opening of the session, I submit what has been done is not entitled to the weight of a precedent.

Besides, this is not a new state of things in the history of the Government. The State of Indiana when it had been admitted into the Union remained for more than a week in precisely the same condition. Mr. Hendricks, of Indiana, came to this House and was admitted at once to his seat as a member. The Senators presented their credentials in the Senate and there was objection made to them. They were referred to a committee, and the committee after consideration of two or three days reported that it was necessary a bill should be passed by Congress admitting Indiana into the Union. They passed the bill on the 6th or 7th day of December. It came to

the House and in three days after that it passed that body, so for more than a week at that period this situation continued: Indiana represented in one branch of the Government and not in the other; and the only way by which in the other branch representation was given to the State was by the very method reported to this House by the minority of the committee, by passing a law declaring that the State was in the Union.

It may be said the people of Colorado will be without government if the minority report is to prevail. Not so. It has a government; and whether you call it a territorial government or State government, it is a *de facto* government, which gives to its people the same rights and privileges and protection which a government *de jure* would.

It has been insisted, Mr. Speaker, that this objection to the admission of Colorado is an after-thought, and that it is made only for the purpose of affecting the count of the electoral vote. I regret very much that this consideration has entered at all into this discussion. It is a question, Mr. Speaker, of the gravest constitutional nature, and one which should be decided without any appeal to partisan prejudice, and without any reference to partisan considerations. It relates to more than one hundred thousand people living within the limitsof Colorado. It affects the interests of forty millions of people who dwell within the Union to which Colorado desires to be admitted. It is a question which concerns the sovereignty of a community, which affects its power as an independent political organization, and which will determine whether it shall be sovereign within the Union, or whether it shall remain in a condition of territorial dependence. It is a question, as suggested by the distinguished gentleman to whom I have already referred, that has lighted the flames of civil war, drenched lands with blood, overturned the oldest dynasties, and broken as though they were pipe-stems the pillars of the strongest governments. It is a question, therefore, which should be decided in the light of the Constitution, and precedents, and the law. When we walk in the paths our fathers have marked out for us on this subject we walk in safety. Away from them, at every point and on every hand is danger.

I firmly and conscientiously believe, Mr. Speaker, if the general principle involved in this bill as to the delegation of legislative power, and to some extent involved in another important bill which has passed at this session, shall prevail, that disorder and confusion will overwhelm our whole system; that distinctions between the legislative, executive, and judicial departments will be entirely abrogated; that the symmetry of the federal plan will be destroyed, and that sooner or later an empire will lift itself out of the ruins of the Republic. Legislative responsibility becomes a myth, for when a trustee can delegate his power the trustee ceases to have responsibility.

Accountability of a man in legislative position to the people and his constituency perishes from the Republic if he can escape accountability by showing that an objectionable act has been performed by another to whom he has delegated the power which the Constitution has conferred upon him.

Mr. Speaker, as soon as this theory is adopted thoroughly in legislation the obscuration of the light of representative government begins only to be ended in its total eclipse. I desire to read the warning words of one of the ablest jurists of New York in discussing this very question. In Barto *vs.* Himrod and Lovett, (4 Seldon's Reports,) Judge Willard said:

> If this mode of legislation is permitted and becomes general it will soon bring to a close the whole system of representative government which has been so justly our pride. The Legislature will become an irresponsible cabal, too timid to assume the responsibility of law-givers and with just wisdom enough to devise subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away and the character of the Constitution will be radically changed.

Mr. Speaker, the minority of the committee reports to this House a bill admitting the State of Colorado. The constitution of the State and what was done under it in the formation of a State government have been reported to the Judiciary Committee, and the minority of the committee are satisfied that the conditions of the enabling act have been complied with. We, therefore, report as was done in the Indiana case, a bill which admits the State seeking admission into the Union. I ask that the bill reported by the minority may be read.

The Clerk read as follows:

> An act for the admission of the State of Colorado into the Union.
>
> Whereas, on the 3d day of March, 1875, Congress passed an act to enable the people of Colorado to form a constitution and State government, and offered to admit said State when so formed into the Union upon certain conditions therein specified;
>
> And whereas it appears that the said people have adopted a constitution which, upon due examination, is found to conform to the provisions and comply with the conditions of said act and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the constitution and government which the people of Colorado have formed for themselves be, and the same are hereby, accepted, ratified, and confirmed, and that the said State of Colorado shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

Mr. MCCRARY obtained the floor.

Mr. SPRINGER. The gentleman from Ohio [Mr. HURD] I believe has fifteen minutes of his time remaining.

The SPEAKER *pro tempore*, (Mr. HATCHER.) The time of the gentleman from Ohio had expired.

Mr. BUCKNER. With the consent of my friend from Iowa, [Mr. MCCRARY,] I ask to have read for information an amendment which I desire to offer to the bill reported by the minority of the committee.

The Clerk read as follows:

> Insert at the end of the bill reported by the minority the following:
>
> "And the people of Colorado having elected a Representative to this Congress in pursuance of authority conferred upon them by the act of Congress aforesaid, the election of said Representative is hereby ratified and confirmed and said Representative is hereby admitted to a seat in the House of Representatives."

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed a concurrent resolution in reference to the issuing of tickets of admission to the Capitol during the count of the electoral vote; in which the concurrence of the House was requested.

REPRESENTATIVE FROM COLORADO.

Mr. MCCRARY. The speech of the gentleman from Ohio, [Mr. HURD,] like everything he says upon this floor, is exceedingly able and ingenious; but at the same time I am sure that it will appear to gentlemen who will carefully look at the question that it is altogether fallacious. The legal proposition upon which he bases his argument is not open to dispute. No gentleman will claim that the legislative power which is conferred upon Congress by the Constitution can be delegated to the President or anybody else. But the fallacy of the gentleman's argument is in the misapplication of the legal principle which he enunciates.

On the 3d of March, 1875, Congress passed an act which both Houses and the entire country understood to be an act admitting the State of Colorado into the Union upon certain terms and conditions. In pursuance of that act, and in strict accordance with it, the government of Colorado was formed, the constitution of that State was adopted, proper certificates were transmitted to the seat of Government, the proclamation of the President of the United States was issued, the territorial government was disbanded and a State government was organized and set in motion. After all this it is said that the act of Congress did not admit the State of Colorado into the Union. After all this it is said that the State of Colorado is not a State in the Union and not entitled to representation on this floor.

Now, sir, let us look at the act of Congress. I would have no quibbling with my friend from Ohio upon the legal proposition that he announces. I take issue with him upon the meaning of the act of Congress providing for the admission of Colorado into the Union. I deny that it was an attempt to delegate to the President of the United States the power of admitting that State into the Union. Let us look at the act itself. Every gentleman understands that one of the modes whereby we interpret an act is by reference to the title. Look, then, at the title of this act and see what its purpose is:

> An act to enable the people of Colorado to form a constitution and State government, *and for the admission of the said State into the Union on an equal footing with the original States.*

The purpose of the act itself was the admission of this State into the Union. Look at the very first section of the act, which declared—

> That the inhabitants of the Territory of Colorado included in the boundaries hereinafter designated be, and they are *hereby*, authorized to form for themselves, out of said Territory, a State government, with the name of the State of Colorado; which State, *when formed, shall be admitted into the Union upon an equal footing with the original States* in all respects whatsoever, as hereinafter provided.

Mr. SPRINGER. Now read the proviso.

Mr. MCCRARY. The State when formed in accordance with the provisions of this act shall be admitted into the Union, not by a proclamation of the President, not by future action of Congress, but by virtue of this act itself.

Mr. SPRINGER. Will the honorable gentleman read the proviso in connection with that portion of the act?

Mr. MCCRARY. I have read the entire section.

Mr. SPRINGER. The proviso to that section is on the first page of the report of the majority of the committee.

Mr. MCCRARY. I have read the entire section. There is no proviso in it.

Mr. SPRINGER. The proviso to which I refer is in the fourth section. It provides that the constitution shall be republican in form.

Mr. MCCRARY. It will come to that point by and by.

Mr. SPRINGER. I refer to the provision concerning race, color, &c.

Mr. MCCRARY. What I am now attempting to show is the intent and purpose of Congress in passing the act, and to do it I show its title wherein it declares that it is an act for the admission of the State of Colorado into the Union, and I show that in the first section of the act it is declared that upon the forming of a constitution and government in accordance with this act, the State of Colorado shall be admitted into the Union.

Now I agree, sir, that there are certain things which by this act are to be done, which are to be evidenced by the proclamation of the President of the United States announcing that they have been done. I agree, too, that there are certain provisions in this statute concerning the character of the constitution which should be adopted. It is stated by the bill offered by the minority that all those provisions have been complied with. But, sir, suppose that were not so. Does anybody claim that after the proclamation was issued, after a State government was set in motion, after the territorial government had been destroyed, after a State judiciary has come into existence, after

a State Legislature has been formed, and after the governor and State officers had been elected and installed, that after all these the question could be raised whether the constitution was in accordance with the enabling act? I think not, sir. I think the power is with Congress to remedy any defects of that kind.

Sir, if the Constitution is not republican in form or violates any of the fundamental principles of the enabling act, we have the power to remedy the defect. Why, sir, suppose the oldest State in the Union should to-day amend her constitution by inserting in it a provision not republican in form, does any gentleman say that that would put the State out of the Union? Not at all, sir. It would only bring into exercise the power which, by the Constitution, is conferred on Congress to guarantee to every State a republican form of government. That a State has adopted a provision in her constitution which is in violation of the Federal Constitution does not put it out of the Union, nor does it cease to be a State because it has done such a thing, but the power to remedy it is in the Congress of the United States under the Constitution.

Now, sir, look again at this act. Section 5 contains this provision:

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

Now, Mr. Speaker, how can any gentleman claim, in view of that language, that it was not the purpose of Congress in the passage of this act by the act itself to admit the State of Colorado into the Union?

Mr. SPRINGER. Will the gentleman allow me to ask him a question, although I do not desire to interrupt him? Did not the admission of Colorado into the Union depend upon the affirmative vote of the people in the ratification or rejection of the constitution of the proposed State?

Mr. McCRARY. It depended undoubtedly upon the adoption of the constitution by the vote of the people.

Mr. SPRINGER. If the people then had voted against the constitution the State would not have been a State in the Union by virtue of this act?

Mr. McCRARY. Undoubtedly the President would not have issued his proclamation declaring it a State if the people had not voted in favor of the constitution.

Mr. SPRINGER. Then the question of the decision whether it was a State or not depended upon whether the people of Colorado voted one way or another on this question.

Mr. McCRARY. The admission of Colorado into the Union, Mr. Speaker, like the admission of many other States of the Union, depended upon the happening of certain events or certain facts, and the happening of these facts was to be evidenced by the proclamation of the President of the United States. If the gentleman will excuse me, I will refer to some illustrations on that point in a moment. Now, again reading further from this act and keeping in view all the time the question whether it was the intention of this act to admit the State of Colorado into the Union by its own force, I call the attention of the House to section 6 of the act, which is as follows:

SEC. 6. That until the next general census said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said State officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

Now, sir, there is a provision for the election of a Representative to Congress on a day to be fixed by the constitutional convention without any further legislation on the part of Congress, without waiting for any further legislation. Assuming unquestionably, as the act does, that the State was to be admitted into the Union under this act, it proceeds to provide for the election by the people of the State, as soon as its admission is complete under this act, of a Representative in Congress. In pursuance of that law the people of Colorado have elected their Representative, and he is now here asking to be admitted to his seat.

Now, sir, it is no new thing in the history of this country that a State should be admitted into this Union by an act similar to this. There are several States in the Union to-day which came in under legislation almost identical with the bill admitting the State of Colorado, particularly the State of Nevada, in which the language of the act upon this point is *verbatim* with the language of the act for the admission of Colorado. And there are some others to which I wish to call the attention of the House.

Take the case of the State of Indiana to which the gentleman from Ohio [Mr. HURD] has referred. I hold that it is a strong case in our favor. The act to enable the people of the Territory of Indiana to form a State constitution and government contained this provision:

That the inhabitants of the Territory of Indiana be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States in all respects whatever.

Under the authority thus conferred the people of Indiana proceeded to frame their constitution and to organize a State government, and elected their Representatives and Senators in Congress and appointed their electors in the presidential election of 1816. On the assembling of Congress, after the formation of the State government of Indiana, and before any action of Congress whatever had been taken upon the character of the constitution, or upon admitting the State of Indiana by any formal act, Mr. Hendricks appeared as the Representative and was admitted to his seat by the House of Representatives. He came here under precisely the same circumstances as those under which the gentleman from Colorado comes to-day, and he was admitted. It is true that in the Senate some question was made, and upon deliberation it was thought to be proper, merely as a measure of caution, to pass a resolution declaring Indiana to be one of the States of the Union. But in the House of Representatives no such resolution was adopted, and the Representative was admitted without question. In that case no proclamation announcing the admission of Indiana into the Union had been provided for, and therefore the present case is in that respect a better one for the claimant of a seat than the Indiana case was.

The case of Missouri is a very strong precedent in favor of the position which I take here to-day. That State was admitted, after a long debate, by a bill which provided that it should come into the Union upon an equality with all the other States upon condition that the Legislature of the State of Missouri should do certain things. Upon those things being done it was provided as follows:

Whereupon, and without any further proceedings on the part of Congress, the admission of said State into this Union shall be considered as complete.

The Legislature of the State of Missouri was to enact certain laws, was to enter into certain stipulations with the National Government. When she had done so the fact was to be certified to the President of the United States, and upon the fact being certified the President was to issue his proclamation, and thereupon, without any further proceedings on the part of Congress, Missouri was to be considered a State in the Union. This condition was subsequently complied with; the President's proclamation was issued August 10, 1821, and from that day to this no man has ever raised the question as to whether Missouri was a State in the Union.

And I say here without fear of contradiction that every principle involved in the bill admitting Colorado was involved in the legislation which admitted Missouri. If it was a delegation of power to the President of the United States to admit Colorado, it was a delegation of power to him to admit Missouri. It matters not what the character of the condition may have been in the one case or in the other. If an event or a series of events was to take place, and the fact that it had taken place was to be attested by the proclamation of the President of the United States, and if this applies in both cases, then Missouri is a precedent for Colorado.

Then take the case of Michigan. On the 15th of June, 1836, there was passed an act to establish the northern boundary of Ohio, and to provide for the admission of Michigan into the Union upon the terms therein expressed, the constitution which the people of Michigan had previously framed for themselves was ratified, and it was provided that when the boundaries set forth in the act should receive the assent of a convention of delegates of said State she should be admitted into the Union on an equal footing with the other States without any further action on the part of Congress."

When the fact was certified to President Jackson that the people of Michigan had complied with these conditions, it happened that Congress was in session, and he sent his message to Congress saying that if Congress had not been in session he would have recognized the evidence that came before him and considered the State of Michigan as regularly admitted into the Union; but as Congress was in session he thought proper to lay the matter before Congress.

The State of Nebraska was admitted into the Union by an act which contained several fundamental provisions which were to be complied with by that State before it was to be considered as admitted into the Union. And as I have already said, the State of Nevada came into the Union under an act precisely similar to the Colorado act. And so I might say with regard to the State of West Virginia, which came into the Union in the same way.

I will not detain the House by reading from these several organic acts. I will say that from the beginning it has been a common practice to admit States into the Union upon conditions, with provisos that before they should be considered as admitted or before the acts admitting them should be considered as having taken effect, certain things must transpire and certain acts must be done, and those things should be attested by the proclamation of the President of the United States.

Now what will be the consequence of declaring that Colorado is not now a State in this Union? What would be the condition of the people of Colorado if Congress should now declare that Colorado is not a State of this Union? By our own law we declared that if the people of that Territory should do certain things it should be a State in the Union without any further action whatever on the part of Congress. In pursuance of our own legislation they have disbanded their territorial government, they have formed their State government, they have organized their judiciary, and they are living to-day under a State government, with a governor, a Legislature, and all the departments of a State government.

A judge, appointed by the President of the United States to hold the district and circuit court within the State of Colorado, is holding those courts in that State to-day. If the people there have no State

government, they have no government at all. Every sheriff who attempts to serve process is guilty of trespass or assault; every sheriff who attempts to execute a prisoner is guilty of murder; every authority in that State is set aside and there is no government there whatever, if Colorado is not a State.

Mr. SPRINGER. I would like to ask the gentleman a question. Is not the government in Colorado at this time a *de facto* government, and to all intents and purposes as good with regard to the people of Colorado as a *de jure* government?

Mr. McCRARY. Mr. Speaker, if there is no State there, if there is no State organization, if there is no State constitution, if there is no State Legislature, there can be no State laws; the laws and the officers of the law have not even the color of authority. In order to be even a *de facto* government it must be a government that is not a usurpation, a government that is based upon a constitution and laws. The territorial government is clearly abrogated; if the State government is set in motion without authority of law, it is null and void. Besides, it is a dangerous thing to leave the people of any part of our Union without a government *de jure*.

Sir, it would be bad faith toward the people of Colorado to refuse now to admit their Representative. It would be treating those people as we have never treated the people of any State or Territory in this Union. I cannot suppose that this House will refuse to admit the Representative from that State.

Mr. HILL. I wish to ask the gentleman whether in all previous cases of this kind, except Nevada, it is not true in point of fact that the State constitution was laid before Congress and pronounced by Congress republican in form before the proclamation of the President was issued?

Mr. McCRARY. I am very glad the gentleman from Georgia [Mr. HILL] has called my attention to that point, for I intended to mention it. I think it is not true that in all cases the constitution was submitted to Congress. I am sure that in at least a number of the earlier cases where States were admitted into the Union the constitution was never submitted to Congress at all. For instance, the constitution of Kentucky was never submitted to Congress. I repeat what I said a moment ago, that the remedy for a defect in a State constitution is not in keeping the State out of the Union nor attempting to put it out after it gets in; but the power to remedy a defect of that sort is given to Congress under the constitutional provision that Congress "shall guarantee to every State a republican form of government." I now yield fifteen minutes to the gentleman from Maine, [Mr. HALE.]

Mr. HALE. Mr. Speaker, I have read with great care the very elaborate and able report of the minority in this case, drawn by the gentleman from Ohio [Mr. HURD] who spoke this morning. I have also listened to his speech, which was as full of ingenuity and of strong logical thought upon the matters which make the basis of his report as a speech could well be; thought upon the nature of the conditions on which an act of Congress may be made to take effect. But neither in the report nor the speech do I find anything which to my mind makes strongly against this broad proposition, that Congress in this case has passed an act which by its title and express terms authorizes the people of Colorado to do certain things in setting up a State government and provides for the admission of that State when the government is so set up. So far as the action of Congress goes, it has by the enabling act done everything that Congress needs to do to authorize the setting up of this State; and as if to exclude any doubt, it declares in terms that no further action shall be needed to be taken by Congress. Now we have here, if the people of Colorado follow out the directions given to them, a State that is to present herself here by her elected member.

But it is said that Congress should now intervene and by an act such as the gentleman from Ohio has appended to his report declare that the State has conformed to the provisions of the enabling act. But I find, as has just been explained by the gentleman from Iowa, [Mr. McCRARY,] that in the early history of the Government, more than once, after the people of a State, formerly a Territory, had enacted a constitution in accordance with the Constitution of the United States, had elected State officers, had set up a State government, and had sent members to the House of Representatives and Senators to the other branch, they were admitted at once, no question being raised such as is raised here. I for one am willing to stand upon that proposition and those precedents. That this view of the case and these precedents have force, was shown two months ago, when this matter came up at the other end of the Capitol; for on turning to the first day's proceedings in the Senate of the United States, as given in the RECORD of the 5th of last December, I find that—

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

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

The President *pro tempore* then announced that "the Senators-elect, who are present, will please advance to the desk and take the constitutional oath;" whereupon Mr. CHAFFEE and Mr. TELLER, together with a gentleman who had been lately elected to fill out an unexpired term from the State of Maine, advanced and took the oath of office as Senators.

These proceedings were on the first day of the session; and I find that a few minutes before, upon the roll-call, there were found to be present in the Senate such good constitutional lawyers, such sticklers for the observance of forms and laws and constitutions as the Senator from Vermont, [Mr. EDMUNDS,] both Senators from New York, [Mr. CONKLING and Mr. KERNAN,] the Senator from New Jersey, [Mr. FRELINGHUYSEN,] the Senator from Ohio, [Mr. THURMAN,] and the Senator from Delaware, [Mr. BAYARD;] and I do not find that any voice was raised in the Senate of the United States against swearing in either of the two Senators who had been, as declared by the President of the Senate, elected by the "State of Colorado." So much upon the question of the law and the precedents.

There is another consideration of a practical nature, which has before been touched upon, the good faith that we owe to these people. Colorado has been struggling for admission for twelve years, seeking to become a State in the Union; has once failed, though a bill for that purpose passed both Houses; has come here again; has received the sanction of Congress; has complied with every detail of legal provision required from her people by the enabling act passed by Congress. It is not claimed by those advocating the minority report that in any regard Colorado has failed; and so far as the "taking effect" is concerned, the President by his proclamation has declared what everybody admits, that she has complied. A State government has been set up and all the paraphernalia of organization has been put on in the once Territory and now State of Colorado. The United States Government, aside from this House, has recognized it in every branch, the Senate by admitting its Senators and the law department of the Government by sending United States judges to act as judges in the State or new district created of Colorado. To-day, under an act passed since the enabling act by both Houses without objection, as I believe, there is a United States court now in session in the capital of Colorado exercising all the powers there as a State of the Union that any other United State court exercises in any State of the Union, no matter how long back the date of its admission into the Union. And both parties, in a political sense, are committed to the admission of the State without further question. It is bad enough——

Mr. SOUTHARD. I should like to ask the gentleman from Maine a question, and that is, whether that does not provide these courts shall be established when this State is admitted into the Union? That is the very thing to be determined.

Mr. HALE. I did not believe there was any doubt until to-day on the presentation of these reports as to the State of Colorado being recognized. It is recognized by the Government under the act. What I was saying when interrupted was this, that we are all committed to the proposition that Colorado to-day is full-clad in the garments of a State. It is not, as shown by the discussion and report, in any degree a party question. Gentlemen will remember when the subject is recalled how eagerly both parties six months ago were claiming each that it had carried the State of Colorado. There was no question then of the territorial organization remaining or that the State was not completely within the Union, with a right to elect a governor and Legislature and member of Congress to sit upon this floor. I remember the picturesque illustrations in the newspapers, with columns set up by each side and Colorado in each as a State in the Union. Yet, notwithstanding that, notwithstanding the action of the Senate, notwithstanding the action of the Executive, notwithstanding the action of the legal department of the Government, for two months her member has been shut from our doors. The important business of a new Commonwealth has drifted without direction on this floor. If a member or citizen of that State is required to call the attention of Congress to its needs, he has been forced to do it through some other member, making him his mouth-piece.

I appeal to gentlemen whether it is a good thing for us here in this House alone, either because of fine argumentation on a narrow point of law, or any fancied advantage which may be gained in any political way to longer hold out and keep the Representative of this State from his place on this floor where the rest of us sit. The State is to-day populatively entitled to be admitted. It is to-day, from the magnitude of its interests and industries, entitled to a place on this floor, all the forms having been complied with. It cast in the last election a vote as large as five of the States. It cast a larger vote than two of the older States, so it is not a rotten-borough system which has brought it here.

In the early stages of the controversy arising in reference to the admission of that Territory I was not in favor of its admission to this floor, for the reason that I did not believe that it had come up to the standard in growth we should require. But all that is past and gone. It has good fundamental reasons for admission, if we were considering the original question of an enabling act why it should be admitted as a sister State. It has gone on as other States have gone, and it presents itself here having conformed with everything required by Congress, precisely as the last State admitted into the Union, which was admitted with little or no question. Congress should stand ready to admit its member and not keep him out further.

Mr. McCRARY. I yield the balance of my time to the gentleman from Massachusetts, [Mr. BANKS.]

Mr. BANKS. Mr. Speaker, the chairman of the Committee on the Judiciary [Mr. KNOTT] has reported a resolution to admit the member from Colorado to his seat as a member of the House. Having first called the attention of the House to the claim of the member-elect for the State of Colorado, I may perhaps be justified in expressing, very briefly, my views of the merits of this resolution. I listened

attentively to the elaborate and critical and very able argument of the gentleman from Ohio, [Mr. HURD.] It surprised me that he could put so much into it that does not belong to the question, and leave so much out which, in my view, does belong to it. From my point of view it is a very simple proposition, which admits of no doubt whatever. I will state it as briefly as it is in my power to do.

The Constitution declares (article 2, section 3) that "New States may be admitted by the Congress into this Union." It is virtually an assent and consent that Congress is authorized to give to the admission of new States, and the word "consent" is used in the same paragraph when the formation of new States carved out of territory belonging to existing States is spoken of, in connection with their admission to the Union. It is in fact a declaration that Congress may give its consent to the formation of new States, and admit them to the Union under such conditions as it may think just and proper.

New States, Mr. Speaker, cannot be formed without the consent of the people belonging to the territory to be included in the State. So here are two propositions of fact: One is that Congress may consent to the admission of new States formed out of new territory or out of the territory of pre-existing States, and the other is that the people of the territory proposed to be admitted as a State either desire or consent to the admission. That is substantially the question we now have before us, nothing but that, and upon that ultimately the House will pass its judgment. I know that every Congress that admits new States admits them upon certain specified conditions. One is that the government of the State shall be republican in form; that it shall make no distinction in civil or political rights on account of race or color, and not be repugnant to the Constitution or the principles of the Declaration of Independence. Other conditions were embraced in the act of the Forty-third Congress for the organization of the State of Colorado. It was to secure by irrevocable ordinance perfect toleration in religious opinions. No person should be disturbed in person or property on account of the mode of religious worship. The people of the State were to disclaim forever all right and title to unappropriated lands within its limits and agree and declare that they should belong to the United States; that equality of taxation of lands should be secured to resident and non-resident owners, and that no tax should be imposed on lands or property of the United States. These are all the conditions specified, which are inseparably connected with the territory out of which the new State is created. But, Mr. Speaker, every member of the House must have noticed that these conditions are irrevocable and perpetual. They are enduring, and to endure forever; and the conditions upon which Colorado is admitted into this Union by the act of 1875, unless modified by the consent of parties, will endure as long as the State of Colorado endures, as long, we hope, as the continent itself shall endure. How unjust then it is to assume that this or some other Congress must enact a statute declaring that these irrevocable and perpetual conditions imposed upon Colorado have been complied with and that each and every conditional obligation has been literally and exactly performed before it can be recognized as a State or admitted to representation in this House.

We have a far more enduring security than any such statute can confer. It exists in the fact that the rights of the people of the State of Colorado are held subject to the exact and perpetual performance of the conditions specified in the act authorizing them to form a State government. No statute can strengthen this enduring title of the United States. Colorado herself is incapable of giving us a more complete acknowledgment of our rights than is embraced in the enabling act by which and through which she became a State, because the security it claims it has taken for all time, a statute recognition of the fact that she has performed every condition imposed upon her people by Congress, would rather weaken than strengthen it, because it might hereafter be assumed by her successors that all the claims and demands of the United States had been satisfied and acknowledged by its government and the State relieved thereby from any further duty on the part of its people or their successors. This is, in my judgment, the relation of the State to the Union of which it has become a member, whether or not a statute of satisfaction and recognition by Congress be passed now or passed hereafter. It will be an open question hereafter to be submitted to the action of Congress whenever any, even the slightest, departure from these fundamental conditions is made by the State, what remedy exists and in what manner it is to be administered by the Government of the United States. I do not assume that there is any impropriety in such an act as that now proposed as an amendment to the resolution of the committee for the admission of the member-elect from Colorado, but that it should not be allowed to deprive the State of its right of representation or impair the just legal effect of the President's proclamation declaring Colorado one of the States of the Union.

Now, sir, the gentleman from Ohio has stated what may sometimes be admitted to be a correct principle of law and what may not be admitted to be a correct principle of law, that a Legislature cannot under any circumstances delegate its authority. I will not dispute that question with him or with the House, but I call the attention of the House to the particular act which Congress has performed in regard to the State of Colorado. What act has it required of its people that could be completely and finally executed and performed in the year 1875 or in the year 1876? What condition has it required of them? Only one, just one—no more and no less—and that was that the people of the Territory of Colorado should form a State constitution subject to the conditions of the enabling act, and at a public election called in pursuance of the provisions of law give their assent to its admission to the Union of the States upon the conditions thus specified. That is all. And when this election was held and the return made to the President required by the act of 1875, then in point of fact, so far as its people were concerned, the State of Colorado was admitted to the Union. When the election was held, when the people had declared that they would become a member of the Union according to the conditions prescribed, and had reported their action to the President, as prescribed by the act authorizing them to form a constitution, and had organized a State government, nothing more remained for them to do.

Congress delegated this power and authorized this political action and organization by the act of 1875 to the people of Colorado. Will the honorable gentleman from Ohio or any other member of the House say that this is a delegation of legislative authority? No, sir. There is no legislation in the act of the people of Colorado assenting to the proposition to become, upon the terms prescribed, a member of the Union of States. That is not legislation. An election is not a legislative act. It is an act of administration, not of legislation. And that is the only act we have here on the part of the people of the State. Congress has not thus far despoiled itself of its legislative authority or power. In what manner has it, then, abdicated its legislative duty?

There is one other proposition which can be considered by any possibility as interfering with the functions of the two Houses of Congress, only one other—and that is the duty imposed by the act of 1875 upon the President of the United States. That act declares that, by an ordinance of the constitutional convention, the constitution formed by the people of the Territory of Colorado should be submitted to the people of the said Territory in the month of July, 1876, for ratification or rejection, and the returns of said election should be made to the acting governor of the Territory, who with the chief-justice and United States attorney of said Territory should canvass the same, and if a majority of legal votes should be cast for said constitution in said proposed State, the said acting governor should certify the same to the President of the United States, with a copy of said constitution, "whereupon, it should be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress."

Now, what was done by Congress in this act? It authorized the people of the Territory of Colorado to say whether they would or would not become a State of the Union. It authorized the acting governor of the Territory, who is instructed with the chief-justice and United States attorney of the Territory to canvass the votes, to make a return of the fact whether the people of the Territory have agreed to it or not to the President of the United States, and upon that fact alone the President is to issue his proclamation—not that the conditions have been complied with, for the President cannot perform that duty in pursuance of any power that is given to him by the terms of the act, but being notified that the people of the Territory of Colorado have agreed to become a member of the Union according to the conditions prescribed, he makes, as he is instructed and required to do, a proclamation of that fact, and thus the State of Colorado is a State of the Union upon an equal footing with the original States. That is all there is of it.

Is there any delegation of legislative power to the President by Congress in the act? Is it a legislative act when the President receives the certificate of the election, issues his proclamation thereupon that Colorado is a State of the Union? Who says that it is legislation? No, sir, it is an executive act performed in obedience to the explicit instructions of the legislative department of the Government; an act necessary to the execution of the law for the admission of Colorado to the Union, in pursuance of the action of Congress and the people of the Territory. It has not the spirit nor the semblance of legislative power.

In the action of the Government for the admission of States to the Union in the first half of this century, the case which most nearly resembles this is that of Indiana, which was admitted to the Union in 1817. As I understand the history of that State, the ground upon which the admission of Indiana to the Union was disputed was that there had been no proclamation either of Congress or of the President of the United States that she was a State of the Union. That was the only alleged defect. Everything else was regular and complete. But the Senate did not so regard it; the House of Representatives did not regard even the proclamation as indispensable to her admission to the Union. Indiana was a State. She had virtually, so far as she could, complied with the conditions of her admission, and therefore they not only received the Senators elected from that State, but they received the electoral vote of that State. The only fact wanting, so far as I remember the case of Indiana, was that the President had not issued a proclamation declaring the State into the Union. There is no such lapse here; everything is complete; everything necessary on the part of Congress has been completed. The people of the State have had a proper election authorized by Congress, have declared by a vote of the people that they desire to become a State of the Union. The governor and the canvassing officers of the new State, in obedience to the law of Congress, made known

to the President of the United States that an election has been held, and that the people had decided in favor of the adoption of the constitution and of her admission into the Union. All the conditions prescribed by the law have been complied with, and the President, in obedience to the law of Congress, has issued his proclamation that Colorado is now a State of the Union.

Now I want to ask the gentleman from Ohio if there is in this action of the people, or the executive department of the Government, any possible derogation of the legislative authority or power? There is none whatever. That, it appears to me, is substantially the spirit and substance, the bone and marrow of this question. These fundamental conditions which were embodied in the act authorizing Colorado to form a State government are perpetual conditions; that is, it is wholly immaterial whether or not Congress shall now decide that the State has or has not complied with them. The conditions are as enduring as the State itself, and it can never avoid, evade, or escape them. The truth is that in regard to this matter there was no delegation of authority—none whatever. The President has performed the simplest executive ministerial act possible for him to perform. It was an act necessary to make known to the country that Colorado had complied with the law of Congress as far as necessary, and that she had consented to come into the Union as one of the States of the Union.

Now there are innumerable instances of this kind of legislation on record and of executive acts of this description. Let us take for example the case of a treaty made by the treaty-making power with a foreign government. It cannot go into effect until certain legislative acts have been passed by the appropriate legislative power. Those acts are legislative in their character but they are indispensable for the execution of the treaty, they are therefore executive not legislative acts, so far as the treaty powers are concerned. The action of the Legislature in performing its duty is merely that of executing the law or treaty, the treaty having been agreed upon between the nations. The negotiation of the treaty is no part of the duty of the Legislature, but the execution of the treaty by legislation is an indispensable duty. In the several States it is a common occurrence, that Legislatures authorize for instance a county site to be established, but do not indicate the spot where it shall be established; that matter is left to the people of the county, they must put into execution the law by selecting the site. So in this instance, the President was required to issue his proclamation so as to inform the people that the State of Colorado had agreed to enter the Union, and there is no power given to Congress to go behind that proclamation.

Mr. SOUTHARD addressed the House, and after proceeding some time was interrupted by

Mr. HOLMAN, who said: I rise to a question of order, not with any view of interfering with the gentleman from Ohio. The point of order I make is that only three hours were devoted to the discussion of this question, and that that time has expired. The reading of the report occupied one hour yesterday, and that was to be included in the time allowed for debate.

Mr. SOUTHARD. The time allowed for debate has not elapsed.

Mr. HOLMAN. I have no objection to the gentleman from Ohio having his time, but the agreement was that three hours only should be devoted to the discussion of this bill, and I make the point of order that the three hours have expired including the time occupied by the reading of the report yesterday.

The SPEAKER. The gentleman from Indiana makes the point of order that the portion of the time allowed for debate was consumed yesterday by the reading of the report. The Chair will be glad if the House will come to some understanding as to the length to which the debate is to be extended.

Mr. SOUTHARD. I understand that the reading of the report took only half an hour.

The SPEAKER. The reading of the report occupied nearly an hour and the question now is, what time shall be fixed for debate?

Mr. KNOTT. The question is whether the reading of the report shall be considered as a part of the debate.

Mr. HOLMAN. The gentleman from Kentucky [Mr. KNOTT] had a right either to submit a speech or a report, and he submitted a report.

The SPEAKER. The gentleman from Kentucky rose and was recognized, and yielded to the gentleman from Ohio, [Mr. HURD.] The report was then read, and it seems to the Chair that the reading of the report was a part of the debate.

Mr. KNOTT. If that is the rule of the House, I have nothing to say against its enforcement.

The SPEAKER. The gentleman rose to debate this question and demanded the reading of the report, and it seems to the Chair that that reading was a part of the debate.

Mr. KNOTT. The Chair will remember that I rose and called up the question and called for the reading of the report; and after the reading of the report I yielded to the gentleman from Ohio, [Mr. HURD.]

The SPEAKER. Does the gentleman say that he yielded to the gentleman from Ohio after the reading of the report?

Mr. SOUTHARD. That is certainly the fact.

The SPEAKER. The gentleman from Ohio [Mr. SOUTHARD] will proceed. The Chair does not think that he should hold to a practice which would cut off debate upon this question; it would be better to err in favor of debate than otherwise.

Mr. HOLMAN. Then we can only endeavor to be a little more cautious in future in agreeing to allowing time for debate. Of course I supposed that only three hours would be consumed before the previous question was called; and the gentleman from Kentucky [Mr. KNOTT] used up an hour of the time when having his report read.

Mr. SOUTHARD resumed, and concluded his remarks, as follows:

Mr. SOUTHARD. Mr. Speaker, the question before us relates to the right of Mr. Belford to a seat on this floor as a Representative in Congress from the State of Colorado. There is no objection made to the manner of conducting or certifying his election, and the only inquiry is whether Colorado has been duly admitted as a State into the Union.

Under the articles of confederation "no other colony" than Canada could be admitted into the Union without the consent of nine States. But a vast extent of unoccupied territory then existed which did not properly fall under the designation of "colony," about which no provision had been made, and which was eventually to become the seat of great wealth and population. At the close of the war for independence, this territory was claimed by the States, but at length its cession by the States to the Union was agreed upon, and it thus became the common property of the people of all the States. The cession of a large part of this territory was made before the adoption of the Constitution, and the convention which framed that instrument foresaw the necessity of providing some method by which new and independent States should be organized and admitted into the Union. The provision adopted is found in the fourth article, third section, of the Constitution, as follows:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or part of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

Whether this provision is the wisest and best that could have been devised is no part of our inquiry, although it is difficult to see where else so important a prerogative could have been more safely lodged. But however this may be, it is that which has been transmitted to us, and we are concerned alone in its proper administration.

It will be observed that there are two distinct branches of this provision. The first relates to the formation of new States from territory wholly without the limits of any State, and the second to the formation or erection of new States from territory included within the limits of one or more existing States. In the first, Congress alone is to be consulted, and in the second the consent of the States concerned is required as well as that of Congress.

The manner of the exercise of this power of Congress is through a legislative act. And while there is no particular formula prescribed, it is clear that the act must be in conformity with those principles which are recognized by legal and judicial interpretation to be necessary to a valid legislative act.

If the act entitled "An act to enable the people of Colorado to form a constitution and State government and for the admission of the said State into the Union on an equal footing with the original States," approved March 3, 1875, is such an act, then Colorado is a State in this Union and Mr. Belford is entitled to his seat. If, however, the act is not of this character, but requires the further action of Congress to make it complete, then Colorado is not yet a State in the Union and Mr. Belford cannot be entitled to his seat until such time as Congress has taken this further and final action.

But I submit that the act is not a valid legislative act, for the reason that it undertakes to delegate legislative authority, an exercise of power clearly prohibited by the Constitution. It declares that several very important conditions shall be complied with in the formation of the constitution and State government precedent to its right to admission into the Union, and delegates to the President of the United States the right to judge whether these conditions have been fulfilled.

The fourth section of the act provides among other things that the constitution shall be republican in form; that it shall make no distinction in civil or political rights on account of race or color; that it shall not be repugnant to the Constitution of the United States or to the principles of the Declaration of Independence.

The same section further declares that the constitutional convention shall provide by ordinance, irrevocable without the consent of the United States and the people of said State, that perfect toleration of religious sentiment shall be secured; that the people of said Territory forever disclaim all right and title to the unappropriated public lands lying within said Territory; that the same shall be and remain at the sole and entire disposition of the United States; that the lands of non-residents of said State shall never be taxed higher than the lands of the residents thereof; and that no taxes shall be imposed by the State on lands or property therein now owned or hereafter to be acquired by the United States.

All these conditions and others not necessary to enumerate, relating to the rights of property and to the personal rights and liberties of the people, are required by the terms of the enabling act to be embodied into the constitution and ordinances as express conditions, upon which alone the State shall be entitled to admission into the Union. The judgment necessary to determine these questions belongs exclusively to Congress.

Judge Cooley, in his able treatise on Constitutional Limitations, page 30, says:

> There are always in these cases questions of policy as well as of constitutional

law to be determined by the Congress before admission becomes a matter of right—whether the constitution formed is republican; whether the proper State boundaries have been fixed upon; whether the population is sufficient; whether the proper qualifications for the exercise of the elective franchise have been agreed to; whether any inveterate evil exists in the Territory which is now subject to control, but which might be perpetuated under a State government—these and the like questions in which the whole country is interested cannot be finally solved by the people of the Territory for themselves, but the final decision must rest with Congress, and the judgment must be favorable before admission can be claimed or expected.

The Constitution of the United States, article 4, section 4, requires that—

The United States shall guarantee to every State in this Union a republican form of government.

There is a necessity, therefore, that Congress shall demand as a prerequisite to the admission of a new State that it shall have a government republican in form. Mr. Madison, in the Federalist, has well said:

But the authority extends no further than a guarantee of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed.

And the reasons for this provision he sums up in the following apt language:

In a confederacy founded on republican principles and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other, and the greater right to insist that the forms of government under which the compact was entered into should be *substantially* maintained. * * * Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort than those of a kindred nature, "as the confederate republic of Germany," says Montesquieu, "consists of free cities and petty states, subject to different princes, experience shows us that it is more imperfect than that of Holland or Switzerland." "Greece was undone," he adds, "as soon as the king of Macedon obtained a seat among the Amphictyons." In the latter case, no doubt, the disproportionate force as well as the monarchical form of the new confederate had its share of influence on the events.

What a manifest abuse of authority it would be in Congress to admit a State to membership in the Federal Union with a constitution not republican in form, which it would be required under the Constition to proceed to change immediately thereafter! And if the Senators and Representatives are first to be admitted, their voice and influence would be added to the power that might oppose the needful change. It can scarcely be expected that Congress would do so unreasonable a thing. But this is only one of the many conditions expressed in the enabling act, all of which are highly important. If Congress cannot now pass upon the constitution of Colorado, as it has been formed and ratified, but must be bound by the result whether it accords or not with the terms and conditions prescribed in the enabling act, then it is perfectly clear that it has divested itself of the authority conferred upon it by the Constitution, and rendered itself powerless to enforce a compliance with those conditions which it has declared to be necessary. But this is precisely what this act undertakes to do.

The fifth section of the enabling act provides—

That in case the constitution and State government shall be formed for the people of Colorado *in compliance with the provisions of this act*, said convention forming the same shall provide by ordinance for submitting said constitution to the people of said State.

It further provides that in case the people, by a majority vote, ratify the said constitution—

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

If it is important to prescribe these conditions, it is certainly of equal importance to have them complied with, and the authority, judgment, and discretion requisite to determine these questions is a part of the duty devolved upon Congress by the Constitution which it cannot confer upon any other person or body.

In Cooley's Constitutional Limitations, page 116, we find this doctrine laid down:

One of the settled maxims in constitutional law is, that the power conferred upon the Legislature to make laws cannotbe delegatedby that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confer this sovereign trust.

In Railroad Company *vs.* Commissioners of Clinton County, 1 Ohio State, 87, Justice Ranney said:

That the General Assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body, is a proposition too clear for argument.

In Rice *vs.* Foster, 4 Harr., 489, the court say:

It is a plain proposition of law that a power or authority vested in one or more persons to act for others, involving in its exercise judgment and discretion, is a trust and confidence reposed in the party, which cannot be transferred or delegated.

From this doctrine there has been no dissent in any of the courts, State or Federal, so far as I have been able to examine, and whatever diversity of judicial decision there has been has arisen from the application of the principle to the particular cases, and not from any disagreement about the principle itself. The decisions affirming this position are so universal that it is not necessary that further references be made to them. Whenever, therefore, the Legislature attempts to delegate the authority reposed in it, it transcends its powers and its action becomes void. What, then, is and what is not a delegation of such authority? This I can best illustrate, perhaps, by reference to some authorities.

It is not denied that conditional statutes, and those made to take effect upon the happening of some future event, may be enacted. But these do not infringe upon this maxim. Nor do those statutes creating corporations, which leave it to the corporators to say whether they will accept of the franchise. Judge Cooley says:

In these cases the legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfected legislation, notwithstanding its actually going into operation as law may depend upon its subsequent acceptance.

It is claimed that this enabling act is what may be termed a conditional act—one made to take effect upon the happening of an event—the event being the compliance with the conditions therein named.

The answer to this is, that the event is not such a one as the act can be made to depend upon. In this view I call attention to the references which I shall now make.

In *Ex parte* Wall, 48 California, 279, the court say:

A statute to take effect upon a subsequent event, when it comes from the hands of the Legislature, must be a law *in presenti* to take effect *in futuro*. On the question of the expediency of the law, the Legislature must exercise its own judgment definitively and finally. If it can be made to take effect on the occurrence of an event, the Legislature must declare the law expedient if the event shall happen, but inexpedient if it shall not happen. They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity; they must exercise that power themselves, and thus perform the duty imposed upon them by the Constitution.

The law in question was one authorizing a license for the sale of intoxicating liquors in any township of the State, in the event that the people of the township, by a majority vote, should so decide; and the court held the law void on the ground that the expediency of the law must rest with the Legislature and not with the people.

In the case of Barto *vs.* Himrod, 8 New York, (4 Selden,) 490, the court say:

It is not denied that a valid statute may be passed, to take effect upon the happening of some future event, certain or uncertain. But such a statute when it comes from the hands of the Legislature must be law *in presenti* to take effect *in futuro*.

The event here referred to was a majority vote of the people of the State in favor of a free-school act. And the court further say:

The wisdom or expediency of the free-school act, abstractly considered, did not depend on the vote of the people. If it was unwise or inexpedient before that vote was taken, it was equally so afterward. The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the constitution makes it the duty of the Legislature itself to decide. The Legislature has no power to make a statute dependent on such a contingency, because it would be confiding to others that legislative discretion which they are bound to exercise themselves, and which they cannot commit to any other man or men to be exercised.

Justice Ranney, in the case before referred to, (1 O. St., 87,) while asserting so unequivocally that legislative authority could not be delegated, still maintained that it was within the constitutional powers of the Legislature to enact a law contingent upon the happening of an event or subject to the intervening assent of other persons, and as a test of what was permissible, laid down this rule:

The true distinction, therefore, is between the delegation of power to make law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

In Santo *vs.* Iowa, 2 Iowa, 203, it is said:

* * * There is no doubt of the authority of the Legislature to pass an act to take effect upon a contingency. But what is a contingency in this sense and connection? It is some event independent of the will of the law-making power as exercised in making the law, or some event over which the Legislature has not control. * * * The will of the law-maker is not a contingency in relation to himself. It may be made in relation to another and external power, but to call it so in relation to himself is an abuse of language. Now, if the people are to say whether or not an act shall become a law, they become or are put in the place of the law-maker. And here is the constitutional objection. Their will is not a *contingency* upon which certain things are or are not to be done *under the law*, but it becomes the determining power *whether such be the law* or not. This makes them the legislative authority, which, by the constitution, is vested in the senate and house of representatives, and not the people.

The contingency referred to was the approval of the people of the State, by vote, of an act for the suppression of intemperance.

And in Bradley *vs.* Baxter (15 Barb., 123) we find the like doctrine:

It is insisted, and was strenuously urged upon the argument, that the Legislature has power to enact conditional laws, laws to take effect upon the happening of some future and contingent event. Nobody will contest this proposition. * * * But in none of these cases was the act of the Legislature made to take effect upon any decision of this foreign or extraneous power upon the expediency of the act itself. These laws were to take effect upon the happening of certain events which would, in the opinion of the legislative or law-making power, render such a law expedient and proper for such a state of things. The circumstances, to meet which such laws were enacted, were contingent and uncertain; but the laws themselves expressed the deliberate will of the law-making power, provided the circumstances should happen to which the laws were intended to apply.

The court say, in *Ex parte* Wall, 48 California Reports, 314:

It is true a statute may be conditional; its taking effect may sometimes be made to depend upon a subsequent event. The last proposition is illustrated by The Brig

Aurora *vs.* The United States, 7 Cranch, 382, in which the validity of a provision of the "non-intercourse law" was upheld. The provision was to the effect that in case Great Britain or France should revoke or modify its edicts previously issued, so that they should cease to violate the neutral commerce of the United States, the trade suspended by the law should be renewed. It will be observed that in this instance the members of Congress exercised their own judgment, and simply determined that trade should be suspended while the orders in council or edict should continue.

From the authorities the following formulas are adduced: (1.) That legislative power or authority cannot be delegated; (2) that while conditional statutes may be enacted, so as to go into effect upon the happening of some future event, it is not *every* event upon which the statute may be made to depend; (3) that the event or condition must be such as is independent of the law-making power, outside of and beyond the legislative will and discretion; (4) that it must operate upon the execution or suspension of the law, and not upon its creation.

Applying these tests to the enabling act under consideration, we find that it falls within the prohibitions laid down. The elements of the event are the elements of the very law that Congress is empowered to pass, and operate upon its creation, and not upon its execution.

To ascertain the qualifications necessary for admission is the very duty which Congress is called upon to perform. The act in question cannot be held to be one which is complete and perfect in itself as it left the hands of the Legislature and only requiring the happening of an event to put it into operation; nor one in which the Legislature has rightfully declared the law expedient if the event shall happen, and inexpedient if it shall not happen. To make such a statute valid the authorities all agree that the event must be one *independent of the legislative power*, otherwise the condition fails and the law is void. In the present case the event depends directly upon the legislative power. The one cannot be separated from the other. The determination of the very existence of the event itself brings into operation those legislative faculties and functions which are involved in ascertaining the qualifications of the new State for admission.

The thing to be done is to admit the State; to admit the State, in the solemn judgment of Congress, certain conditions should be first complied with as a necessary qualification; to determine whether these conditions have been complied with, or, what is the same thing, whether the event has happened, is nothing more nor less than to determine whether the new State is entitled to admission—a conclusion which rests exclusively with Congress.

The act, therefore, does not admit the State, and cannot do more than project a plan for its admission. Thus far it is very appropriate, but no farther.

The projection of a plan may be very well in the first instance, but the important thing to know, and decide finally, is whether the plan has been adopted.

In Permoli *vs.* First Municipality, 3 Howard, 609, the court say in relation to the enabling act, and the act of admission of the State of Louisiana:

> That act of February 20, 1811, authorized the people of the Territory of Orleans to form a constitution and State government. By section 3 certain restrictions were imposed in the form of instructions to the convention that might form the constitution; such as that it should be republican in form; consistent with the Constitution of the United States; that it should contain the fundamental principles of civil and religious liberty; that it should secure the right of trial by jury in criminal cases, and the writ of *habeas corpus;* that the laws of the State should be published and legislative and judicial proceedings be written and recorded in the language of the Constitution of the United States. * * *
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> By the act of April 8, 1812, Louisiana was admitted according to the mode prescribed by the act of 1811. Congress declared that it should be on the conditions and terms contained in the third section of that act, which should be considered, deemed, and taken as fundamental conditions and terms upon which the State was incorporated in the Union.
>
> All Congress intended was to declare in advance to the people of the Territory the fundamental principles their constitution should contain. This was every way proper under the circumstances. The instrument having been duly formed and presented, it was for the National Legislature to judge whether it contained the proper principles, and to accept it if it did, or reject it if it did not. Having accepted the constitution and admitted the State "on an equal footing with the original States in all respects whatever," in express terms, by the act of 1812, Congress was concluded from assuming that the instructions contained in the act of 1811 had not been complied with.

But the Louisiana enabling act was as complete and perfect in every respect as the Colorado enabling act, with the single exception of that part which, in case of a majority vote of the people in favor of the constitution, requires the acting governor to "certify the same to the President of the United States, together with a copy of said constitution and ordinances," and makes it "the duty of the President to issue his proclamation declaring the State admitted into the Union on an equal footing with the original States, without any further action whatever on the part of Congress."

If we are to construe this act in accordance with its terms, then until the President has seen fit to issue his proclamation the State of Colorado must be deemed and held not to be admitted into the Union. If this be a correct interpretation of the act, it is clear that the President of the United States, and not Congress, admits the State into the Union; for he is made the judge of the sufficiency of the Constitution and ordinances. Suppose he withholds his proclamation? In that event the State either is not admitted, or, if admitted, it must be by force of other provisions of the law, and the proclamation must be treated as a work of supererogation. And this seems to be the position taken by the committee in their report. They say:

> Assuming that the people of Colorado had in point of fact performed in good faith every condition prescribed in the act in strict conformity with its provisions, the present Congress would be bound in good morals to recognize them as a State and admit them to representation in the Senate and House, even if the President had willfully refused to issue the proclamation provided for, and the only possible pretext for a failure upon the part of Congress to discharge its solemn obligation in that regard would be found in the quibble that the people of Colorado had agreed that their admission should depend finally upon the issual of a proclamation willfully withheld without any fault upon their part, and after they had religiously observed and performed every obligation resting upon them.

In the estimation, therefore, of the committee, the proclamation of the President is not held to be necessary to perfect the admission of the State into the Union. But this conclusion does not relieve the question of its difficulty. It is just as objectionable, and just as much in conflict with the authorities upon the subject, to delegate the power to the people of the Territory as to delegate it to the President of the United States. It follows as a matter of course from this view that if the President's proclamation is unnecessary, that that portion of the enabling act which relates to certifying the vote, together with the constitution and ordinances to the President, and for the issuing of his proclamation, is to be treated as a dead letter, and the act would be the same in effect if it were stricken out. But strike out that portion, and we have left an enabling act, pure and simple, such as it has been the practice of Congress to adopt for more than half a century. And in none of the cases of this character has Congress accepted the doctrine that the State was actually admitted into the Union at the time the people of the Territory had adopted a constitution in accordance with the terms of the enabling act. But Congress, on the contrary, has dissented from this position in every instance in which the question has been made. It was rejected by Congress after the fullest consideration upon the admission of Missouri and later upon the admission of Michigan, and the question may be regarded as settled so far as the force of legislative precedent can settle it.

But the *assumption* of the committee in their report, as a condition upon which the Territory is entitled to admission as a State, that "the people of Colorado had in point of fact performed in good faith every condition prescribed" in the enabling act, is an *implied admission* that, if they had not so performed, Congress would not be "bound in good morals" or otherwise to recognize them as a State. What more cogent reason could there be of the necessity of an examination into the constitution to ascertain whether, in point of fact, it had been framed in accordance with the conditions imposed? If it is only upon this assumption that the State is to be recognized, then it follows from the force of irresistible logic that this examination becomes an imperative necessity.

And the question recurs, Who is to make this examination? Manifestly Congress, and not the President or the people of the Territory. But the committee say, in such case—

> Congress would be bound in good morals to recognize them as a State and admit them to representation, &c.

"Bound in good morals" is a very different thing from being bound under the Constitution and laws. Furthermore, "bound in good morals" to do a certain act upon the assumption or ascertainment of certain facts, is a very different thing from doing that act without the ascertainment of these facts. I may admit, for the sake of the argument, that, if upon examination of the Constitution as formed, it is found to be in accordance with the terms of the enabling act, Congress would be "bound in good morals" as well as in public faith and justice to the people of Colorado to ratify the work thus performed; but this admission does not require of me that I must therefore maintain that Colorado has been admitted by what has already transpired, or that the State, as a matter of constitutional and legal right, became a member of the Federal Union either at the date of the adoption of the constitution by the people or at the time of the issuing of the President's proclamation.

Our judgment of the constitutional and legal effect of what has already been done in no just sense can be likened to what our action ought now or hereafter to be in consequence of what has transpired. We may, indeed, with entire consistency, have an honest conviction that the State is not now admitted, and an equally honest conviction that it ought "in good morals" to be hereafter admitted by the further legislative sanction of Congress.

And if I understand the minority of the committee, this is precisely what they propose to do. Believing upon full examination of the constitution and ordinances of Colorado as they have been formed and ratified that they are in substantial compliance with the terms of the enabling act, and such in their character as should entitle the State to admission, they propose by the bill, which they present to Congress for its a doption, to admit the State "on an equal footing with the original States." And while I was originally opposed to the admission of the State, now that the people have formed for themselves a State government on the faith of the enabling act, and in harmony with the Constitution of the United States, I feel like giving the work my sanction and voting for the bill presented.

The view which I have taken is in substantial harmony with the long line of precedents, with the single exception of that of Nevada, which was in the midst of civil war, when constitutional restraints were very much weakened. And if this precedent is now to be followed it will verify the exclamation of Calhoun: "Let it be remembered that under our system bad precedents live forever; good ones only perish."

In this connection I would commend to attention the warning words of the court in the case of Parker *vs.* Commonwealth, 6 Barr., 507:

A bad precedent suffered to pass *sub silentio* cannot be set up to justify the continuance of an abuse in which it originated. This is especially true where the question is of the constitutional exertion of a delegated power. A different rule would expose the fundamental laws of the State to continual danger of subversion from a succession of encroachments which in the beginning did not attract the public attention or invite its investigation; a consequence too momentous to be hazarded by unreasonable deference to tolerated mistakes.

Now what are the precedents?

The first case is that of Vermont, which State it is claimed was admitted into the Union without any enabling act and without Congress having examined and approved her constitution. This distinction must be observed: the question was not the formation of a new State, but the admission of a State that was *in esse*, a State that had had a State government for years. The only question in the case of Vermont was whether the State government that then existed should adopt the Constitution of the United States, and thus qualify itself for admission into the Union.

There was a dispute between the State of New York and Vermont over the western boundary of Vermont, which under the Constitution required the action of the Legislature of New York to give its assent to the proposed admission of the State of Vermont if the claim of New York were valid.

I have said that at the time of the admission of Vermont she was a State in existence. I find in Thompson's History of Vermont this statement in relation to the royal decision in 1764, by which it was attempted to place her under the jurisdiction of New York:

Regarding herself as placed by that decision in a state of nature, her citizens had formed themselves into a body politic, into a little independent republic for their mutual benefit and defense, and by the boldness, the wisdom, and the prudence of her statesmen she had succeeded in organizing an efficient government for the regulation of her internal affairs, and had adopted a system of jurisprudence fully adequate to the necessities of the people.

* * * * * * *

At the time Vermont became a member of the Confederacy, her own government had become systematic and stable by the practical experience of thirteen years, and that of the United States had been placed upon the foundation of its present Constitution.

Before the act for the admission of Vermont was adopted the President of the United States laid before Congress the legislative act of New York granting her consent to the admission of Vermont and the legislative act of the State of Vermont giving the assent of her people to the terms and conditions prescribed on the part of the State of New York, adopting the Constitution of the United States and praying admission of Congress. The thing that was done on the part of the State of Vermont was to adopt the Constitution of the United States and agree to terms imposed by New York. Here is the closing section of the act of her Legislature:

It is hereby further enacted by the authority aforesaid, That the persons so elected to serve in the State convention as aforesaid do assemble and meet together on the first Thursday of January next, at Bennington, in the county of Bennington, then and there to deliberate upon the aforesaid Constitution of the United States, and, if approved of by them, finally to assent to and ratify the same, in behalf and on the part of the people of this State, and make report thereof to the governor of this State, for the time being, to be by him communicated to the President of the United States and the Legislature of this State.

So Vermont at that time was a State, and her Legislature gave the consent of that State to her admission into the Union and ratified the Constitution of the United States, and it was not a question of the formation of a State constitution. They had their State government, and it was not for years after that they formed a State constitution. Vermont was admitted into the Union by act of Congress February 18, 1791, and her Senators and Members of Congress were not admitted to their seats until October 13, 1791.

The next case is that of Kentucky. It is said that Kentucky was admitted in a manner similar to this. Kentucky was erected out of the territory of the State of Virginia. The State of Virginia had the right and the authority to erect a State out of her territory, and only required the assent of Congress that the State so erected might become a State in the Union. The terms and conditions were prescribed by an act of the Virginia Legislature, and those terms and conditions were ratified by the people of Kentucky in convention assembled. All the proceedings were laid before Congress by the President of the United States before the act of assent was given by Congress.

But more than that, the day fixed for admission was June 2, 1792. Before that time had arrived the people had formed their constitution, which had been laid before Congress, as is shown by House Journal, volume 1, page 614; and before the member was admitted to this floor the constitution had been placed in the possession of Congress. So that Congress actually had made the examination of the constitution that was necessary to determine whether Kentucky was a State, in full compliance with such terms and conditions as ought to entitle a State to admission into the Union.

In reference to this question, I beg leave to read from 8 Wheaton, page 87:

Now, it is perfectly clear that, although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State without the assent of Virginia or upon terms variant from those which Virginia had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed by a solemn act the consent of that body to the separation.

The terms and conditions therefore were prescribed by the State of Virginia, and Congress assented with full information, with full knowledge of what had been done, and in strict accordance with the provision of the Constitution relating to erection of new States out of territory within an existing State. In the case of Colorado the constitution has never been laid before either branch of Congress. The President's proclamation does not pretend to transmit here the constitution or ordinances of the State of Colorado.

The next case cited as a precedent against the doctrine of the minority report in this case is that of Ohio. But, sir, before any Member or Senator was admitted to his seat the constitution was laid before Congress. It was duly referred to a committee; it was reported by them to be in compliance with the terms and conditions of the enabling act; and not until the next year thereafter was the member sworn in here or Senators in the other branch, as appears from House Journal, volume 4, page 403. On the 17th of December, 1803, the member from that State took his seat; on a later day the Senators were seated; but the constitution as formed was laid before Congress, and due action was had upon it; Congress passed upon the sufficiency of its provisions. So that the case is directly in point in favor of this minority report in principle, although no further act of ratification was placed upon the statute.

The next case is that of Louisiana, which formed its constitution in strict compliance with the enabling act, and a subsequent act of ratification was deemed necessary and adopted. From that day down to the present there has been no single instance except that of Nevada in which a State has been admitted into the Union until the constitution had first been laid before Congress and its provisions passed upon. In all these cases, except Nevada, the mode has either been by an enabling act and a subsequent act of ratification, or by the submission of the constitution and ordinances previously formed by the voluntary action of the people.

Indiana also is cited as a case in point against the position I have taken. But I beg the attention of the House for a moment to this case. A constitution was formed for the State of Indiana, and on the 6th day of November, 1817, the Representative presented himself and was sworn in; but the Senators who also presented themselves were not sworn, because objection was taken and the point made that the State was not duly admitted. The case was, therefore, similar to that presented to-day with regard to Colorado, the Senators having been sworn in but the admission of the Representative being objected to. Subsequently the Senate, after mature deliberation, passed an act ratifying the work of the convention of Indiana; ratifying the constitution as it had been formed and transmitted to Congress; and so consistent did the House deem this proceeding with what was necessary to be done to perfect the admission of the State, that it, notwithstanding it had seated the member, concurred in that act, and on the 11th of December it was approved by the President. Thus, notwithstanding the member had been sworn in, the House saw fit to pass a subsequent act ratifying the work which had been done. When it came to counting the electoral vote from Indiana the House objected, and the two Houses separated. After some discussion in the House it was resolved to postpone the question, not to decide it; and thereupon the two Houses met and the vote was counted. But subsequently, in the case of Missouri, in 1821, the vote was not counted; and in the case of Michigan, in 1837, the vote was not counted, except hypothetically; and that was a practical rejection of the vote to all intents and purposes.

I want to call attention now to another feature in the case of Missouri. It is said that Congress, after examining the constitution and ordinances, required a further condition, which was submitted to the Legislature for ratification; that this fact was certified to the President, and upon his proclamation admission became complete. A distinction is here to be observed. The condition which Congress prescribed was set out *in hæc verba*, and all that the Legislature was required to do was simply to sanction the specific condition by solemn act and to confirm that work of Congress. The State was not called upon to enact any provision, but simply to accept one specifically set forth by Congress; and the certification of that fact to the President was simply the certification of an event, which was legitimate and proper, but by no means a parallel with the present case. It would be parallel with this case only upon the supposition that Congress had actually formed the constitution and ordinances of Colorado complete and perfect in all their provisions, submitted them to the people for their ratification by solemn act of convention, such ratification to be certified to the President, and that fact to be by him made known by proclamation. That would be a parallel, but nothing less than that would be a parallel.

The case of Missouri, therefore, shows that Congress assumed the right to exercise its judgment upon the work done by the convention in forming the constitution of Missouri. The same may be said of Nebraska. After the enabling act Congress examined the constitution as formed, and required a further condition should be complied with, and Congress set out the condition specifically, not in general terms, but specifically what the Legislature of Nebraska was required to do, and that ratification was to be transmitted to the President and he on certification of the ratification of the condition fixed by Congress was to issue his proclamation. In the exercise of the legislative discretion on the part of Congress it was required to determine whether a constitution had been adopted republican in form, whether it had

been adopted in accordance with the principles of the Declaration of Independence, whether it had been adopted in accordance with the terms and conditions set out in the enabling act. All these had been previously passed upon by Congress in the admission of Nebraska, and the fact to be certified was similar to that in the case of Missouri.

The same may be said in reference to West Virginia, but I need not pursue this feature any further.

Mr. Speaker, in no single instance has Congress ever admitted a State except it has passed upon the work of the constitutional convention, unless it has passed upon the constitution framed for the State government, since 1812, when Louisiana was admitted, save and except Nevada alone. In every other instance the work has been required to be laid before Congress and its approval had been obtained before the State was held to be actually admitted into the Union and entitled to the privilege of Senators upon the floor of the Senate or to a Representative upon the floor of this House. Congress has seen fit to prescribe that legal mode, and it is one consistent with reason and the precedents and practice of the country since 1812 down to the present hour.

Now, if we are to admit a State in the way proposed in the case of Colorado, Congress cannot be the judge of its conditions and qualifications. Suppose, for instance, Colorado in her constitution had provided that no man should be eligible to be governor unless he had an income of $50,000 a year, and did not have to come to Congress for ratification of that constitution. Not a member in the House would have voted for its ratification and admission, not a member but would have voted to reject it, and yet it is republican in form. Publicists and political writers would say it is republican in form. But if the State is actually admitted the remedy is lost, and the evil might continue to exist. What is to be done is to determine the work after it is complete, that Congress may rationally, intelligently, constitutionally pass upon it, thereby preserving the harmony of the Federal Union and the equality of the States.

ADMISSION TO THE FLOOR TO-MORROW.

Mr. COX. Mr. Speaker, I move, by unanimous consent, to take from the Speaker's table a concurrent resolution of the Senate for action at this time.

The SPEAKER. The Chair hears no objection.

The concurrent resolution was read, as follows:

IN THE SENATE OF THE UNITED STATES,
January 31, 1877.

Resolved by the Senate, (the House of Representatives concurring,) That during the counting of the votes for President and Vice-President, no persons besides those who now have the privilege of the floor of the House of Representatives shall be admitted to the south wing of the Capitol extension, except upon tickets to be issued by the President of the Senate and the Speaker of the House of Representatives; to be issued to Senators and Representatives and others, and shall be distributed by the Sergeants-at-Arms of the Senate and House of Representatives.

GEO. C. GORHAM.

Mr. COX. I move concurrence in that resolution.

The resolution was concurred in.

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

The latter motion was agreed to.

Mr. COX. I wish to state to members of the House, by way of notification, that the tickets of admission are now being printed and will be at the Sergeant-at-Arms' office as soon as they can be brought here; but if they do not come here in time to be handed to members before the adjournment they will be sent in the mail of members this evening.

COLORADO.

Mr. KNOTT. I now yield to the gentleman from Illinois, [Mr. CAULFIELD.]

Mr. CAULFIELD. Mr. Speaker, the position assumed by the minority in this case is that Colorado has never been admitted into this Union as one of the States thereof. The reason assigned is that by the Constitution Congress *alone* can admit new States into the Union, and Congress has never admitted Colorado; therefore she is not one of the States of the Union. I admit that Congress alone can admit new States; but if it be true that Congress has never admitted Colorado, then Colorado is not one of the States of this Union.

The ground taken by the minority for their position is that although Congress by the act of March 3, 1875, agreed to admit Colorado as a State upon the performance by her of certain prescribed conditions, yet she was not admitted because Congress delegated the power of admitting her to the President of the United States and to the people of Colorado themselves; and that although the President exercised that power and the people exercised that power, still the act was null and void, and she still remains in a territorial condition. No member of this House can go farther than I do in maintaining that Congress cannot delegate the power of admitting States into the Union, and that to Congress alone belongs the power of admission; but I do not concede that the clause of the enabling act, which the minority of the committee maintain attempts to give the power of admission to the President of the United States, confers any such power upon him. I maintain that Congress by that provision has neither delegated nor attempted to delegate any power whatever to the President. The act provides, after the people of Colorado have complied with all its requirements, it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union upon an equal footing with the original States. This is the clause which it is claimed is a delegation of power to the President to admit Colorado into the Union. I hope to be able to show in a few brief words that no such construction can be placed upon this sentence, and that Congress has simply made use of the President as the means of making known the fact that Colorado had been raised to the dignity of one of the States of this Union.

The gentleman from Ohio [Mr. HURD] maintains that there is a delegation of power to the President and delegation of power to the people, but both of these propositions I deny.

No power whatever has been delegated to the President, but the *duty* of announcing a fact has been imposed upon him. No power has been delegated to the people of the Territory, because that people themselves possess the inherent power of acting upon the question of admission. When the Constitution says that Congress shall have the power to admit new States into this Union it necessarily implies that the new State itself has something to say upon that subject. The new State has a power to say whether she shall be admitted or not. The new State under the Constitution possesses this power. No one can say that the power to admit does not imply that the person to be admitted has not something to say about it. So that the Constitution itself preserves in the people of the Territory the power either to reject or to accept the proposition which Congress has made to it. Otherwise it can be said that the people of a Territory or of a State, when formed, can be forced into this Union under the Constitution. No such power exists in the Constitution. But the power exists in the Constitution and by the Constitution that Congress shall admit and may admit new States into the Union, provided the new States are willing to be admitted. So that the proposition of the gentleman from Ohio is entirely illogical.

Again, he contends that the enabling act authorized the President to admit. This I shall show, as I have said, to be a fallacy. I maintain that the act of Congress provides that after the people of Colorado have complied with all requirements of the act it shall be the *duty* of the President of the United States to issue his proclamation declaring the State admitted into this Union.

Congress has adopted many and various modes of admitting new States, and confines the process to no fixed and permanent rules. It may be done on the motion of the Territory desiring admission in the first instance, or by Congress first taking the initiatory steps. The Territory may without the previous knowledge or consent of Congress frame its constitution and present itself at the doors of Congress asking for admission and be admitted; also Congress may by enabling act present the question of admission to the Territory for its decision and point out what conditions precedent must be complied with to entitle her to be admitted; or, a Territory, without any previous steps being taken by Congress, may adopt a constitution and elect her Senators and Congressmen and send them here, and their admission by the two Houses of Congress would be an admission of her as a State in the Union, without any previous legislation thereon. The admission is complete whenever the mind of Congress and the mind of the Territory meet and agree upon the question of admission. Congress may then indicate any mode it thinks fit of making the consummation of that agreement known to the other States of the Union and to the world. Congress may prescribe the means by which the Territory and itself shall ascertain whether or not they agree upon the terms of admission, and in case such agreement is reached, it may prescribe some method by which the fact that such agreement has been reached shall be made public. It may make it the duty of the President of the United States upon the fact of such agreement being made known to him to publish information of the same in the public journals of the country. Can it be said that imposing such a duty would be a delegation of power to the President to admit the State into the Union? Is it any more than a duty devolved upon him to announce, declare, or proclaim that, by an agreement between Congress and the Territory, the Territory has been admitted as a State into the Union?

Supposing that Congress should pass an enabling act for the admission of Utah into the Union and in such act require that before she should be admitted she must by a vote of her people abolish polygamy within her limits; that the result of such vote should be made known to the President of the United States; that if the vote should be for the abolishment of polygamy the President should, "without any further act on the part of Congress," issue a proclamation announcing that the State was admitted into the Union; and if the vote were against its abolition he should issue his proclamation that the people had refused to abolish polygamy, and therefore the State *was not* admitted into the Union. Then suppose the vote when taken should be opposed to the abolition of polygamy and the President, as required, should announce by proclamation accordingly that the State was not admitted, will any member on this floor contend that Congress thereby vested the President with the power to keep Utah out of the Union, and that his proclamation excluded Utah from admission into the Union? It was the act of Utah herself that kept her out of the Union. But if she had voted to abolish polygamy she would have consummated an act which would be an acceptance of the terms proposed by Congress, and which act, "without any further act on the part of Congress," would admit her into the Union. The subsequent proclamation of that fact by the President would not be an admission of Utah into the Union, but simply a declaration or publication to the world of the already existing fact of her admission as a State. When the

President of the Senate by direction of both Houses, when they had met to count the votes for President and Vice-President, arose and declared that Andrew Jackson was elected President of the United States, did he by that declaration make or *elect him to be President?* Did he not declare an already existing fact that Andrew Jackson had been elected President by the *people* of the United States? And when the President of the Senate, after having been so instructed by the House and Senate in joint session, shall arise in the presence of both these bodies and announce that by virtue of the authority vested in him by the two Houses he declares Samuel J. Tilden or R. B. Hayes the President of the United States from the 4th of March next, will the President of the Senate make the President, or will he declare who has already been made President by the votes of the people?

So when President Grant by the direction of Congress declared Colorado admitted into the Union he did not admit her into the Union, but by such announcement he declared an existing fact that she was admitted into the Union.

But supposing for the sake of argument that Congress in the case of Colorado, as it is charged, did intend to make a delegation of power to the President by which he was authorized to admit Colorado as a State into the Union by proclamation, she having first complied with all the terms of the enabling act, and that accordingly Colorado did comply with all the terms thus prescribed exactly and to the letter; now at this point arises the question, is the proclamation of the President necessary to admit her after she has complied with all the conditions-precedent required by Congress? The proclamation admitting her could not be required, because, Congress having no authority to make a grant of power, the grant was void, and any proclamation issued in pursuance thereof would be a nullity in law; its issuance therefore could have no binding effect in law, would be mere surplusage, and would have no further or greater force than simply to give notice to the world that the people of Colorado had done all that was necessary to make them a State in the Union. The rule is that when two constructions can be given to a law, one sustaining the validity of the law and the other destroying it, that construction *must* be given which will sustain its validity in full force and effect, "*ut magis valeat, quam periat.*" Nor will the law presume that the law-maker intended to enact a nullity, either ignorantly or designedly. If therefore the words of the enabling act in this instance—"whereupon it shall be the duty of the President of the United States to issue his proclamation declaring the State admitted into the Union"—are susceptible of two constructions, one of which would involve an illegal delegation of power to the President and make the words void and the other would simply devolve upon him the duty of publishing the fact to the world that Colorado was already a State in the Union, the latter construction *must* be adopted because it gives effect to the words of the law and does not destroy them. Therefore we are of necessity obliged to conclude that such was the intention of the law-makers; that is to say, that the compliance on the part of the people of Colorado with the terms prescribed by the enabling act should admit her into the Union without any further act on the part of Congress, and that the President should announce the fact of her admission by his proclamation.

But it is argued that Congress vested in the President the power of deciding whether or not the constitution of Colorado was republican in form. This is an error. Let us see what Congress did provide. It first authorized the inhabitants of the Territory of Colorado to form for themselves a State government by the name of the "State of Colorado," and declared that such State when formed should be admitted into the Union. It provided further that delegates shall be elected to a convention to frame a constitution; then, when and where the delegates should meet; that they should first declare that they adopted the Constitution of the United States; that they should then form a constitution and State government, *provided the constitution should be republican in form*, and when framed should be submitted to a vote of the people for ratification or rejection; that the returns of the votes should be made to the acting governor, who, with the chief-justice and United States attorney, should canvass the same; and, if a majority of the votes were for said constitution, the governor should certify the same to the President, *together with a copy of said constitution.* "*Whereupon* it shall be the *duty* of the President of the United States to issue his proclamation," not admitting, but "declaring the State *admitted* into the Union;" and this he should do "without any further action on the part of Congress." Here it will be seen the "copy of the constitution" is not sent to him for revision or for the exercise of any judgment regarding it, but the result of the vote and the "copy of the constitution" are required to be sent to him only to notify him of the fact of its adoption, and that he might know that the time fixed by Congress had arrived for him to make his announcement, not that Colorado is *hereby* admitted into the Union, but declaring an already existing fact, that Colorado is admitted into the Union by having complied with the terms prescribed by Congress. No discretion, no duty to examine and decide upon the constitution is prescribed to the President, but the act says:

Upon the receipt of the result of the vote and a copy of the constitution *it shall be his duty* to issue his proclamation declaring the State admitted into the Union, &c.

Supposing, after Colorado had done all that the enabling act required of her to do, the President had not issued his proclamation, and her Senators and Member of Congress coming to Washington were admitted and sworn in as members, can any one say that Colorado would not thereby be admitted as a State into the Union, simply because the President had failed to perform his duty by not issuing his proclamation?

But it is further argued that one of the conditions-precedent required by the enabling act for the admission of Colorado was that she should frame and adopt a constitution republican in form, and that, therefore, Congress had to see that constitution and judge whether or not it was republican in form, before the State could be admitted. This might be a very wise precaution, but Congress has not in this case, as she has not in many others, seen fit to adopt it. The presumptions are all in favor of the republican form of her constitution. Congress presumed it would be republican. But should there be anything in her constitution inconsistent with a republican form of government, it would be a nullity, and would be of no more force and effect than if it were not in the constitution at all. That part of the constitution which would be republican in form would be the constitution of Colorado, and that portion of the document which would not be republican in form would be null and void and consequently no part of her constitution.

The judicial tribunals of her own creation and of the United States would be compelled so to decide. But the fact is her constitution is republican in form, and Colorado has therefore complied with the enabling act in this as in all other requirements made of her by Congress. No one charges that Colorado has not complied with all the terms of the enabling act required to be done by her before her admission into the Union. On the contrary, all that is admitted. If, then, the act required to be performed by the President was nugatory, as claimed by the minority, it had no effect, and the State was admitted without it.

I therefore maintain, in construing the clause making it the duty of the President to issue his proclamation declaring Colorado admitted into this Union, that this House cannot decide it to be unconstitutional. If any construction can be given to it which will make it constitutional, that construction must be given. In considering the question the following legal propositions must be kept in view: First, this Congress cannot presume that the last Congress in enacting said law intended to adopt an unconstitutional act. Second, we cannot presume that the last Congress ignorantly and unintentionally adopted an unconstitutional act. Third, the clause in question must be construed "*ut magis valeat quam periat;*" that it shall stand, and not fall by reason of its unconstitutionality.

In order that it shall not fall the simple, reasonable, and only construction which can be given to the clause is that it was intended simply to make it the duty of the President to issue a proclamation which should declare and announce the fact that Colorado, by reason of having complied with the terms of the enabling act, was by force of such compliance a State in the Union. Any other construction would make the clause unconstitutional; and such construction cannot by the rules of law be given to it, if the simple and reasonable construction for which I contend can be maintained. This is the only construction which can be given to it consistent with its constitutionality, and must therefore be given to it by this House.

When Mr. Patterson, the former Delegate from the Territory of Colorado, was here a short time ago he said (and he himself a democrat) that it was an error to raise the question of the admission of Mr. Belford, the Representative elected from Colorado; that the State had complied with the act under which it was to be admitted, and that Mr. Belford should be admitted to the present Congress. I state this in justice to Mr. Patterson, as the opposition press of his State has represented him as using his influence against the recognition of the State and the admission of his successor.

Mr. SPRINGER. Will the gentleman allow me to make a statement in reference to the action of the people of Colorado?

Mr. CAULFIELD. Not at present, as my time is fast going.

Mr. SPRINGER. Allow me to have printed in the RECORD, then, a resolution of a public meeting of the people of the Territory of Colorado upon that subject.

Mr. CAULFIELD. I have no objection to that.

There being no objection, leave was granted accordingly. [For preamble and resolution referred to, see end of speech.]

Mr. CAULFIELD. But, Mr. Speaker, *this* Congress is barred by its own act against making any question as to Colorado now being a State in this Union. The President's proclamation was issued on the 1st day of August, 1876; and fifteen days afterward Congress passed the act, which will be found on page 158 of the statutes passed at the first session of this Congress, appropriating money as follows:

For salaries of governor, chief-justice, and two associate judges, at $3,000 each, and secretary at $2,000—$14,000: *Provided*, That said officers shall only receive their compensation on the basis of the salary aforesaid up to the time of the admission of said Territory as a State into the Union.

This act is an admission and recognition of the fact that Colorado had already been admitted as a State. This, Mr. Speaker, we are bound by, and we cannot now go behind it. In good faith no question should be made about Colorado's status in the Union. Congress certainly intended to admit her upon compliance with the terms of the enabling act, and Colorado intended to be admitted, and for that purpose complied with those terms. Believing she was admitted, (as I believe she was,) she has participated in the presidential election and chosen three presidential electors who have cast their votes for President of the United States. If there is any force whatever in the question as to Colorado's admission, it is entirely too technical for serious consideration under existing circumstances. The refusal to admit the member from Colorado would involve consequences bearing

upon her electoral vote, which no partisan consideration can excuse or palliate. A resolution passed now admitting Colorado as a State in the Union, her admission dating from this time, can have no retroactive effect or validity upon her electoral vote already cast, and would give rise to questions productive of no good, but probably of much harm to the country.

Kentucky was admitted without any inquiry by Congress as to the character of her constitution. Vermont was admitted in the same way, and the same is true as to the admission of Tennessee.

The simple declaration that her member is entitled to a seat on this floor is but justice to Colorado, to the member himself, and to the country; and I shall therefore vote for such a resolution and against the resolution of the minority report.

The following are the preamble and resolution referred to above by Mr. SPRINGER:

Whereas a portion of the democratic central committee, at a meeting held at Denver on the 8th instant, did, without consulting the democracy of the Territory of Colorado, proceed to pass certain resolutions condemning the action of the House of Representatives of the United States in not recognizing Colorado as a State and admitting the Representative;

And whereas all of the resolutions passed at that meeting, except the eighth and ninth, are heartily indorsed by the democracy of Pueblo County: Therefore,

Resolved, That the democrats of Pueblo County, in convention assembled, do hereby repudiate and condemn the action of said committee, believing the constitution was carried by means of outrageous frauds in the northern portions of the Territory, as exemplified by the unprecedented vote polled in Denver, Georgetown, and other northern points; that we cordially indorse the sentiments expressed in the letter of Hon. W. M. SPRINGER, of Illinois, of December 23, 1876, to Hon. T. M. Patterson, and would call upon Congress to thoroughly investigate the law in the case previous to taking any action in the premises.

Mr. KNOTT. While I think that I could demonstrate that Colorado is as much a State in this Union as the Commonwealth which I have the honor in part to represent on this floor, I cannot fail to recognize the fact that the House is already wearied, and that no remarks that I might submit would have the effect of changing a solitary vote upon the pending question. I therefore forego the privilege of addressing the House upon the pending resolution, and in deference to what I know is the desire of a large majority of the members I now call for a vote.

The SPEAKER *pro tempore*, (Mr. COX.) The first question is upon the preamble and bill proposed by the minority of the committee as a substitute for the resolution reported by the majority of the Committee of Elections.

The substitute was read, as follows:

Whereas, on the 3d day of March, 1875, Congress passed an act to enable the people of Colorado to form a constitution and State government, and offered to admit said State when so formed into the Union upon certain conditions therein specified;

And whereas it appears that the said people have adopted a constitution, which, upon due examination, is found to conform to the provisions and comply with the conditions of said act and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution and government which the people of Colorado have formed for themselves be, and the same are hereby, accepted, ratified, and confirmed, and that the said State of Colorado shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

Mr. SOUTHARD. I call for the yeas and nays.

The yeas and nays were not ordered; there being—ayes 20, noes 107.

So the substitute submitted by the minority of the committee was not adopted.

The question then recurred on agreeing to the following resolution reported by the majority of the committee:

Resolved, That Colorado is a State in this Union, and that James B. Belford, Representative-elect from said State, be sworn and admitted to his seat as such.

The resolution was adopted.

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

The latter motion was agreed to.

Mr. KASSON. I ask that the Representative from Colorado be now sworn in.

The SPEAKER *pro tempore*. That is a question of the highest privilege.

Mr. JAMES B. BELFORD presented himself and was duly qualified by taking the oath prescribed in section 1756 of the Revised Statutes.

REVISION OF THE STATUTES.

Mr. DURHAM submitted a report; which was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3156) to perfect the revision of the statutes of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to amendments numbered 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, and 21, and agree to the same.

That the Senate recede from its amendments numbered 4, 15, and 17.

M. J. DURHAM,
S. N. BELL,
D. C. DENISON,
Managers on the part of the House.

GEORGE S. BOUTWELL,
I. P. CHRISTIANCY,
WILLIAM A. WALLACE,
Managers on the part of the Senate.

Mr. DURHAM. The Senate amendments to which we have agreed are all of a verbal character. The Senate having receded from the three others, the effect of adopting this report will be that the House will substantially stand by its original action in the passage of the bill. I call for the previous question on agreeing to the report.

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

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

The latter motion was agreed to.

DISCHARGE OF THE WITNESS E. W. BARNES.

Mr. KNOTT reported, from the Committee on the Judiciary, the following resolution; which was read, considered, and agreed to:

Whereas E. W. Barnes has delivered to the select committee, of which Hon. W. R. MORRISON is chairman, the telegrams in his possession, in pursuance of the order of this House:

Resolved, That said Barnes be, and he is hereby, discharged from custody.

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

The latter motion was agreed to.

RESIGNATION OF HON. FRANK HEREFORD.

The SPEAKER *pro tempore* laid before the House the following; which was laid on the table:

HOUSE OF REPRESENTATIVES, DISTRICT OF COLUMBIA,
January 31, 1877.

SIR: I hereby tender my resignation as a Representative in the Forty-fourth Congress from the third congressional district of West Virginia.

Very respectfully,

FRANK HEREFORD.

Hon. SAMUEL J. RANDALL,
Speaker House of Representatives.

DEFICIENCY APPROPRIATION BILL.

Mr. WALDRON, from the Committee on Appropriations, reported a bill (H. R. No. 4559) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1877, and for prior years, and for other purposes; which was read a first and second time.

Mr. WALDRON. I move that this bill be ordered to be printed, referred to the Committee of the Whole on the state of the Union, and be made a special order for Friday next.

Mr. BRIGHT. I object to fixing Friday, which is private-bill day.

Mr. HOLMAN. Say Thursday.

Mr. WALDRON. I modify my motion so as to fix Saturday after the morning hour.

The motion of Mr. WALDRON, as modified, was adopted.

Mr. WILSON, of Iowa, and Mr. KASSON reserved all points of order on the bill.

SURVEY OF PUBLIC LANDS—INDIAN AFFAIRS.

Mr. WALDRON reported, from the Committee on Appropriations, the following resolution; which was considered and adopted.

Resolved, That the Committee on Appropriations be discharged from further consideration of so much of the letter of the Secretary of the Treasury, transmitting estimates of appropriations required by the various Departments for the fiscal year ending June 30, 1877, and prior years, as relates to the surveying of the public lands and to Indian affairs, and that the same be referred to the Committee of Claims.

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

The latter motion was agreed to.

MILITARY ACADEMY APPROPRIATION BILL.

On motion of Mr. CLYMER, by unanimous consent, the amendments of the Senate to the bill (H. R. No. 4306) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1878, and for other purposes, were taken from the Speaker's table and referred to the Committee on Appropriations.

ORDER OF BUSINESS.

Mr. HOLMAN. I move that the House take a recess until half past seven o'clock this evening.

Mr. SPRINGER. Allow me to introduce two bills for reference.

Mr. HOLMAN. Several gentlemen have desired me to yield. I think I must insist on my motion. [Cries of "Regular order!"]

Mr. PAGE. Pending the motion for a recess, I move that the House now adjourn.

Mr. HOLMAN. I hope we shall not adjourn.

The House divided; and there were—ayes 52, noes 142.

So the House refused to adjourn.

Mr. HOLMAN's motion was agreed to; and the House accordingly (at four o'clock and forty minutes p. m.) took a recess until half past seven o'clock this evening.

EVENING SESSION.

At half past seven o'clock the House resumed its session, the Speaker in the chair.

POWERS AND PRIVILEGES OF THE HOUSE.

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

The SPEAKER. The regular order of business is the consideration of the report from the committee having in charge the subject

of the powers, privileges, and duties of the House of Representatives in connection with counting the electoral votes for President and Vice-President.

Mr. HOLMAN. I move that subject be postponed.

The SPEAKER. Until when?

Mr. HOLMAN. I will name next Monday.

Mr. BURCHARD, of Illinois. Let it be until after the electoral count.

Mr. FOSTER. Indefinitely. [Laughter.]

Mr. CONGER. May I inquire what is the next business?

The SPEAKER. The next business will be the morning hour.

Mr. HOLMAN. I move that the consideration of the unfinished business be postponed until Monday next.

The motion was agreed to.

T. E. MALEY.

Mr. A. S. WILLIAMS, by unanimous consent, moved to take from the Speaker's table a letter from the Secretary of War in reference to the case of T. E. Maley, and to refer it to the Committee on Military Affairs; which motion was agreed to.

The SPEAKER. It is so referred by unanimous consent, with the understanding that it is not to come back on a motion to reconsider.

INTERNAL IMPROVEMENTS.

Mr. HAYMOND, by unanimous consent, obtained leave to print in the RECORD as part of the debates some remarks which he had prepared on the subject of internal improvements.

CORRECTION OF VOTE.

Mr. WILSON, of Iowa. In the RECORD, on passing the bill abolishing the police board in this District over the veto of the President, I am recorded as voting in the affirmative. I voted in the negative, and wish to be so recorded.

The SPEAKER. The correction will be made.

MIAMI INDIANS.

Mr. GOODIN, by unanimous consent, moved the Committee of the Whole on the state of the Union be discharged from the further consideration of a bill (S. No. 619) to carry out in part the provisions of the act entitled "An act to abolish the tribal relations of the Miami Indians, and for other purposes," approved March 3, 1873, and the same be referred to the Committee on Indian Affairs; which motion was agreed to.

OMAHA BRIDGE.

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

The SPEAKER. The morning hour for reports of committees begins at twenty-four minutes to eight o'clock, and the call rests with the Committee on the Pacific Railroad.

Mr. THROCKMORTON. I ask unanimous consent that the bill (H. R. No. 1547) limiting rates for the transportation of freight and passengers over the bridge constructed by the Union Pacific Railroad Company across the Missouri River at Omaha, Nebraska, be made the special order in the Committee of the Whole on the state of the Union for Tuesday next. The gentleman from Missouri, [Mr. PHILIPS,] who desires to submit the views of the minority, is not now present, and I hope there will be no objection to my motion.

The SPEAKER. That can only be done by unanimous consent.

Mr. HOLMAN. Not to interfere with appropriation bills.

The SPEAKER. Is there objection?

Mr. HOLMAN. Is that measure confined to one subject-matter?

Mr. THROCKMORTON. It is.

Mr. O'BRIEN. I suggest that it come in after the morning hour on Tuesday next.

Mr. THROCKMORTON. Yes, sir; and not to interfere with appropriation bills.

There was no objection, and it was ordered accordingly.

Mr. THROCKMORTON 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.

OREGON CENTRAL RAILROAD.

Mr. THOMAS, from the Committee on the Pacific Railroad, reported back a bill (S. No. 146) extending the time for the completion of the Oregon Central Railroad and Telegraph Line from Portland to Astoria and McMinnville, in the State of Oregon, with amendments, and moved its reference to the Committee of the Whole on the state of the Union, and that the bill and amendments be printed.

Mr. LANE. Is it in order to move to put the bill on its passage at this time?

Mr. HOLMAN. I reserve all points of order.

Mr. CONGER. I demand the reading of the bill.

Mr. HOLMAN. The gentleman from Maryland only wants it referred to the Committee of the Whole on the state of the Union. If it is proposed to put it on its passage I insist on the point of order.

The bill and amendments were read.

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] makes a point of order against the bill. The gentleman will indicate what is his point of order.

Mr. HOLMAN. The point of order is that the extension of time made by the bill is a grant of property within the rule of the House.

Mr. LANE. I ask the ruling of the Chair. I understand the Chair has ruled upon that point before.

Mr. HOLMAN. It is the extension of an old grant upon new conditions.

Mr. LANE. And those new conditions are in favor of the settlers and against the railroad.

The SPEAKER. The Chair sustains the point of order, and the bill goes to the Committee of the Whole House on the Public Calendar.

CLAIMS FOR SURVEY OF PUBLIC LANDS, ETC.

Mr. PHILIPS, of Missouri, from the Committee of Claims, reported back the resolution of the House of April 27, 1876, referring certain claims for surveying public lands and for Indian service to the Committee of Claims; and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee on Appropriations.

Mr. CONGER. I would like to hear read the paper which the gentleman from Missouri has sent to the Clerk.

The Clerk read as follows:

A letter from the Secretary of the Treasury, transmitting estimates of appropriations required by the various Departments for the fiscal year ending June 30, 1875, and prior years.

Mr. PHILIPS, of Missouri. That is the whole letter from the Secretary of the Treasury making estimates for deficiencies in the various Departments for the fiscal year ending June 30, 1876. It is not necessary to read the whole document. It includes innumerable claims, whereas the claims reported back by the Committee of Claims occupy only a small portion of the document. The letter which the gentleman from Michigan asks to have read is not pertinent to the matter before the House except in one portion of it which I can designate.

The SPEAKER. Does the gentleman from Michigan [Mr. CONGER] insist upon the reading of the paper.

Mr. CONGER. I think it had better be read. I am not familiar with the contents of the paper.

The SPEAKER. It will be read.

The Clerk proceeded to read the letter from the Secretary of the Treasury.

Mr. O'BRIEN. Mr. Speaker, I move that what we have already heard be taken as equivalent to the reading of the whole document. It will take two hours to read all.

The SPEAKER. It cannot be read beyond the morning hour. The reading will cease with the expiration of the morning hour.

Mr. O'BRIEN. I do not suppose the gentleman from Michigan wishes to occupy the whole morning hour with the reading of something to which he does not himself pay attention.

Mr. PHILIPS, of Missouri. If the gentleman from Michigan will permit me to say a word, I wish to explain that the matter now being read as I have already stated is not pertinent at all to the report made by the Committee of Claims. What is reported back by the Committee of Claims is simply a resolution referring to that committee two items in a deficiency bill. On behalf of the committee I report back the resolution with the request that it should go to the Committee on Appropriations. Nothing therefore ought to be read under this application except the resolution itself, which the Clerk will find among the papers.

Mr. HURD. I insist on the reading of the document.

Mr. O'BRIEN. Mr. Speaker, is the motion which I made in order?

The SPEAKER. It is not.

The Clerk resumed the reading of the letter of the Secretary of the Treasury.

Mr. CONGER, (interrupting the reading.) I do not call for the further reading of the paper.

The SPEAKER. The gentleman from Ohio [Mr. HURD] has demanded the reading.

The Clerk resumed the reading of the paper.

Mr. JONES, of Kentucky, (interrupting.) Mr. Speaker, would it be in order to move to dispense with the further reading of that paper? Nobody is listening to it.

The SPEAKER. The Chair thinks that the reading of the paper having been entered upon cannot now be interrupted by a motion of that kind.

The Clerk resumed and continued the reading of the paper until the expiration of the morning hour.

ORDER OF BUSINESS.

Mr. COX. Has the morning hour expired?

The SPEAKER. It has.

Mr. COX. I move that the House proceed to the consideration of business on the Speaker's table. I believe that motion is now in order.

Mr. FOSTER. When it was proposed this afternoon that the House should take a recess, I said to gentlemen around me not to oppose it because I supposed from the fact that it was the gentleman from Indiana [Mr. HOLMAN] who was making the motion, that the evening session would be devoted to the consideration of the legislative appropriation bill.

Mr. COX. There was no understanding about that.

Mr. FOSTER. I have learned since that there was no such understanding. But I said to the gentlemen around me at the time that I supposed the legislative bill would be the business at the evening session, and I feel under obligations to them to resist the motion of the

gentleman from New York. I am perfectly willing that we should go on with the consideration of the legislative appropriation bill, but I am not willing that any other business should be transacted to-night.

Mr. HOLMAN. I stated in the afternoon that the object of having a session to-night was to proceed with general legislative business, and from that I suppose the gentleman from Ohio [Mr. FOSTER] naturally took up the impression that the legislative bill was to be considered.

Mr. COX. Mr. Speaker, is my motion in order that we proceed to dispose of business on the Speaker's table?

Mr. HOLMAN. I think there can be no objection to the House now proceeding to dispose of business on the Speaker's table.

Mr. FOSTER. There is objection.

Mr. COX. The Speaker's table is encumbered with business.

Mr. FOSTER. There is objection, and we will insist on it.

Mr. CAULFIELD. And we will persist.

The SPEAKER. The motion of the gentleman from New York is in order.

Mr. FOSTER. I do not deny the propriety of making the motion; but if the motion is insisted on, I move that the House do now adjourn.

The SPEAKER. The gentleman from New York [Mr. COX] moves that the House proceed to the consideration of business on the Speaker's table, and pending that motion the gentleman from Ohio [Mr. FOSTER] moves that the House do now adjourn.

Mr. CONGER. Pending that motion, I move that the House take a recess until nine o'clock to-morrow morning.

The SPEAKER. That motion is not in order.

Mr. HOLMAN. I trust this business will not be entered upon until gentlemen on the other side are aware that there is business on the Speaker's table to which they object.

Mr. FOSTER. The business of this House can be carried along best by proceeding at once to the consideration of the appropriation bills. They are very far behind, and we can take up the legislative bill. But I warn gentlemen opposite that this motion will be resisted on this side of the House by every parliamentary motion known to the rules of the House.

Mr. HOLMAN. I hope the gentleman from Ohio does not charge me with bad faith in this matter?

Mr. FOSTER. Not at all; but I wish to say another word in reference to this subject.

Mr. COX. I object to debate.

Mr. HUBBELL. I move that when the House adjourns it adjourn to meet to-morrow at nine o'clock.

The SPEAKER. That motion is not in order; it is a change of the rules of the House.

Mr. PAGE. I move that when the House adjourns it adjourn to meet on Saturday morning.

Mr. RICE. I call for the regular order.

Mr. JOYCE. I move to amend the motion of the gentleman from California by substituting Friday for Saturday.

The SPEAKER. That motion to adjourn until Friday is in order, but the motion of the gentleman from California is not in order, because it causes an adjournment over for more than three days.

Mr. HANCOCK. I think the law of Congress requires us to meet to-morrow, and therefore that we cannot adjourn over.

Mr. PAGE. Do I understand the Chair to say that an adjournment until Saturday would be beyond the constitutional limit?

Mr. SPRINGER. The laws require the House to be in session to-morrow; no motion to adjourn over can be in order.

Mr. COX. I understood the gentleman from California to move that when the House adjourns it adjourn to meet on Saturday. I make the point of order that to-morrow is fixed for business connected with the electoral college and the counting of the votes for President and Vice-President, and therefore we cannot adjourn over until Saturday.

Mr. FOSTER. The meeting to-morrow is in joint convention.

Mr. HEWITT, of New York. The law says that the House shall be in session on the 1st of February.

The SPEAKER. The Chair desires to say upon the point of order that the law reads that "the Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock p. m. on the first Thursday in February, A. D. 1877;" and that this law was passed in obedience to and for the execution of a provision of the Constitution of the United States. The Chair therefore sustains the point of order that a motion to adjourn which would vacate the session of to-morrow is not in order.

Mr. PAGE. I appeal from the decision of the Chair.

Mr. COX. I move to lay the appeal upon the table.

The yeas and nays were ordered.

The Clerk proceeded to call the roll, and called the name of JOSIAH G. ABBOTT.

Mr. WILSON, of Iowa. I move to reconsider the vote by which the yeas and nays were ordered.

Mr. COX. I rise to a parliamentary inquiry. How many motions to adjourn can be made? How many dilatory motions are in order?

Mr. CONGER. That point does not arise here.

The SPEAKER. That point is not yet reached.

Mr. COX. Still it would be pleasant information to the gentleman from Michigan, [Mr. CONGER.]

Mr. SPRINGER. I rise to a parliamentary inquiry.

The SPEAKER. The gentleman from Iowa has moved to reconsider the vote by which the yeas and nays were ordered upon the motion to lay upon the table the appeal from the decision of the Chair.

Mr. WILSON, of Iowa. I ask for the yeas and nays upon that question.

The yeas and nays were ordered.

Mr. SPRINGER. I rise to a parliamentary inquiry. What is the question upon which the yeas and nays are now about to be called?

The SPEAKER. The gentleman from Iowa now moves to reconsider the vote by which the yeas and nays were ordered.

Mr. SPRINGER. I make the point of order that it is not in order to call the yeas and nays on the question of ordering the yeas and nays.

Mr. BURCHARD, of Illinois. It is too late to make that point, even if it were well taken, as the roll-call has already been commenced.

The SPEAKER. The Chair will read from the Manual on the subject:

An order for the yeas and nays or refusal of the yeas and nays may be reconsidered.

The Chair therefore entertains the motion.

Mr. CANNON, of Illinois. I appeal from that decision of the Chair. [Laughter.]

Mr. HOLMAN. There can be but one appeal pending at a time.

Mr. CANNON, of Illinois. I withdraw the appeal.

Mr. SPRINGER. This is a subsidiary question, and it is not in order to pile one subsidiary motion on another; if that can be done no business can ever be reached or disposed of.

Mr. FOSTER. I object to the Chair being bull-dozed after he has made his decision. [Laughter.]

Mr. SPRINGER. You are bull-dozing the Chair.

Mr. BURCHARD, of Illinois. I call the gentleman to order, and demand that his words be taken down. [Laughter.]

The SPEAKER. The Clerk will call the roll.

The question was then taken; and there were—yeas 25, nays 188, not voting 77; as follows:

YEAS—Messrs. Ainsworth, John H. Bagley, jr., Ballou, Blair, Horatio C. Burchard, Buttz, Cate, Crounse, Culberson, Dunnell, Field, Foster, Abram S. Hewitt, Franklin Landers, McDill, Miller, Monroe, Mutchler, O'Brien, Oliver, Riddle, Tufts, John W. Wallace, G. Wiley Wells, and Andrew Williams—25.

NAYS—Messrs. Abbott, Adams, Ashe, Atkins, Bagby, George A. Bagley, John H. Baker, Banning, Beebe, Belford, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, Bradley, John Young Brown, Buckner, Samuel D. Burchard, Burleigh, Cabell, John H. Caldwell, William P. Caldwell, Candler, Cannon, Caswell, Caulfield, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Conger, Cook, Cowan, Cox, Cutler, Davis, De Bolt, Dibrell, Dobbins, Douglas, Durham, Eames, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Flye, Forney, Fort, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Robert Hamilton, Hancock, Haralson, Hardenbergh, Benjamin W. Harris, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Hathorn, Haymond, Henderson, Henkle, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Hubbell, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Thomas L. Jones, Kehr, Kimball, Knott, Lamar, George M. Landers, Lapham, Lawrence, Lewis, Lord, Luttrell, Lynch, Lynde, Mackey, Maish, MacDougall, McCrary, McFarland, McMahon, Metcalfe, Milliken, Mills, Money, Morgan, Nash, Neal, New, O'Neill, Packer, Page, John F. Philips, Pierce, Poppleton, Potter, Pratt, Rainey, Rea, Reagan, John Reilly, Rice, John Robbins, William M. Robbins, Robinson, Miles Ross, Sampson, Savage, Scales, Schleicher, Sheakley, Singleton, Smalls, A. Herr Smith, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Tarbox, Teese, Terry, Thomas, Thompson, Thornburgh, Martin I. Townsend, Washington Townsend, Tucker, Turney, John L. Vance, Robert B. Vance, Waddell, Wait, Waldron, Charles C. B. Walker, Gilbert C. Walker, Alexander S. Wallace, Walsh, Ward, Warner, Warren, Erastus Wells, Whitehouse, Whitthorne, Wigginton, Willard, Alpheus S. Williams, James Williams, Jere N. Williams, William B. Williams, Willis, Wilshire, Benjamin Wilson, James Wilson, Alan Wood, jr., Fernando Wood, Woodworth, and Young—188.

NOT VOTING—Messrs. Anderson, William H. Baker, Banks, Bass, Bright, William R. Brown, Campbell, Carr, Cason, Chapin, Chittenden, Crapo, Danford, Darrall, Davy, Denison, Durand, Evans, Freeman, Frye, Garfield, Gibson, Goode, Hale, Harrison, Hays, Hendee, Hoar, Hoge, Hoskins, Hunter, Hurlbut, Hyman, Joyce, Kasson, Kelley, King, Lane, Leavenworth, LeMoyne, Levy, Magoon, Meade, Morrison, Norton, Odell, Payne, Phelps, William A. Phillips, Piper, Plaisted, Platt, Powell, Purman, James B. Reilly, Roberts, Sobieski Ross, Rusk, Sayler, Schumaker, Seelye, Sinnickson, Slemons, Stephens, Stowell, Strait, Throckmorton, Van Vorhes, Walling, Watterson, Wheeler, White, Whiting, Wike, Charles G. Williams, Woodburn, and Yeates—77.

So the motion to reconsider was not agreed to.

During the call of the roll,

Mr. SCALES said: My colleague, Mr. YEATES, is confined to his room by sickness.

The question recurred upon laying upon the table the appeal from the decision, upon which the yeas and nays had been ordered.

The SPEAKER. The Chair desires to state to the House that a portion of the members must be under a misapprehension; there is no occasion whatever for alarm in reference to the business on the Speaker's table. The Chair presumes, however, that the gentlemen who make these dilatory motions are apprehensive in relation to two papers which the Chair now holds in his hand. He therefore would ask unanimous consent that he may present them at this time.

Mr. PAGE. What are they?

The SPEAKER. The titles will be read, and then the Chair will listen to objections. The Chair thinks that gentlemen had better withdraw their motions.

Mr. FOSTER. And after that what?

Mr. PAGE. What does the Chair propose to do with the papers?

The SPEAKER. Whatever the House may determine.

Mr. PAGE. Does it require unanimous consent to present them?

The SPEAKER. The Chair asks unanimous consent to present

these papers. Let the titles be read, after which objections can be made. The Chair desires to state to gentleman that it will be found that exact duplicates of these papers have been placed in possession of the Presiding Officer of the Senate.

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

Mr. COX. I withdraw the motion to go to business on the Speaker's table; I had no idea that it would make all this trouble.

Mr. CONGER. I make the point of order that the gentleman from New York [Mr. COX] has no right to withdraw that motion at this time.

Mr. FOSTER. We know very well what the papers are.

The SPEAKER. The gentleman has been asked by the Chair to read them.

Mr. PAGE. What do the papers purport to be?

The SPEAKER. The Chair will have the titles read.

Mr. BURCHARD, of Illinois. I object.

The SPEAKER. Does the gentleman object to having the titles read? The Chair simply asks unanimous consent to present these papers, and desires that the titles be read, after which the Chair will ask for objection.

Mr. BURCHARD, of Illinois. The Chair does not then lay them before the House for action?

Mr. WILSON, of Iowa. It is simply to ascertain whether the Chair can obtain unanimous consent to present them at this time.

The SPEAKER. That is all.

The Clerk read the titles of the papers, as follows:

An authenticated copy of an act to declare and establish the appointment by the State of Florida of electors of President and Vice-President; and

A record of proceedings on an information in the nature of a *quo warranto*, in the circuit court of the second district of Florida, The State of Florida *ex rel.* Wilkinson Call *et al.* against Charles H. Pearce *et al.*

Mr. PAGE. What does the Chair propose to have done with those papers?

The SPEAKER. To let the House say what shall be done with them.

Mr. CONGER. I object to the presenting of the papers.

The SPEAKER. The Chair will then avail himself of his right as a member of this House to place these papers in the petition-box.

Mr. COX. I withdraw the motion to go to business on the Speaker's table.

ELECTION IN FLORIDA.

Mr. THOMPSON. I rise to make a privileged report. I submit from the select committee on the election in Florida a report in writing, with the accompanying testimony, and I ask that the report be now read.

Mr. CONGER. Is there not a motion to adjourn pending and undisposed of?

Mr. PAGE. An appeal from the decision of the Chair, as well as a motion to adjourn, is pending.

The SPEAKER. The gentleman from New York [Mr. COX] withdrew his motion to go to business on the Speaker's table, and of course all the other motions fall with it.

Mr. PAGE. The motion to adjourn fell with the withdrawal of the motion to go to business on the Speaker's table?

The SPEAKER. The gentleman from New York [Mr. COX] withdrew the motion.

Mr. CONGER. I objected to his withdrawing his motion.

The SPEAKER. The rule provides that "a motion may be withdrawn at any time before a decision or amendment, * * * and all incidental questions fall with such withdrawal."

Mr. PAGE. That does not affect the motion to adjourn.

Mr. LAWRENCE. I desire to make an inquiry of the Chair.

The SPEAKER. The Chair will listen when order is restored. [After a prolonged pause for the restoration of order.] Does the gentleman from Massachusetts [Mr. THOMPSON] yield for a motion to adjourn?

Mr. THOMPSON. No, sir; I decline to yield.

Mr. PAGE. There was a motion to adjourn pending before the gentleman from Massachusetts was recognized at all; and the yeas and nays had been ordered upon that motion.

The SPEAKER. The gentleman from New York withdrew his motion to go to the Speaker's table, and the Manual is very clear in the statement that all incidental motions made in connection with that motion must fall with it.

Mr. PAGE. But I ask the ruling of the Chair as to whether a motion to adjourn is not an independent motion.

The SPEAKER. The Chair ruled that the gentleman from New York withdrew his motion to go to the Speaker's table, and with that withdrawal all incidental motions fell. The Chair then recognized the gentleman from Massachusetts, who had a right to be recognized, as he rose to make a report from a committee authorized to report at any time.

Mr. CONGER. I appeal from that decision of the Chair.

Mr. COX. I rise to a point of order.

Mr. WILSON, of Iowa. I think there was a misunderstanding perhaps. I understand the proceedings to have been something like this: the gentleman from New York moved to go to the Speaker's table; pending that a motion to adjourn was made. Now pending the action of the House on the motion to adjourn the gentleman from New York could no doubt rise to withdraw the motion to go to the Speaker's table, although I do not very well see how he could be recognized to do it. But that did not interfere at all with the motion to adjourn—a motion of the highest privilege known to the rules of the House. Unless that motions was withdrawn the sense of the House must be taken on it.

The SPEAKER. All incidental and dilatory motions fell of course with the withdrawal of the motion to go to the Speaker's table.

Mr. PAGE. The Chair has no right to decide that the motion to adjourn was a dilatory motion.

Mr. COX. I make the point of order that nothing is in order except the reading of the report of the gentleman from Massachusetts.

Mr. LAWRENCE. I thought I had the floor at one time, and I have never yielded it.

The SPEAKER. The gentlemen from Ohio [Mr. LAWRENCE] never had it. The gentleman from Iowa [Mr. WILSON] is on the floor on a point of order.

Mr. WILSON, of Iowa. A motion to adjourn over and a motion to adjourn cannot very well be decided to be dilatory motions; and even if that were not true, the right of the minority to make dilatory motions is known to none better than to the gentleman who now occupies the Chair, for I recollect that he kept me here once forty-six and one-half hours by motions of that class.

Now the motion to adjourn is a highly privileged motion, the very highest known to the House except a motion to fix the time to which the House shall adjourn. Pending the action of the House on the motion to adjourn the gentleman from New York could not get the floor, could not be recognized to withdraw his motion. The House gave the Chair unanimous consent to make a statement, but it was to ascertain whether we would give him leave to do certain things. Objection was made. Then the gentleman from New York withdrew the motion to go to the Speaker's table. But the motion to adjourn, if insisted on, must be disposed of.

The SPEAKER. Does the gentleman from Iowa say that a gentleman having the floor can be taken off the floor within the period of one hour by another member making a motion to adjourn?

Mr. WILSON, of Iowa. But my point of order is that the gentleman from New York did not get the floor and could not get it until we had determined what we would do with the motion to adjourn.

The SPEAKER. That motion fell, as the Chair has heretofore stated, with the withdrawal of the motion to go to the Speaker's table.

Mr. WILSON, of Iowa. That is the very point I raise—that it cannot fall. The motion to adjourn is of too high dignity to fall. There is no such thing as that motion falling.

Mr. COX. I object to debate.

The SPEAKER. The gentleman from Iowa is speaking to a point of order.

Mr. COX. I make another point of order.

The SPEAKER. Two questions of order cannot be made at once.

Mr. WILSON, of Iowa. I say in the presence of the gentleman from New York and every other gentleman here that I would not knowingly make a representation to the Chair that I did not believe to be absolutely correct. I do not want you, Mr. Speaker, or any other gentleman occupying that high position, to make a bad ruling. I believe that the rules under which we act are a structure of greater beauty than the Capitol in which we sit. I would rather see a man go to the top of this Capitol and toss down the stones one after another, even if every stone killed a citizen, than see the rules of the House wrongly administered; for a wrong decision, like the archangel spoken of by Milton, strikes squadrons at once. I submit that the motion to adjourn must be acted on. Of course if the Chair decides otherwise I have nothing to say.

Mr. COX. I beg to say one word. I submit that no point of order can be made in a frivolous and dilatory way that would take the gentleman from Massachusetts off the floor when he is presenting a question of the highest privilege, in which we are all interested for to-morrow's work. So the Chair has decided.

Mr. PAGE. I do not understand the Chair has decided that point.

Mr. COX. The gentleman from Massachusetts has the floor and is proceeding to make his report.

Mr. BURCHARD, of Illinois. That is the question.

Mr. COX. And you have no right by raising points of order to break him down in his patriotic endeavor to bring these facts before the House on a question of high privilege.

MEMBERS of the republican side. Ah!

Mr. CONGER. I appeal to the Chair whether he decides that the motion to adjourn fell with the withdrawal of the motion to go to the business upon the Speaker's table?

The SPEAKER. The Chair desires to state that the gentleman from New York withdrew his motion to go to the business upon the Speaker's table. Then some time elapsed and no effort was made on the part of anybody on the point of order as to the motion to adjourn until the gentleman from Massachusetts [Mr. THOMPSON] was actually on his feet and had stated that he rose to submit a report from a committee which had the right to report at any time, and was recognized by the Chair to make that privileged report. The Chair now submits to the gentleman from Iowa, [Mr. WILSON,] or to anybody else, whether under such a state of facts he could be allowed or would be in any way warranted in entertaining a motion to adjourn while

the gentleman from Massachusetts was upon the floor and in the very act of presenting his report to the House, the Clerk at the desk having proceeded with the reading of the written report?

Mr. COX. Nor would the Chair under the circumstances be justified in entertaining an appeal from the decision of the Chair.

Mr. CONGER. The point is that there is now pending a motion to adjourn.

The SPEAKER. Not pending.

Mr. CONGER. Yes, sir; a motion pending that the House adjourn.

The SPEAKER. The Chair has decided that motion to adjourn fell with the withdrawal of the motion to go to the business upon the Speaker's table.

Mr. CONGER. Then from that decision of the Speaker I appeal.

Mr. O'BRIEN. The motion was withdrawn at the request of the Speaker.

Mr. CONGER. The yeas and nays were ordered on the motion to adjourn.

Mr. O'BRIEN. The motion to go to the business upon the Speaker's table was withdrawn by unanimous consent.

Mr. BAKER, of Indiana. The motion to adjourn was never withdrawn.

Mr. CROUNSE. Has the motion to adjourn been withdrawn by any one?

The SPEAKER. Hardly any one listening at the time but will agree the motion of the gentleman from New York to go to the business upon the Speaker's table was withdrawn. In reply to a parliamentary inquiry the Chair replied that with the withdrawal of that motion all incidental motions fell, the motion to adjourn included. The House then proceeded without objection to the consideration of other business, and the Chair recognized the gentleman from Massachusetts, [Mr. THOMPSON,] who, under the authority of this House, had leave to report at any time. He was recognized to make such privileged report, and he did make such privileged report, and the House proceeded to its consideration. The Chair thinks it is not competent according to the rules under such a state of facts, the House having proceeded to the consideration of other business, to entertain a motion to adjourn which would have the effect to take the gentleman from Massachusetts off the floor. Nor can the motion to adjourn be entertained until the hour to which the gentleman from Massachusetts is entitled expires.

Mr. CONGER. If the Chair pleases——

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

Mr. CONGER. I appeal from the decision of the Chair.

The SPEAKER. The Chair does not recognize any gentleman to take an appeal, because the gentleman from Massachusetts is on the floor and refuses to yield it.

Mr. CROUNSE. The point of order is raised as to his right to hold the floor.

The SPEAKER. That right cannot be disputed, as the right was given by the House originally that he might report at any time.

Mr. CROUNSE. What is the right of a member of this House if the Chair can arbitrarily——

The SPEAKER. The Chair has arbitrarily done nothing.

Mr. CROUNSE. Let me submit, with all respect to the Chair, that he has decided the gentleman from Massachusetts has the floor. [Cries of "Order!"] That right is challenged by members here, and an appeal is taken from the decision of the Chair.

The SPEAKER. That right cannot be challenged. The gentleman from Massachusetts rose up in the sight of everybody upon this floor and in the galleries and presented his report. He stated what his report was and sent it to the Clerk's desk and asked to have it read. The Clerk has proceeded to read the report.

Mr. COX. I object to further debate.

The SPEAKER. The Clerk will proceed with the reading of the report.

The Clerk proceeded to read the report.

Mr. BURCHARD, of Illinois. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. BURCHARD, of Illinois. I propose to raise the question of consideration.

Mr. COX. It is too late.

The SPEAKER. It is too late to raise the question of consideration.

Mr. LUTTRELL. I raise the point of order that we must have order.

Mr. DUNNELL. I ask that the minority of this committee have leave to print their views.

Mr. THOMPSON. I do not yield the floor at this time for any purpose.

Mr. DUNNELL. I ask leave to submit the views of the minority.

The SPEAKER. That can be done at the expiration of the gentleman's hour.

Mr. BURCHARD, of Illinois. I raise the question of consideration.

The SPEAKER. The Chair will rule upon that. The Chair rules that the question of consideration comes too late.

Mr. BURCHARD, of Illinois. I rose at the time the paper was presented at the Clerk's desk for the purpose of raising the question of consideration. I respectfully appeal from the decision of the Chair.

Mr. COX. I object to debate. Gentlemen on the other side will never learn that they are in the minority.

The Clerk resumed the reading of the report.

Mr. BURCHARD, of Illinois. Mr. Speaker, I have raised the question of consideration.

Mr. COX. I hope the Speaker will send for the Sergeant-at-Arms to put the member down, as he is violating the rules of the House.

The SPEAKER. The Chair has decided that the gentleman from Illinois is too late in raising the question of consideration.

Mr. FOSTER. I appeal from the decision of the Chair.

The SPEAKER. The Chair decides that an appeal cannot be entertained.

Mr. FOSTER. Does the Chair decide that the question of consideration cannot be raised and that we cannot take an appeal from that decision?

The SPEAKER. Not while the gentleman from Massachusetts [Mr. THOMPSON] is on the floor.

Mr. FOSTER. He is not on the floor.

The SPEAKER. The gentleman from Massachusetts is on the floor and has the right to retain it for one hour.

The Clerk continued the reading of the report.

Mr. PAGE, (interrupting.) I rise to a point of order. It is, that if the gentleman from Massachusetts is on the floor he must read his own report.

The SPEAKER. If the point is insisted on, the gentleman from Massachusetts will come to the Clerk's desk and read the report.

Mr. THOMPSON. All right; I will come and read it. [Applause.]

Mr. THOMPSON proceeded to the Clerk's desk and commenced to read the report.

Cries of "Louder! Louder!"

The SPEAKER. The Sergeant-at-Arms will see that members keep order.

Mr. THOMPSON resumed the reading of the report.

Mr. BAKER, of Indiana, (interrupting.) I rise to a point of order.

The SPEAKER. The gentleman from Indiana is not in order.

Mr. BAKER, of Indiana. I rise to a point of order.

The SPEAKER. The gentleman from Indiana is not in order in rising at this time to a point of order.

Mr. BAKER, of Indiana. I have a right to be heard.

The SPEAKER. Gentlemen will take their seats and the House will come to order.

Mr. THOMPSON resumed the reading of the report.

Mr. CANNON, of Illinois, (interrupting.) I rise to a point of order.

The SPEAKER. The gentleman is not recognized for a point of order.

Mr. CANNON, of Illinois. I insist on my right to be heard.

The SPEAKER. The gentleman is not recognized to interfere with the public business.

Mr. THOMPSON resumed the reading of the report.

Mr. DUNNELL, (interrupting.) I wish to suggest that the Clerk be allowed to read. I think the chairman of the committee should not be required to read the report.

There being no objection, the Clerk proceeded to read the remainder of the report.

Mr. DUNNELL, (interrupting.) I suggest that the further reading be dispensed with, and that the report be printed in full in the CONGRESSIONAL RECORD.

The SPEAKER. The Chair understands that the gentleman from Minnesota [Mr. DUNNELL] desires to offer a minority report.

Mr. DUNNELL. I do.

The SPEAKER. And the chairman of the committee apprises the Chair that he desires that the gentleman from Minnesota should have that privilege.

Mr. LAWRENCE. Let both be printed together.

Mr. DUNNELL. The report of the minority is not yet quite ready to be presented.

The SPEAKER. It is understood that whenever the gentleman from Minnesota is ready he shall have that privilege.

Mr. THOMPSON. Certainly; that was the understanding of the committee.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota? [After a pause.] The Chair hears none.

Mr. FORT. I object to the printing of the report in the RECORD.

Mr. DUNNELL. I hope there will be no objection to that.

Mr. FORT. I object.

The SPEAKER. The Clerk will continue the reading of the report.

The Clerk resumed the reading of the report.

Mr. PAGE, (interrupting.) I ask unanimous consent that the further reading of the report be dispensed with, and that it be printed in the RECORD, and that the minority have the same privilege.

The SPEAKER. Is there objection to the request of the gentleman from California? [After a pause.] The Chair hears none. Both reports will be printed in the RECORD and the usual number of copies will be printed for the use of the House. They will be printed together, the chairman of the committee suggests, if the views of the minority are presented in time. The Chair, therefore, would suggest to the gentleman making the minority report that the sooner he makes it the better in order that the two reports may be printed together.

Mr. CONGER. In the mean time the minority report will be printed in the RECORD.

The SPEAKER. Whenever it is ready.

Mr. DUNNELL. It is not quite ready yet. I think it will be ready within twenty-four hours.

The SPEAKER. The majority report will be printed in the RECORD,

the minority report will go into the RECORD when ready, and the two reports will be printed together in the usual pamphlet form.

The report of the committee is as follows:

The House of Representatives on the 4th day of December, 1876, passed the following resolution:

"*Resolved*, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate the recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committees shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise."

Your committee appointed under the foregoing resolution proceeded at once to Florida and made the examination called for by said resolution. They found that the board of State canvassers, consisting of the secretary of state, the attorney-general, and the comptroller, had pretended to canvass the county returns of the vote of November 7, 1876, according to law, and that by said canvass they returned a majority of votes not only for the republican candidates for governor and lieutenant-governor, but also for the republican presidential electors.

The canvass made by that board is shown to be false by the minutes made by the board itself upon the county returns. The board had no power but simply to canvass the county returns, or in the words of the statute to "determine and declare who shall have been elected to any such office, or as such member, as shown in such returns." They had no power to determine as to specific votes, but simply the power and duty, in case 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 such officer or member, they shall so certify and shall not include such return in their determination and declaration."

This is the whole power conferred by the laws of Florida upon that board. Still in direct violation of the law they did go behind the county returns and inquired into and determined judicially upon the validity of the elections at several precincts, and in some cases to reject whole precincts, and in others to reject specific votes. They also rejected the vote of an entire county without any legal authority for so doing. Your committee decided not to examine into the evidence presented before the board of State canvassers, as their action was wholly illegal and the evidence upon which the board acted could not wholly be reproduced, as a part of it was oral testimony and the remainder and larger part consisted of *ex parte* affidavits, which, in the judgment of your committee, must be wholly unreliable, and could not have afforded the board the least aid in the ascertainment of truth, and would not be of any aid to your committee. The action of the State board was wholly illegal, being a bald usurpation, as has been fully and formally determined by the supreme court of Florida, the highest judicial tribunal in that State, (see case of George F. Drew *vs.* The State Canvassing Board,) and therefore any decision of result made by them under that canvass and any certificate of election issued by them must be regarded as without any weight or authority, and absolutely void.

Your committee have obtained, and the same is included in their evidence, certified copies of the returns of the county canvassing boards from each of the counties in the State, together with the laws of the State of Florida regulating elections and the canvassing of the votes cast at such elections, and also the clear interpretation of the law as given by the supreme court of that State in the case of George F. Drew, now governor of Florida, *vs.* The State Canvassing Board, so that each member of the House may see upon his own inspection of the record who were chosen presidential electors for the State of Florida on the 7th day of November last. The returns of the county canvassers show the vote for presidential electors at said election to be as follows:

Counties.	Tilden electors.	Hayes electors.
Alachua	1,267	1,984
Baker	238	143
Brevard	111	58
Bradford	703	202
Calhoun	215	63
Columbia	903	718
Clay	287	122
Duval	1,437	2,367
Escambia	1,426	1,602
Franklin	167	91
Gadsden	835	1,300
Hamilton	617	330
Hernando	579	144
Hillsborough	790	186
Holmes	300	16
Jackson	1,397	1,299
Jefferson	737	2,660
La Fayette	309	62
Leon	1,003	3,035
Levy	488	207
Liberty	147	83
Madison	1,078	1,524
Manatee	262	26
Marion	958	1,552
Monroe	1,047	980
Nassau	667	802
Orange	908	208
Putnam	605	586
Polk	456	6
Santa Rosa	768	409
Saint John's	501	338
Sumter	506	173
Suwannee	626	458
Taylor	242	73
Volusia	460	186
Wakulla	361	182
Walton	626	46
Washington	407	119
Dade	5	9
Total	24,439	24,349

Tilden's electors' majority 90. To this should be added the return of the vote of the eighth precinct, pond 11, in Clay County, which gave a majority of 23 votes for the Tilden electors, which are fairly canvassed for them, although not included in the enumeration, making their majority 113.

(There are but 3 votes' difference between the highest and lowest vote on the democratic ticket, and not more than 10 difference between the highest and lowest on the republican ticket.)

This is the result upon the face of the returns, counting the full and correct returns (and not the partial and fraudulent returns) from

BAKER COUNTY,

and which beyond all reasonable question should be counted. It is provided by act of the State of Florida of August 6, 1868, section 24, as follows:

"On the sixth day after any election, or sooner if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk and take to their assistance a justice of the peace of the county, (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several officers and persons, as shown by the returns on file in the office of such clerk or judge, and shall then make and sign duplicate certificates containing, in words and figures, written at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given for each office, the names of the persons for whom such votes were given for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state and the other to the governor of the State."

Thus it appears that the county judge and the clerk of the circuit court are co-equal in authority, and the absence of the one as much calls for an explanation as the absence of the other.

The returns of the district judge, sheriff, and justice of the Peace Green ought not to have been canvassed by the State board of canvassers, for from the papers in the possession of the said State board it did appear that the return was false in this, that it did not contain the whole number of votes given for each office, which of itself is very clearly against its validity. There was left out of it fraudulently the entire vote of two precincts in that county, namely: Darbyville, which gave the Tilden electors 65 votes, and the Hayes electors 13 votes; and Johnsville, which gave the Tilden electors 84 votes, and the Hayes electors 9 votes; thus taking from the Tilden electors a majority in those two precincts of 136 votes. The return of the clerk of the circuit court and Justice of the Peace Dorman show this fact, and the board of State canvassers were bound in law to take the return containing the whole number of votes instead of the one containing only a part of said votes. The State board knew the law, and knew that the county canvassers were bound to return the whole number of votes cast in the several precincts in the county, not having any right under any circumstances whatsoever to reject any precinct return or any vote in any precinct, but they were bound to canvass the whole vote cast in each and all of the several precincts. The return of the county judge, the sheriff, and Justice of the Peace Green does not show any reason for the calling in of the sheriff, and it is a settled principle of law that where a particular person is to act only in a special contingency, it must appear of record that the contingency exists which authorizes him to act, before his act can be regarded as valid. The county judge had no right to call in the sheriff, and the sheriff had no right to act upon the board except "in case of the absence, sickness, or other disability of the county judge or clerk." The return, therefore, bears upon its face the evidence that it is not a return made by the proper officers, there being nothing of record, or in any accompanying paper, to show the reason why the clerk of the circuit court did not assist in the canvass. And the evidence both of the clerk and the sheriff clearly show that there was no reason existing for the sheriff being called in, except that the county judge contemplated committing a most base and wicked fraud in the canvass, and he did not believe the clerk of the circuit court would become a party to it. The sheriff, therefore, was wholly unauthorized to assist in making the canvass, and his act was that of an unauthorized person, and of a mere intruder, and instead of his name adding anything to the return and certificate, it made it more irregular than it would have been had it been signed only by the judge and justice of the peace alone.

The return made by Coxe, the clerk, and Dorman, justice of the peace, is regular, and with the certificate sent by the clerk with his return, (which clearly accounts for the absence of the judge and sheriff,) is greatly strengthened by the fact that the sheriff has acted with the judge in making a canvass of a part of the precinct returns without any authority, but acting clearly in violation of law. The canvass of the clerk and Justice Dorman, taken in connection with the certificate of the clerk, is clear evidence of the unwillingness of the county judge to assist the clerk in making the canvass, and the fact that the judge did not call upon the clerk to assist, in whose possession all of the papers necessary for making the canvass were deposited in requirement of the law, is of itself a very strong circumstance to impeach the action of the county judge. The fact is there is nothing to show that the certificate of the clerk, explaining why the judge and sheriff did not assist him, is not in every particular true, but everything upon the face of the return made by the judge to confirm his, the clerk's, statement. And your committee are unhesitatingly of the opinion that there is no reason, apparent or real, why the partial and fraudulent return of the judge, sheriff, and Justice of the Peace Green should be canvassed, but every reason why it should not be canvassed, and that there is every reason both in law and justice why the one made by the clerk, Coxe, and the justice of the peace, Dorman, should be.

The return made in Duval County, where the Hayes electors received a majority of 930 votes, does not stand upon so good grounds as the return by the clerk and Justice of the Peace Dorman, which only gives the Tilden electors a majority of 95. The counting of the legal and correct returns from Baker County gives a majority in the State for Tilden electors of 90 votes. When the State board of canvassers made their false canvass by which they declared a majority of the votes of Florida were cast for the republican candidates for presidential electors, they did not, as clearly appears from the indorsements made by them upon the county returns, reject a single vote, precinct, or county return for any legal cause, but every vote rejected, every precinct rejected, and every certificate of county canvass rejected was rejected upon illegal grounds, and without any justification in law whatsoever.

It was proved that E. W. Driggers, the county judge, acted with the deliberate and willful intent of defrauding the legal voters of Baker County of their votes, and of making it appear that the county gave a majority of 136 votes for the Hayes electors, when in truth and in fact it gave a majority for the Tilden electors of 95 votes, thus making a difference in favor of the Hayes electors of 231 votes. There was not the slightest pretense for so doing. The facts are fully given in the testimony of the clerk of the circuit court, John Dorman, justice of the peace, and Andrew Allen, sheriff of the county. The sheriff testified that the county judge, on Monday the 13th of November, 1876, invited him to assist; that at night, after the clerk's office was closed, Driggers and the justice of the peace, Green, and himself went to the clerk's office, the judge having the key and unlocking the door, and alone in the office took the returns and "just made the return throwing away two precincts;" one was Darbyville precinct and the other was Johnsville precinct.

The sheriff further testified as follows in answer to questions propounded to him:

Question. Which did you throw away first?

Answer. Johnsville precinct.

Q. And then you threw away the Darbyville precinct?

A. Yes, sir.
Q. Did you have any witnesses at all before you?
A. None at all.
Q. Did you have anything before you except the returns?
A. No, sir.
Q. Why did you throw away Johnsville precinct?
A. We believed that there was some intimidation there—that there was one party prevented from voting.
Q. Did you have any evidence before you to that effect?
A. No, sir; there was only his statement.
Q. Did you not have a particle of evidence before you?
A. No, sir.
Q. You believed that one party had been intimidated and prevented from voting?
A. Yes, sir.
Q. And therefore you threw out the Johnsville precinct?
A. Yes, sir.
Q. Was there any reason for throwing it out?
A. No, sir.
Q. None whatever?
A. No, sir.
Q. No other reason suggested but that, was there?
A. No, sir.
Q. You next threw out Darbyville precinct?
A. Yes, sir.
Q. For what reason did you do so?
A. We believed that there were some illegal votes cast there.
Q. Did you have any evidence before you at all?
A. No, sir.
Q. Not a particle?
A. No, sir.
Q. But you had an impression that some illegal votes were cast there?
A. Yes, sir.
Q. You had no proof of it at all?
A. No, sir.
Q. How many illegal votes did you have an impression were cast there?
A. About seven, I think, as well as I can recollect.
Q. Therefore you threw out the precinct without any evidence at all?
A. Yes, sir.
Q. Then you made up your returns?
A. Yes, sir.
Q. Who wrote those returns?
A. I did.
Q. You wrote them yourself?
A. Yes, sir.
Q. And the judge signed them?
A. Yes, sir.
Q. Mr. Green signed them?
A. Yes, sir.
Q. Then you made return to the secretary of state that you had canvassed the vote?
A. Yes, sir.
Q. And also sent one to the governor that you had canvassed the vote?
A. Yes, sir.
Q. The returns, so far as you knew, appeared to be regular from the different precincts, did they?
A. Yes, sir.
Q. Who was chairman of the board of canvassers?
A. The judge.
Q. Who made the suggestion to throw out Johnsville?
A. He did himself.
Q. Who made the suggestion to throw out the Darbyville precincts?
A. He did.
Q. Did anybody come in while you were there?
A. No, sir.
Q. You knew that afternoon that the clerk had made a canvass?
A. Yes, sir.

It is difficult to conceive of a more wicked attempt to defraud the people of their votes and impose upon the State and county officers not the choice of the people, than is here presented. Your committee endeavored to obtain Judge Dreiggers as a witness but did not succeed in finding him, and are clearly of the opinion that he intentionally avoided the officer who endeavored to find and summon him as a witness. The testimony of the clerk, Coxe, and Justice Dorman is clear that they were at the clerk's office on Monday, the 13th, in answer to the notice of Judge Dreiggers, that the judge saw them and declined to canvass with the clerk, and that the clerk offered to assist the judge in making the canvass. It also appears from the evidence of both the clerk and the sheriff that on Monday, November 13, when the judge refused to join the clerk in making a board of county canvassers, the clerk requested the sheriff to act with him, and the sheriff also refused; so that the presumption of law and fact that the sheriff had no right to act with the judge under the circumstances is in perfect accordance with the proven facts in the case. Everything upon the face of the returns signed by Coxe and Dorman on the 13th of November, with the papers accompanying the same, show that their canvass was correct and legal, (the absence of both judge and sheriff being accounted for,) and that the return made by them is clearly the return which the State board of canvassers were in law and justice bound to canvass.

The canvass by the clerk (Coxe) and the justice of the peace (Dorman) on the 10th day of November was made to protect the actual vote of the county and as a means to preserve the evidence of that vote. The clerk received notice that a fraud with reference to the vote of this county was contemplated, and took the precaution to make the canvass in order to prevent the fraud. His discretion is fully vindicated by the action of the county judge, (Dreiggers,) who did attempt to commit a most gross fraud upon the vote of this county, as appears from the testimony of Andrew A. Allen (before referred to) and from the false and fraudulent certificate signed by Judge Dreiggers. As has before been stated, the certificate which the State canvassing board was bound to accept as the true certificate from Baker County was the certificate made on the 13th day of November by Coxe, clerk of the circuit court, and Dorman, justice of the peace.

CLAY COUNTY.

The return of Clay County is regular upon its face, and there is nothing to impeach it in the slightest degree. The vote for the Hayes electors as aggregated by the county canvassers was 122, and the vote for the Tilden electors 286. The said county canvassers certify on their return that at precinct No. 8 (pond No. 11) the Tilden electors received 29 votes and the Hayes electors 6 votes, which were not included by them in the enumeration made because it did not appear that the inspectors at said poll were sworn. The vote at this precinct being added, as it certainly should be, would make the entire vote of the county, as appears on the face of the return, 315 for the Tilden electors and 128 for the Hayes electors. This precinct is fairly canvassed. The statement that there was no evidence of the inspectors being sworn is not a material part of the return and does not show a sufficient reason for rejecting the vote there cast.

The vote of this precinct is fairly canvassed and the result stated with clearness and certainty. The statement attached to the returns taken from Green Cove Springs precinct No. 1, that Samuel J. Tilden received 74 votes and Thomas A. Hendricks 74 votes, was clearly made by the inspectors taking the names on the heading of the democratic ticket, and they are in no sense votes and were not to be taken and were not taken into the count by the board of county canvassers as a part of the electoral vote. This appears upon the face of the returns of the board of county canvassers; so that it cannot be said with any truth that there is anything in relation to the returns from Clay County which is either false or fraudulent or uncertain. In fact this return bears upon its face the evidence of a careful desire to faithfully perform their duty on the part of the board of county canvassers, and the certificate of returns is entitled to as much weight as any return from any county in the State.

In point of fact the inspectors at this precinct were sworn as appears by the testimony. But we are willing to rest this point upon the face of the return.

DUVAL COUNTY.

The returns from this county give 2,367 votes for the Hayes electors, and 1,437 votes for the Tilden electors, being a majority for the Hayes electors of 930 votes. The return, as the return from Baker County, is signed by the clerk of the circuit court, and a justice of the peace. There is a certificate with this return stating that William A. McLean, judge of the county court of said county, refused to sign the certificate. There is not a word in the certificate that shows that the judge in any manner assisted in or agreed to assist in the canvass, or was notified to be present and assist, or being present was requested to assist in the canvass; or, in the language of the statute, that "absence, sickness, or other disability" prevented him from acting. The certificate does not give a reason why the sheriff was not called in to assist in making the canvass. This return is irregular, being the canvass by a board consisting of two members without any certificate or statement of a reason why the third person was not called in to assist, when the law provides that the board shall consist of three persons. The return is by no means as good and valid on its face, taken in connection with the certificate returned with it, as the return from Baker County signed by Coxe, clerk of the circuit court, and justice of the peace Dorman, taken in connection with the certificate returned with it. So that if this return from Baker County is to be rejected by reason of the canvass having been made by the clerk of the circuit court and a justice of the peace, where the absence of the county judge and sheriff of the county is satisfactorily accounted for, so much the more must the return from Duval County be rejected where the canvass was made by the clerk of the circuit court and the justice of the peace and no explanation given why the county judge or the sheriff of the county did not assist in the canvass. In a word, the certificate of canvass from Baker County made and signed by Coxe and Dorman, taken in connection with the certificate accompanying the same, is regular, while the certificate of canvass from Duval County is irregular. If the votes from both Baker and Duval Counties are rejected, the majority for the Tilden electors will be increased 535 votes, and the total majority for the Tilden electors will be at least 925 votes.

It was proven that at Jacksonville in this county sixteen persons in the county jail at that place held for trial, and some of them for aggravated felonies, were taken by the sheriff of the county or his subordinates to the polls to vote, and that they did vote the republican ticket. Two of those persons were, a short time after the election, convicted of murder, the crime for which they were then held for trial, and another was convicted of a felonious assault. Without discussing the question as to whether or not persons under such duress as they then were are disqualified from voting, your committee suggest that it shows a partisan zeal and use of means that is inconsistent with an honest purpose. It must, we are sure, be conceded that a party that takes murderers from the jails to vote its ticket, has exhausted all its resources to carry its point, and that it has done everything in its power to prevent the success of its opponents, and has, with the whole machinery of the election in its possession, not been overscrupulous in taking at least all legal advantages that the situation may offer.

Thus it appears from a legal canvass of the county returns, the only legal canvass made, that the Tilden electors were duly elected. This canvass is binding upon all parties, being made by authority of the State of Florida, and there is nothing in it to impeach its perfect accuracy. Their election has been duly certified by the governor of the State. It has also been adjudged by the circuit court of the second judicial district of Florida upon proceedings, to wit, upon an information in the nature of a *quo warranto*, made the following order and adjudication, namely:

"It is therefore considered and adjudged that said respondents, Frederick C. Humphries, Charles H. Pearce, William H. Holden, and Thomas W. Long, were not, nor was any one of them, 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. Young, 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."

The supreme court of Florida, in the case of George F. Drew *vs.* Samuel B. McLin and others have in effect decided that the Hayes electors were not elected and that the Tilden electors were elected. The independent substantive proposition presented in the case submitted to the court was not as to whether George F. Drew had been elected governor, but was as to the validity of that documentary evidence in the office of the secretary of state which, by the law of Florida, was declared to be the evidence upon which a determination as to who had been elected should be made, namely, the certificates of returns of the county canvassing boards. In other words, the question was whether, so far as concerned the votes cast for the several persons voted for at the election, the certificates of the county canvassing boards on file in the office of the secretary of state were or were not conclusive evidence of the facts stated by them, or whether the State board of canvassers had a right to go behind those certificates and of their own motion determine as to the validity of the returns in the several precincts, and exercise the right to reject them in part or accept them in part. The State canvassing board, in their answer to the alternate writ of mandamus, set forth every ground upon which they relied to substantiate their claim that the result shown upon the face of the returns should not be counted. As to each and all of the grounds thus presented, the court ruled that they were wholly insufficient in law, and that the board must take the certificates and canvass them without adding thereto or taking therefrom, or, in other words, that the State canvassers were bound to give certificates of election to those persons who, upon the face of the returns from the county canvassing boards were shown to have received a majority of the votes cast at the election.

In the clearest and most emphatic manner, the court determined that whoever had a majority of the votes cast, as shown upon the face of the returns, was duly elected; and it appearing clearly upon the face of the returns that the Tilden electors had received a majority of the votes cast and had been elected, the determination of the supreme court of the State was a declaration that the Hayes electors were not elected, that the Tilden electors were elected, and that the votes for President and Vice-President of the United States cast by the Hayes electors were illegally

cast and were void. The issue being solely one as to the validity of the returns, as was clearly shown upon the pleadings, the decision of the court that the returns are legal and they must be counted is conclusive and binding upon all parties claiming under said returns. The validity and effect of those certificates of returns is *res adjudicata* and cannot be tried again in any case where the right to an office by a person whose vote is set forth therein is thereafter called in question, an inspection of the returns being the only thing necessary to be done in order to ascertain who has been elected. It follows that the fact having been judicially ascertained that the persons named upon the face of the returns as having received the highest number of votes were elected, your committee submit that in order to ascertain who were chosen presidential electors this House has only to look upon the face of the record and read the words and figures which determine that result. These certificates having been made a matter of record, it is only necessary in order to determine the result that the record be read.

Your committee, therefore, are of opinion that the fact having been judicially determined that the Hayes electors did not receive a majority of the votes cast at the election, that that determination has involved in it as a necessary incident the denial of their right to cast their votes as presidential electors, and no determination other than that which has been made by the supreme court of the State of Florida is required to show that the act of those electors in casting their votes for President and Vice-President is illegal and void. This conclusion appears the more just when we consider that the real parties to the suit are not so much George F. Drew and the State board of canvassers as the democratic voters and the republican voters of the State, and the decision of the supreme court is a substantial determination as to which party's candidates were duly elected. It will not be claimed that the court is bound to go through with the same proceedings with reference to every person voted for whose vote is contained in those certificates.

Your committee have no words with which to characterize with sufficient severity the act of the late State canvassing board, by which they attempted to defraud the people of a State of their vote and the country at large of a President of their choice. The fact that the Tilden electors were duly elected is so clear that the action of the State canvassing board in declaring that they were not elected is of itself sufficient proof of a want of an honest intention. And your committee have no hesitation in saying that the disturbed state of the country with reference to the result of the presidential election has been produced by the wrongful act of that board. Had that board declared the true result as it appeared from the returns, and as they were bound to do, the result would have shown the election of Samuel J. Tilden for President and Thomas A. Hendricks for Vice-President so clearly that no question would have been seriously made by any one.

There not having been a legal canvass of the county returns made for presidential electors, the Legislature of Florida passed an act authorizing the board of State canvassers to make such a canvass. The law was approved January 17, 1877, and is as follows:

An act to procure a legal canvass of the electoral vote of the State of Florida as cast at the election held on the 7th day of November, A. D. 1876.

The people of the State of Florida, represented in senate and assembly, do enact as follows:

SECTION 1. The secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet forthwith at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of the election of electors of President and Vice-President, held on the 7th day of November, A. D. 1876, and determine and declare who were elected and appointed electors at said election, as shown by such returns on file in the office of the secretary of state.

SEC. 2. The said board of State canvassers shall canvass the said returns according to the fourth section of the statute approved February 27, 1872, entitled "An act to amend an act to provide for the registration of electors and the holding of elections," approved August 6, 1868, according the construction declared, and the rules defining the powers and duties of the board of State canvassers under said law, prescribed in and by the supreme court of this State in the case of The State of Florida on the relation of Bloxham *vs.* Jonathan C. Gibbs, secretary of state, *et al*, decided in January, A. D. 1871, and in the case of The State of Florida on the relation of George F. Drew *vs.* Samuel B. McLin, secretary of state, William Archer Cocke, attorney-general, and Clayton A. Cowgill, comptroller of public account of the State of Florida, decided December 23, A. D. 1876.

SEC. 3. The said board shall make and sign a certificate, containing in words written full length, the whole number of votes given at said election for each office of elector, the number of votes given for each person for such office, and therein declare the result, which certificate shall be recorded in the office of the secretary of state, in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government, and shall transmit two certified copies of such certificate, one to the presiding officer of the senate and one to the presiding officer of the assembly of the State of Florida.

SEC. 4. This act shall take effect from and after its passage.

Approved January 17, 1877.

I, W. D. Bloxham, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of the original on file in my office

In testimony whereof I have hereunto set my hand and affixed the great seal of the State.

Done at Tallahassee, the capitol, this the 26th day of January, A. D. 1877.

[SEAL.]

W. D. BLOXHAM,
Secretary of State.

The result of this canvass is set forth in detail in the evidence.

The returns from the several boards of county canvassers clearly show the election of the Tilden electors by a majority of at least 90 votes. No legal canvass of the returns as they appear in the office of the secretary of state of Florida can show a different result. It is as certain as testimony can make it that under the laws of Florida the Tilden electors should have had from the board of State canvassers certificates showing their election. In other words, the evidence which the laws of Florida provide for showing the result of an election shows beyond all fair controversy that the Tilden electors did receive a majority of at least 90 votes, and were consequently elected.

It should be borne in mind, in considering the certificates of the boards of county canvassers, that a majority on nearly, if not all, of those boards are republicans, and that a majority on nearly all of the precinct canvassing boards were republicans also, and therefore the result as stated in the declaration of these precinct and county canvassing boards cannot be presumed to be any more favorable to the candidates of the democratic party than the facts will fully warrant. This being the situation of the vote of Florida as it appears from the returns which the law provides shall be the evidence of the result, the question is whether there is anything in the manner of the conducting of the election on the part of the supporters of the Tilden electors in the State of Florida to vitiate and reverse that result.

This is certainly an important question, and in considering the testimony bearing upon it one fact should be kept constantly in view, which must have a great influence upon all who consider the question. It is this, the governor of Florida was a republican candidate for re-election and had the appointment of all the officers of the State except constables. This put the whole machinery of the government in the hands of the republican party, under circumstances which would make them most vigilant to see that no possible advantage should be taken of it or its candidates for office, and there was at least the usual temptation on the part of those having the agencies of the government in their control to use those agencies to the utmost verge of a most liberal construction of their powers in that direction which might be most favorable to the success of their candidates, and thereby continue themselves in office.

The county commissioners had the appointment of all the voting-places and election officers, except clerks, (the clerks being appointed by the inspectors appointed by the county commissioners,) and they had also the power of revising the registration-list. A majority of the election officers were republicans at nearly every voting-precinct. This gave them every facility to commit fraud if so inclined and to prevent its commission if attempted by others. There is, therefore, nothing in the situation going to make it probable that the supporters of the Tilden electors, rather than the supporters of the Hayes electors, were guilty of any frauds in the election.

Without discussing the general questions as to the powers of either House of Congress or both combined to go into the question of the details of an election in a State for presidential electors, your committee say that although they are not specifically charged with the duty of examining into the matter of intimidation, they feel justified in declaring that they did not hear any one seriously claim that there was any intimidation of the colored voters by the white people of Florida, and that there is not any evidence going to show that the people of Florida were not as quiet and free from all disturbing influences at the late presidential election calculated to wrongfully affect an election as the people of any other State in the Union. The election was regularly conducted in accordance with the forms of law prescribed by the State, and there is nothing in the mode of conducting it which ought to vitiate it or throw distrust upon it except in a few instances to which we specially refer. There were irregularities in conducting the elections at some of the precincts, as there must always of necessity be from accident, inattention to the provisions of law, and the presiding at elections of unskillful persons, where there is an honest intent and no disposition to commit a fraud. There were some cases of most clear, direct, and flagrant fraud.

LEON COUNTY.

At the very commencement of their examination at Tallahassee, in Leon County, your committee found that one Joseph Bowes, a leading republican politician and a prominent office-holder, and one Wiley Jones, a republican, went from Tallahassee to Richardson's school-house, a voting-place about ten miles distant from Tallahassee, known as Richardson's school-house precinct, No. 13, for the purpose of acting as election officers, and that said Bowes did act as an inspector of election and the said Jones did act as clerk. It was also proved that Lawrence Booth, a republican and a Federal office-holder, living at Saint Mark's, in the adjoining county of Wakulla, thirty miles distant, acted as one of the inspectors. It appeared that said Bowes had in his possession a quantity of small ballots with the names of the republican candidates thereon, the ballots being about an inch and a half square. It also appeared that 73 of those ballots were found in the ballot-box at this precinct. It was testified by one Rouse, who was in the room where the ballot-box was during the whole day at said precinct, that although he watched all day the putting of votes into the ballot-box, he did not see one of those small ballots put into the box, and that he was satisfied that none of them was voted at that precinct. Leon T. Roberts, a United States supervisor of election, also testified that he was all day sitting by the ballot-box and watching the ballots as they were deposited in the ballot-box, and did not see one of the small votes deposited in said ballot-box.

The poll-list at this precinct was suspicious in its character, there being three pages of names, amounting to seventy-two names in all, which had the appearance of being written all at one time and in the same handwriting, and not like the rest of the poll-list, which was written by different persons. Neither the names on said poll-list nor the pages of said list were numbered, differing in that respect from all the other poll-lists in Leon County, which were sixteen in number.

It was proved that these seventy-two names were of persons scattered throughout the county, and that not more than two or three of them lived within five miles of Richardson's school-house, and that many of them lived in remote parts of the county; that forty-eight of those persons voted at other precincts in the county, and twenty-four of them were called and every one of them made oath that he did not vote at the precinct and was not at Richardson's school-house during the day of election; and some of these witnesses did not know the location of Richardson's school-house. All of these twenty-four were republicans but two, and voted the republican ticket at other precincts. There was no evidence that a single one of the seventy-two persons upon these three pages of the poll-list voted at this precinct. Here is a clear case of the "stuffing of a ballot-box" and the making up of a fraudulent poll-list to cover up the first fraud; and there was willful and corrupt perjury on the part of Bowes to uphold the double fraud. There being this clear evidence of fraud on the part of the election officers, their certificate is not entitled to any credit, and no votes can be counted but what are proved independent of their certificate of return. There were 187 ballots in the box including the 73 small votes, although but 186 votes were returned as cast.

Your committee are clearly of the opinion that the rules of law, as ordinarily applied in election cases, would lead to the rejection of this entire poll, making a difference in the vote of Leon County of 177 votes in favor of the Tilden electors. Still your committee are of the opinion as a matter of fact that there is a strong probability that 114 votes were really cast, and that only 9 of them were cast for the Tilden electors; that the vote may stand 105 for the Hayes electors and 9 for the Tilden electors, making a difference of 72 votes in favor of the Tilden electors. This is the most liberal construction that can possibly be given to the vote for the Hayes electors.

In considering and ascertaining the true result of an election, very little attention should ordinarily be paid to mere irregularities which do not affect the real merits of the case. It is impossible to define exactly the degree of irregularity and illegality in the conduct of an election which will render it void. Each case must depend, to a very great extent, upon its own merits, upon the circumstances as developed by the evidence. The principle is, that irregularities which do not tend to affect the result are not to defeat the will of the people; the will of the majority is to be respected even when irregularly expressed. (Jaker *vs.* Commonwealth, 20 Penn. St. R., 493.) In Carpenter's case, 2 Parsons, 540, the court say, "that although the election officers may be liable to punishment for a violation of the directory provisions of the statute, yet the people should not be punished for the defaults of their agents. That a mere irregularity or mistake on the part of the election officers, or their omission to observe some merely directory provision of the law, will not vitiate the poll or render void the election is a principle sustained by the whole current of authorities." The same general principle is recognized and supported by the following authorities: Piatt *vs.* People, 29 Ill., 72; Hardenburgh *vs.* Farmers' and Merchants' Bank, 2 Green, (N. F.,) 68; Day *vs.* Kent, 1 Oregon, 123; Taylor *vs.* Taylor, 20 Minn., 107; People *vs.* Bates, 11 Mich., 362; McKinney *vs.* O'Connor, 26 Texas, 5; Jones *vs.* State, 1 Kansas, 279; Gorham *vs.* Campbell, 2 Cal., 135; Sprage *vs.* Norway, 31 Cal., 173; Keller *vs.* Chapman, 34 Cal., 635; Brightley's Election Cases, 448, 449, 450.

The power to reject an entire poll is a dangerous one and should be exercised only in a case where it is impossible to ascertain the true vote. It must appear that the conduct of the election officers has been such as to destroy the integrity of their returns and to avoid the *prima facie* character which they ought to bear as evidence, before they can be set aside and other proof demanded of the true state of the vote. (American Law of Elections, 303.) In the case of Weaver *vs.* Given, reported

in 1 Brewster, 157, the court say: "And we also re-affirm the opinion announced in Mann *vs.* Cassidy, that when the entire proceedings connected with the conduct of an election are so tarnished by the fraudulent and negligent acts of the officers charged with the performance of the most solemn and responsible duties, so that the returns are not intelligible, or the election, because of such fraudulent conduct, is rendered unreliable in such a case, it may become obligatory on the court to throw out from the general return the entire return of such election division."

In Chadwick *vs.* Melvin, Brightley's Digest, 256, Chief-Justice Thompson says: "There is nothing which will justify the striking out of an entire division but an inability to decipher the returns, or a showing that not a single legal vote was polled, or that no election was legally held."

In Littlefield *vs.* Green, Brightley's Digest, 495–496, the court say: "It is undoubtedly the rule that if the canvassing court can separate the legal from the illegal votes and reject the illegal ones they are bound to do so, and that mere irregularities in the manner of conducting an election, or fraud of the officers, will not vitiate unless it be of so gross a character as to destroy all means of ascertaining the true result."

In the case of Biddle and Richard *vs.* Wing, decided in 1826 by this House, Clark & Hall, 504, the committee say "the elective privilege is a very important one, and ought to be held in the highest estimation. When a people in the exercise of their constitutional rights have gone through with the process of an election according to the prescribed rules, they ought not to be deprived of the advantages accruing therefrom but for the most substantial reasons. No doubts which are capable of being solved ought to be permitted to operate against them. Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes have been given ought to vacate an election; more especially if, by such decision, the people must, on account of their distant and dispersed situation, necessarily be unrepresented for a long period of time." And further on in the report the committee say: "The officers of the election must certify the result in their several districts to the canvassers, who must certify to the governor; they are all ministerial officers, and error committed by any of them, either through mistake or design, is to be corrected by the House."

In Thompson *vs.* Ewing, 1 Brewster, 107, the court say: "The correct disposition of questions of this character is not without difficulty, for while on the one hand the whole conduct of election officers may, though actual fraud be not apparent, amount to such gross and culpable negligence, such a disregard of their official duties as to render their doings unintelligible or unworthy of credence, and the results of their action entirely unreliable for any purpose; on the other, the mere neglect to perform the directory requirements of the election laws, or the performance of their duties in a mistaken manner, where there is no reason to believe that the officers *acted with bad faith*, and no harm has accrued from the negligence or mistake, ought not to be allowed to defeat the expression of the will of the people of an entire district, against whose votes no objection can be made. Every such case must be examined and determined upon its own merits. * * * If it were the duty of the court to set aside the return from every poll in which an irregular or even an illegal act had been done, no election would be likely to stand the test. Such a rule would in fact afford to the adroit and designing partisan the opportunity to interfere with the fair expression of the popular will. While, therefore, we carefully investigate to detect and subvert fraud, we cannot lean in favor of less serious complaints, which do not affect the real merit of the transaction." But if fraud be clearly shown to exist to such an extent as to satisfy the mind that the return does not show the truth, and no evidence is furnished by either party to a contest, and no investigation of the committee enable them to ascertain the true vote, then no alternative is left but to reject the poll.

These authorities have been liberally quoted from approvingly by Mr. McCRARY in his valuable work on elections. (See sections 302, 303, 304, and 305.)

The authorities sustaining this doctrine could be multiplied, but we think sufficient have already been presented to fully establish it. The rule here laid down and approved by the courts and the decisions of this House can be summed up in a few words, as follows: That if the voice of the electors can be made to appear from the return, either alone or aided by extrinsic evidence, with reasonable clearness and certainty, then the election should stand; and if it appear that error or mistake has been committed by the election officers, or illegal votes admitted, it is our duty to purge the poll and correct the mistake.

These are principles of law which we have applied to the cases where irregularities or fraud have been here considered.

JEFFERSON COUNTY.

In this county the election was conducted in a very loose manner. Many of the plain provisions of the statute were ignored, and others violated. The registration-list was not corrected as required by the act approved February 24, 1875, (see session acts, 1875, Florida Legislature,) and in consequence thereof it was largely in excess of the male inhabitants over the age of twenty-one years, as shown by the census taken under the provisions of said act a few months previous to the election. Prior to the election the intelligent and influential men of both political parties, for the purpose of insuring peace, good order, and fairness, entered into a written agreement that two challengers to be selected from each party should be stationed in the room near the ballot-box, whose duty it should be to challenge those persons offering to vote who were not qualified. This proposition was violated by the republican inspectors, and the challengers excluded from the room except at one poll. The county commissioners first appointed all inspectors from the republican party, but were subsequently prevailed upon to change their order and appoint one democratic inspector at each poll. The whole election machinery of the county was in the hands of the republican party. Four out of the five county commissioners, who appoint the inspectors, the clerk of the circuit court, who is the registering officer, together with the county judge, are all members of that party. One of these last-named officers on the day of election acted as clerk, the other as an inspector, and each assisted in making up the return of their respective polls. They were both *ex officio* members of the board of county canvassers and as such passed upon and canvassed the result of their own work, an act which, while it may not be absolutely illegal, is certainly improper and highly reprehensible, and should be condemned by all fair-minded men.

The law of Florida provides that no person shall vote at any election unless he shall have been duly registered six days previous to the day of the election, and the name of the voter shall be written on the registration-list by himself, or at his request by the clerk or deputy in his presence. These plain *mandatory* provisions of the law were violated in respect to a large number of voters (the exact number of which could not be ascertained) by the deputy clerk taking the names of electors and sending them by mail to the clerk, and the clerk, instead of placing them on the list, sent them to the printer at Jacksonville, who failed to put them on. Not one of those persons whose names were thus hawked about were qualified voters at the last election.

POLL ONE.

The official return from this poll gave 570 votes for the republican and 5 votes for the democratic electors. The testimony of the voters themselves show that there were ten persons at least who voted for the democratic electors at this precinct. The canvass was not public as the law directs. There was no other evidence of fraud or irregularity at this poll, except the rapid manner in which the ballots were received and the want of care with which they were canvassed. The time occupied in counting was less than two hours. The names were not read at length, but two of the inspectors each unfolded and counted packages of twenty-five, put them together, passed them to the third, who placed them in the box, and the clerk tallied one for each package of fifty. The law of Florida makes no provision for the preservation of the ballots after the same are canvassed, but fortunately in this instance they were preserved and on a recount the next day 10 democratic ballots were found in the box. Evidently this discrepancy between the return and the proof is the result of mistake on the part of the officers, occurring from the rapidity with which the canvassing was performed. Justice demands not the rejection of the poll, but that the 5 votes proven be deducted from the republican electors and added to the democratic electors, making the poll as corrected stand 565 republican and 10 democratic votes.

In support of the rule adopted and bearing on the point, see Washburn *vs.* Vorhees, 2 Bartlett, 54. Reid *vs.* Julian, *ibid*, 822.

POLL EIGHT.

The ballot-box at this poll was concealed from the view of the voter at the time of voting, the window through which the ballots were received being 6 feet 3 inches from the ground. On counting the votes and comparing the same with the number of names on the clerk's list, it was ascertained that there were 504 ballots and 2 cotton receipts in the box, and 514 names on the clerk's list. It was subsequently ascertained that there were two double tickets, or tickets folded together, which under the law should have been destroyed, but were all canvassed, thereby increasing the number of ballots to 506. On making up the certificate, James C. Smythe, one of the inspectors, added 6 in number to the republican votes, making the return show 493 republican and 19 democratic votes, instead of 487, the actual number of republican votes found in the box. The clerk's list, the check or registration list used at this poll, the affidavits of the clerk and inspectors, have all been lost or destroyed. The officers swear they returned them with the box to the clerk of the court, the clerk swears that he never saw either of them after the election; that examination was made and they could not be found. The return shows 19 democratic ballots, when twenty-three witnesses testified that they voted the democratic ticket at this precinct. James H. Sanders swears that he placed a corresponding mark on two democratic ballots, voted one and retained the other, which he exhibited at the examination; that he was present at the canvassing and closely scrutinized each ballot as it came out of the box, and failed to find or see the marked one voted by himself. The conduct of Smythe in making the addition of 6 votes can be viewed in no other light than a deliberate purpose to falsify the return, or force the number of ballots to correspond with the number of names on the clerk's list.

But the number added by Smythe is definitely stated, and must, with the double tickets and the 4 extra democratic votes proven, be deducted from the whole number of republican votes returned. And applying the same rule here as at poll No. 1, we give the democratic electors the benefit of the 4 votes proven in addition to the 19 returned, making their vote stand 23 and the republican electors 479.

Your committee further find that at the various precincts in Jefferson County a large number of votes were cast for the republican electors by persons not entitled to vote by reason of minority, non-residence, non-registration, and conviction for larceny and other offenses; also a number cast by persons who voted more than once, the aggregate of these various classes being 149, as follows: minors, 31; non-residents, 16; not registered, 52; convicts, 21; and repeaters, 29. These must be deducted from the aggregate republican vote as returned by the board of county canvassers.

JACKSON COUNTY, FRIENDSHIP CHURCH PRECINCT.

The ballot-box at this poll was concealed from the view of the voter at the time of passing his ballot to the inspector, but could be seen by the bystanders from several other windows in the room. The votes were not first counted and compared with the number of names on the clerk's list. John R. Mozley, a United States supervisor, received a number of ballots and passed them to the inspector. Immediately upon the close of the polls the inspectors proceeded to make their canvass, and did canvass 4 ballots, then took a recess and removed the box two miles to the house of John R. Mozley, where the canvass was resumed and a few additional ballots canvassed. Again they discontinued for supper and left the box in the room where the canvass was made, the windows nailed down, all persons being excluded therefrom; the box and the door of the room was locked and the keys kept by Henry Long, the republican supervisor. They returned after supper, found the box as they had left it, and completed the canvass. Prior to removing the box the same was locked by Jacob H. Stephens, the democratic supervisor, and the key given to Henry Long, the republican supervisor; they then placed it in a buggy with said Stephens and Edmond Hays, the republican inspector, and by them was conveyed to the house of Mr. Mozley. On arriving there the box was carried into the house by Mr. Stephens, accompanied by Henry Long, Edmond Hays, and the other officers, together with the crowd that followed, when Long unlocked the same and the canvass was resumed. The canvass was public. After it was understood that the box should be removed, and before starting, the announcement of the intention was made to the audience, five or six of whom followed and witnessed the canvassing, or passed in and out of the room at pleasure during the progress of the same. The reasons given by the witnesses for the removal of the box was that the church was unfinished, the windows open, the day cold and unpleasant, no fire, nor any place for one, no lights, no paper, and nothing to eat. The population of this immediate neighborhood being very sparse and poor, the necessary conveniences could not be obtained nearer than Mozley's.

While your committee do not in any manner wish to appear as sanctioning or excusing these irregularities and violations of plain directory provisions of the law, yet, in the *total* absence of actual or even apparent fraud on the part of the officers conducting the election they do not consider them as affecting the merits or rendering uncertain the result. On the other hand, the inspectors, the clerks, and the United States supervisors all swear that the election, so far as they could observe, was conducted fairly and honestly; that each name appearing on the tickets was read at length by one of the inspectors as the same was drawn from the box; that the ballots were all properly canvassed; that the poll-list and check-list, with the certificate or return, were transmitted to the clerk of the circuit court as provided by law. There appears, however, a discrepancy between the return and the proof at this poll, the return showing on the face 145 votes for the democratic and 44 for the republican electors, while the evidence of sixty-three witnesses shows they voted the republican ticket at this precinct. Your committee think it proper here to state that many of these witnesses could neither read nor write, and that, from their want of general information and inability to read, they may have been deceived as to the contents of their tickets, or, if they voted the democratic ticket, were unwilling to disclose it, either of which would fully account for the discrepancy.

But the question is, what shall be done with this poll? Shall it be rejected or can the errors, if any, be corrected? If the true vote can, with reasonable certainty be ascertained, it is our duty to apply the rule by which it can be found. The proof is conclusive that the whole number of votes cast was 189. On this point there is no conflict in the testimony; and, accepting the statements of those persons to be correct, we can arrive at the result by adding the extra 19 votes proven to the 44 republican votes returned and then deducting the 63 from the total number of votes cast, making the vote of the precinct as corrected stand for republican electors, 63; for democratic electors, 126.

If, upon any principle, this poll should be excluded from the count, the same principle applied to other precincts would exclude polls Nos. 1 and 8 in Jefferson County, poll No. 13, Richardson school-house, Leon County, and Archer Precinct, No. 2, in Alachua County. The net result of the exclusion of these entire polls would be to deduct from the total vote for the Hayes electors 1,682 votes and from

the Tilden electors 314, being a net gain in favor of the Tilden electors of 1,368 votes.

CAMPBELLTON PRECINCT.

Your committee examined into the manner of conducting the election at this precinct and find everything fair. Its fairness was so apparent that the republican member of the subcommittee making the examination waived all objections to its being counted as returned.

That in the counties of Jefferson and Jackson the committee was wholly unable to discover the violence or intimidation in any manner affecting the election or that a single vote was changed thereby; on the contrary, they find that the elective franchise was exercised freely and undisturbed by all; that the only threats or attempt at intimidation or violence was made by colored persons against those of their own color who manifested a disposition to vote the democratic ticket, and even in those cases the evidence fails to establish that any person was influenced to vote against his will. The same can be said with equal truth of all the counties in the State except as already stated. There was not a syllable of evidence tending in the slightest degree to create even a suspicion that any intimidation or coercion had been practiced.

The committee found, in the course of their investigations, that many persons voted the republican ticket who were disqualified under the constitution and laws of the State by conviction before the courts of certain offenses. Many of these convictions were for larceny, and it was urged by some members of the committee that there is no disqualification unless the larceny amounts to a felony.

The distinction as to the grade of offenses under the statutes is between felonies and misdemeanors; the former including all crimes punishable by death or imprisonment in the State penitentiary, the latter every other offense. (Acts of 1868, page 104, section 1.) Under the statutes there is a grade of larceny where the money or goods do not exceed in value $20, (Acts of 1868, page 72, section 21,) which is punishable by fine and confinement in the county jail. This is clearly a misdemeanor; all other grades of larceny are felonies under the State laws.

The clause of the statute relating to the disqualification is as follows:

"The following classes of persons shall not be entitled to vote: * * *

"3. Persons hereafter convicted of felony, bribery, perjury, larceny, or other infamous crime."—*Acts of* 1868, page 3, section 6.

There is no statutory definition of the expression "infamous crime," and this clause seems to regard larceny of every grade as infamous. The expression has no technical signification as to the grade of the offense. If only a larceny amounting to a felony were intended it would have been unnecessary to use the word at all, for it would have been included in the word felony, and the specific mention of it afterward would have been superfluous.

The constitution clearly gives the right to the Legislature to make the exclusion in the following clause:

"The Legislature shall have power and shall enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime."—*Constitution*, article 14, section 4.

In section 2 of the same article there is a positive exclusion of all persons convicted of felony from the right of suffrage. It reads:

"No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights."

Under this latter clause persons convicted of larceny of a grade amounting to a felony would be disqualified to vote; there is no necessity for a statute to put the machinery in motion, they are convicted felons, and their rights are concluded by the constitutional enactment. The framers of the constitution, however, went further in section 4 and directed the Legislature to exclude all persons convicted of larceny without regard to the grade of the offense or the amount stolen. This duty the Legislature discharged in passing the act of 1868, already quoted, which repeats the constitutional disqualification as to all convicted felons, and specially disfranchises the other classes in the later section.

There has been no judicial decision upon this point by the courts of Florida.

ALACHUA COUNTY.

In this county your committee found a gross fraud committed by some of the officers of an election precinct, and a clear attempt to sustain by willful and corrupt perjury the fraud and to retain the advantages of it for the republican ticket. This was at Archer precinct No. 2. The officers of election at the precinct were Richard H. Black, Green R. Moore, and Floyd Dukes, inspectors, and Thomas H. Vance, clerk. Black, Moore, and Vance were republicans, and Floyd Dukes, who had the misfortune not to be able to read or write, was a democrat. It is customary for the county commissioners to appoint one democrat on the board of inspectors, but your committee found in several cases the democrat put upon the board was not one who had the capacity to be very skillful in detecting fraud. The precinct is about thirteen miles from Gainesville. Vance, the clerk, lived in Gainesville, and is an active politician. The evidence shows, beyond all controversy, that not more than three hundred and sixteen votes were polled at this precinct, yet the returns showed that 535 votes were cast, so that two hundred and nineteen names were fraudulently put upon the poll-list by Vance, the clerk, of persons who did not vote at this precinct and the votes for the Hayes electors made to appear two hundred and nineteen greater than they in fact received.

There cannot be the least ground of mistake as to the existence of this fraud. The evidence showed that one Samuel T. Fleming, a merchant and a man of intelligence and probity, who was most thoroughly acquainted with the voters at Archer and vicinity, did at the request of various persons remain all day at the polls to take the name of every person who voted from the outside of the room in which the ballot-box was placed, and it was proven that the officers only voted from the inside of the room where the ballot-box was. He intended to take the name of every person voting, remaining the entire day at the polls, and he is quite certain that he did take the name of every person voting. He took the names of 304, making, with the four who voted from the inside of the room, 308 votes. His evidence is the only reliable evidence as to the number of votes cast; no other one has given any testimony as to votes cast whose word is entitled to credit. It is possible that Fleming may have made a mistake as to eight votes, or that eight more ballots may have been voted from the inside of the room, still there is no evidence to satisfy any one that Fleming is not absolutely correct.

The vote was declared on the night of election thus: For Stearns, 180; for Drew, 136; and the statement that the votes for the other candidates did not differ more than two or three from that. Black, one of the inspectors, also read off the vote from the tally-sheet to one Samuel C. Tucker, (pages 183 and 282,) and he took it down that night and produced the original paper, and the same is Exhibit No. 47. This shows Drew, 136; Stearns, 180; and the Hayes electors 178, and the Tilden electors, 141. There is evidence also from several other parties who were present and heard Black announce the vote, 180 for Stearns and 136 for Drew. Two witnesses were called who testified that a different vote was declared; one of them was a deputy United States marshal named David Brown, who was stationed at this precinct, said the vote was announced by Black to be 530, but this singular fact appeared that the appointment of this very David Brown, which had been in his possession all the time except a short time that it was in the possession of one of his children, had written upon it S. 180, D. 136, being the initials of the two candidates for governor of Florida. Brown cannot write, and your committee are strongly of opinion that the entry was made on the night of the election by one of the officers of the election at the request of Brown. Brown did not, though inquired of, give any explanation as to who made the entry, or when it was made, or the object for which it was made, but stated he did know it was on the paper. It is clearly proven that the announcement of this vote was 180 for Stearns and 136 for Drew.

The poll-list at this precinct was stolen from the clerk's office, so that your committee did not have the opportunity of examining it. Mr. Fleming made out a list of over one hundred and sixty names which were not duplicated on the registration of persons on the poll-list at this precinct, and testified that he was sure that no one of said persons voted, and that he knew personally nearly every person who did vote at this precinct. It could not be shown that one of those persons did vote at this precinct. An attempt was made to show that there was a Pompey Godfrey in the vicinity of Archer, he being one of the men that Fleming testified did not vote there and that he did not know any such man. One Allen M. Jones testified that he knew Pompey Godfrey and that he lived within two miles of Archer, whereupon your committee sent at once an officer to summon him, and had Jones go with the officer to point him out, with directions to the officer to summon the man pointed out by Jones as Pompey Godfrey. This being done Pompey Lawrence was pointed out as Pompey Godfrey, and he appeared and said that Jones ought to have known his name as they had attended the same church, and he had never been known by any other name than Pompey Lawrence. No further attempt was made to impeach the recollection of Fleming.

It is as clear as testimony can establish a fact than not more than three hundred and sixteen persons voted at this precinct. Several persons were called who were on the poll-list as having voted at Archer No. 2, who testified that they were not at this precinct during election day, and that they voted at other precincts in this county many miles from Archer, and were not anywhere in the vicinity of Archer during election day. One man who had been dead for a number of years was recorded as having voted at this precinct. Thomas H. Vance, who went from Gainesville on Monday preceding the election to Archer for the purpose of acting as clerk of election, deliberately made oath that he went down to Archer on the evening previous to the election without any intention of acting as an officer of election there, and that it was not suggested to him until he had been some time at Archer that he had better remain there and act as an officer, did on the day before the election, at the clerk's office of the circuit court at Gainesville, subscribe and take an oath to act as clerk at Archer. The clerk appeared and produced the oath and certificate, and a copy may be found on page 238. The clerk testified that the oath was subscribed and taken by Vance before him on Monday the 6th day of November, the day before the election.

It appeared that the returns from this precinct in the office of the clerk of the circuit court were forgeries; that the names of the inspectors on each of the returns were all written by the same person, and that person was without doubt Richard H. Black. It appeared that on the night of election Green R. Moore signed one of the duplicate returns, but neither of those produced by the clerk or the county judge had the signature of Green R. Moore upon it, although they both purported to have his signature; and there was no evidence tending to show that Moore authorized Black to sign his name to more than one of them. And it was plain that the blanks upon which the returns in the clerk's office and in the possession of the county judge were made were not the blanks furnished by the clerk of the circuit court for this precinct. The clerk testified that he attached a leaf to the form he had for return of election of State officers on the inner margin of the first page of the sheet with mucilage for the returns of the vote for presidential electors. The returns produced had this leaf attached to the outer margin of the third page. The clerk testified that were it not for these returns he should have been positive that he had attached all the leaves for the returns of the vote for presidential electors on the inner margin of the first page of the blanks sent, but he was sure he attached the leaf for the returns of presidential electors to all the blanks sent out. An examination of these certificates showed that on each blank the leaf for the vote of presidential electors was attached by mucilage after the names of the inspectors were subscribed to it, as it covered in each a part of the scroll made in signing one of the names on each.

The ballot-box and all of the papers relating to this precinct were in the hands of Vance and Black, and they had full opportunity to commit the fraud and did as clearly appears from the evidence commit it jointly, as part of the false and forged returns were in the handwriting of each of them. It is certain that Floyd Dukes could not have had any participation in this fraud; he was a democrat, and certainly would not have aided in committing a fraud upon the candidates of his party. It may be fairly claimed that it is certain that 136 democratic votes were cast at this precinct. It cannot be that these republican officials would commit a fraud and then attempt to sustain it by perjury and forgery to aid the party they were laboring to defeat. The ballot-box at this precinct when opened by the board of county canvassers was found to contain but 277 votes, 215 being republican votes and 62 being democratic votes. There were 35 republican votes that had not been strung, and the evidence is that all of the ballots were strung at the time they were canvassed on the night of the election, therefore it is certain that the ballot-box was stuffed with 35 republican votes. It will not be pretended, or conjectured even, that the party that would put in republican votes would take out any of the republican votes already in the box, but it is fair to presume that the man who is base and partisan enough to stuff a ballot-box with republican ballots would not hesitate to steal democratic votes, and thus your committee are clearly of opinion that the 180 votes that had been strung were all the republican votes cast at this precinct. It is quite a striking coincidence that there were just 180 republican votes that had been strung and the republican vote declared. It will be seen that the 35 republican votes not strung added to the 180 votes strung make 215, just the number of republican votes found in the box.

Your committee are clearly satisfied that 180 republican votes are all that were cast at this precinct or that were in the ballot-box on the night of the election, and that there must have been 136 democratic votes cast. In no other way can the 316 votes declared be made up. They were so made up and that is the result of the vote as declared on the night of the election. There is no possibility that any fraud could have been committed by Floyd Dukes. He could not read or write and had no capacity to commit a fraud. Green R. Moore had nothing to do with making out the returns or keeping the poll-list. The fraud was committed by Black and Vance. They made a false return, stuffed the ballot-box with republican votes, made a false poll-list, stole votes, and committed perjury and forgery to sustain the fraud. The rule of law is clear that where the officers of election are shown to be guilty of fraud it destroys their return so that it is wholly unreliable, and no votes can be counted but those that are proven outside of the return.

It is proved that at least three hundred and eight persons voted at this precinct. It was declared by the two republican officers that the democratic ticket had received 130 votes, and that was sworn to by Vance, who would not swear to more votes than that ticket did receive. Richard H. Black, the republican, makes oath that the democratic ticket received 136 votes. But your committee have come to the conclusion that it is impossible to ascertain the actual vote cast at this precinct, and that upon the plainest principles of law as applied in election cases the whole poll is so tainted with fraud and the evidence as to the real vote so unreliable that the whole vote must be thrown out, which will make a reduction of 263 votes in this county in the majority for the Hayes electors, 136 being taken from the Tilden electors and 399 from the Hayes electors; but, if the vote shall be taken as it was declared to be on the night of the election, assuming that the action was fair at the polling-place, and that the whole fraud was committed on Wednesday morning after the election, and after the ballot-box and returns were taken to Gainesville under the direction of the managers of the party there, which may be the real fact, which we are inclined to believe is the fact, then the vote would stand 136 for the Tilden

electors and 180 for the Hayes electors, making the majority for the Hayes electors 219 less than the returns upon their face show it to be, which is the most favorable position that can possibly be claimed for the republican electors.

HAMILTON COUNTY.

Some question has been raised as to two of the precincts in this county, involving, however, no allegation of fraud, intimidation, or violence, but purely and solely charges of irregularity. (See pages 134 to 146, and 148 to 151, all inclusive.)

At White Springs precinct there were 141 votes polled, of which the Tilden electors received 83 and the Hayes electors received 58. The election and the canvass were quietly and honestly conducted. Both political parties were represented in the board of election officers, and there was present a United States supervisor appointed at the instance of each party. All concur in the statement that the entire proceedings, from the opening of the polls until the completion of the count, were fair and regular, and that the certificates were duly signed. But it appears that the blank certificates furnished by the county clerk contained no place for the insertion of the vote for presidential electors, being old blanks prepared for previous State elections. This fact was overlooked when the returns were signed on the night of the election, there being great anxiety to finish their labors and get home, because of serious and sudden domestic affliction in the families of two of the officers.

The ballots, the registration-list, the poll-list, and the tally-sheet, which showed the vote as above stated, (Tilden 83, Hayes 58,) were placed in the ballot-box; that box with its contents was taken up to the county seat by Mullis, the republican inspector, and Cason, the republican United States supervisor, and delivered to Raulerson, the clerk of the circuit court, also a republican. The box and contents remained in the custody of Raulerson until November 13, when the county canvassers met to canvass the entire vote of the county. Upon opening the certificate from White Springs precinct it was discovered that no votes for presidential electors had been returned. Upon request made, the board of canvassers, all being republicans, agreed to delay the completion of their labors until the officers of White Springs precinct could be sent for. This was done. Those officers, until that day ignorant of their omission, assembled in the county clerk's office, opened the ballot-box, took out the tally-sheets, and therefrom filled out duplicate certificates of the number of votes cast for each candidate for presidential elector, and appended them to the other certificates made out on the night of the election. This was done in the presence and with the consent of all of the officers who conducted the election at White Springs, all of whom signed the same. This being done and properly certified to the judge and the clerk of the circuit court, the board of county canvassers then in session canvassed the vote at that precinct for presidential electors, and included the same in the aggregate return from the county, which they then prepared and sent up to the secretary of state in accordance with the law.

The fact that the ballot-box and its contents had not been tampered with, and that the tally-sheet on the 13th of November exhibited the correct vote, was confirmed by the production before your committee of a statement of the number of votes cast for each candidate, which statement was written by one of the inspectors on the night of the election as soon as the canvass was completed. [See Exhibit No. 44.]

This narration of the facts is the completest argument in favor of the justice of including the vote of White Springs precinct in the canvass, and of giving effect to the clearly expressed and undisputed voice of the voters.

At Jasper, the county seat of Hamilton County, there were 511 votes cast. Of these the Tilden electors received 323 and the Hayes electors received 185 votes. The canvass was not completed until four o'clock in the morning, when, by unanimous consent and desire, a recess or adjournment was had for five hours. At nine o'clock of the same morning all of the election officers met in the same room where the election was held and made out the certificates from the tally-sheets. They were signed by all of the officers and properly returned; they were duly canvassed by the county board and by them in turn certified to the secretary of state.

Several objections have been made as to the regularity of the proceedings at this precinct. The one to the adjournment before making out the certificates is disposed of by your committee in considering a similar objection to Key West, Monroe County, where we show that the clause of the act was purely directory; and, further, that by the very terms of the law the making of the certificates is not a part of the canvass and need not be completed before adjournment.

Objection has also been made to the mode of conducting the canvass. It appears that Major Tuten, one of the inspectors, after reading off the ballots for some time, asked to be relieved, his eyes being weak, and that Mr. Reynolds, the democratic United States supervisor, and Mr. Blackwell, in rotation, each read off the ballots for several hours during the night; and that Mr. Patterson performed this service for a short time. Neither Blackwell nor Patterson was an election officer, but aided in the manner specified, at the request of one and with the consent of all of the officers. Blackwell and Patterson are democrats; Mr. Taylor, a republican, also with the consent of the officers, aided somewhat in making the canvass. As each ticket was read off by Tuten, Blackwell, and Reynolds it was immediately handed to Smithson, the republican inspector, (see pages 113, 117, 126,) or to Mr. Taylor, deputy United States marshal, a republican, (pages 121, 129.) The few that were read off by Patterson were handed to another inspector, Tuten. Two tally-sheets were kept, one by the inspector and the other by a clerk. At times each was relieved by one not an officer, but both were never relieved at the same time. At the close of the canvass the two tallies agreed. During the entire canvass all of the officers of the election were present, in the room, being about twelve feet square, except for a very few minutes during which one of the inspectors was out. There were also present during the night two United States supervisors and other citizens of opposite political faith.

It is said that there was further irregularity in the disposition made of the ballot-box during the adjournment from four o'clock until nine o'clock. The key was taken by Major Tuten and the box, being locked, was taken by another inspector named Fryar to his store. There is a sleeping apartment adjoining and communicating with the store, which, on the occasion referred to, was occupied by Judge Bell, the county judge, and a young m neighteen years old. The store door was locked and the key was in Fryar's possession all the time he was absent from the store, and when the box was opened in the sheriff's office, the polling place, at nine o'clock, everything was in the same condition as when the box was locked at four o'clock. The tally-sheets were just as they had been left and in accord with the votes as declared at the completion of the canvass. It may also be remarked that no person could have had access to the ballot-box during the intermission but Judge Bell, a republican, or the young man who slept with him.

Not one of all those present during the balloting, the canvassing, or the certifying, whether officer or private citizen, whether democrat or republican, alleges or intimates that there was the slighest fraud. All admit that there were 323 votes cast for the Tilden electors and 185 for the Hayes electors. This result was certified to the secretary of state, and under the recent decision of the supreme court of Florida, in Drew *vs.* McLin and others, this return should be included in the State canvass.

The entire current of legal decisions establishes the principle "that irregularities which do not tend to affect results are not to defeat the will of the majority. (Faker *vs.* Commonwealth, 20 Pennsylvania Reports, 493.) The attainment of office against the clearly expressed will of the people is unworthy the ambition of any lover of a republican government, and to disfranchise an entire community because of the negligence or carelessness of those who handle their ballots is a crime against popular suffrage.

MANATEE COUNTY.

The returns from the county canvassing board of this county are regular, and the supreme court of Florida ordered the State canvassing board to canvass them, and your committee find nothing to impeach those returns, while on the other hand they find the most conclusive evidence to confirm their correctness. This county was known to be a strongly democratic county, and it is clear that the then governor of Florida, who was a candidate for re-election, determined if possible to defraud the people of that county of their votes. In pursuance of this determination, about the 25th day of September preceding the late election, he accepted unconditionally the resignation of the clerk of the circuit court of this county, and did not appoint another clerk until a short time before the November election, and then did not appoint a clerk who would qualify before said election, in order, as your committee believe, to have, if possible, left undone all the preliminary acts which the clerk is required to perform. By the laws of Florida it is provided in section 10, act of August 6, 1868, as follows:

A complete copy of the list of the names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county, before the hour appointed for opening the election. The clerk shall prepare and certify such copies, and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one of such lists to be delivered to one of such inspectors before the time of opening the election.

There not being a clerk to perform this duty and no evidence that it was performed by any person, your committee find that it was not done, but this in their opinion does not in the least degree affect the validity of the election in this county. The people of this county, being satisfied of the attempt made to deprive them of their votes, did all in their power to preserve the same, and did cast their votes on the day of election at the polling-places appointed by the county commissioners, and did in every particular conform to the law of the State where they were not prevented from doing so by the want of a clerk of the circuit court. And there are but two things which the law provides shall be done which they could not do in conducting the election by reason of the vacancy in the office of clerk of the circuit court: one being to check the name of the voter on the registration list as he voted, and the other the depositing of a duplicate certificate of the precinct returns with the clerk of the circuit court.

The precinct returns were made in duplicate and both delivered to the county judge, the law providing that one of the duplicate certificates shall be delivered to the county judge. The law also provides that the canvass of the board of county canvassers may be made either from the certificates delivered to the clerk of the circuit court or the county judge, so that in the matter of the precinct returns there is nothing to vitiate the returns. The provision that duplicate certificates shall be made and one forwarded to the clerk of the circuit court and the other delivered to the county judge is a provision made to make it certain that the returns shall be where they will be furnished to the board of county canvassers. The evidence being that the county canvassers did in fact have these certificates makes the absence of the clerk so far as the custody of the returns is concerned of no consequence whatever. The failure of the clerk of the circuit court to act as one of the board of county canvassers is fully explained. In the matter of voting each voter in the county took and subscribed to an oath, as follows:

"I do solemnly swear that I am twenty-one years of age; that I am a citizen of the United States; that I have resided in the State for one year, and in the county for six months next preceding this election; that I have not voted at this election, and I am not disqualified to vote by the judgment of any court, and that I have been a registered voter in the county of Manatee for a period of more than six days next preceding this election."

This entitled the party taking it to vote. None but duly registered voters did vote, and all the votes cast in this county were entitled to be counted and canvassed as they have been. But the greatest hardship upon the people of this county was the preventing of those who desired to register their names as voters from doing so. It is provided that "no person shall be entitled to vote at any election unless he shall have been registered at least six days previous to the day of election." And there being no way for those voters not registered before the vacancy in the office of clerk to register and qualify himself to vote, a great number of persons were prevented from voting, who otherwise would have voted, and the majority for the Tilden electors in this county is much less than it would have been had not there been this vacancy in the office of clerk of the circuit court.

It is a well-settled principle of law that officers of the law are presumed to do everything which the law provides they shall do, and this certainly applies with great force in a case of this kind. It will not be presumed that any act in the series of acts necessary to the conducting of an election according to the forms of law has been omitted, but, in order to establish that it has been, clear proof must be produced to that effect. In this county, where there was a plain attempt to put obstacles in the way of the exercise of the right of suffrage by the voters of a whole county, by the governor of a State in the interest of his party, a most liberal construction should be given to this principle in the interest of the legal voters who have been so wickedly wronged. But giving this rule only its usual application, it appears that everything in Manatee County was done by all of the officers of the law, which it is provided by law that they should do, and there being nothing in the want of a clerk of the circuit court which renders it impossible to have an election, although it may disfranchise many who might otherwise qualify themselves to vote, and make the modes of proceeding more difficult, yet everything having been done to secure a free and fair vote which could be done, and the election being held in as regular a manner as it could be, without a clerk of the circuit court, the vote should be regarded, and will, we are sure, be regarded as it in fact is, as regular. We repeat it, the returns show that the election was properly conducted, and there is not any evidence going in any manner to show that it was not. It is therefore, in any consideration of the vote of Florida, clear and certain that the vote of Manatee County should stand as returned by the board of county canvassers. (See evidence of Graham, part 1, page 97.)

MONROE COUNTY.

The only question in this county is relative to the validity of the return from precinct No. 2, Key West. The undisputed facts are that both political parties were represented on the election board; that the election was fairly and peaceably conducted; that after the polls were closed the votes were properly and correctly counted; that the result was then announced; that 460 votes were cast; that of these the Tilden electors received 401 votes and the Hayes electors received 59 votes; that when the result was declared it was after midnight, and some or all of the officers were worn out by long fasting and confinement, and by unanimous consent they adjourned to meet at nine o'clock a. m. at Kemp's place. The ballots, poll-list, and tally-sheets having been first deposited in the ballot-box, the boxed locked, and the apertures secured, the key taken by one inspector and the box by another; that at or soon after nine o'clock a. m. all of the officers of the election assembled at Kemp's store or sponge-house, about three hundred yards from the polling-place, a public place much frequented; that, all of the officers being present, the ballot-box was opened, and the officers then and there proceeded to, and did, make out the returns of the said election from the tally-sheets made before the adjournment; that the certificates of the result were in due form, were signed by all of the election officers, and were properly filed. (See pages 81 to 96, inclusive.)

The sole ground upon which these returns are attacked, and the attempt is made to disfranchise 460 legal voters, is because there was an adjournment by the election officers after the votes were counted and before the certificates were made out. The argument in favor of throwing out the vote of this precinct rests upon section 21 of the election law of Florida, which reads as follows: "As soon as the polls of an election shall be finally closed the inspectors shall proceed to canvass the

votes cast at such election; and the canvass shall be public, and continued without an adjournment until completed." It is claimed that the making out of the certificates is a part of the canvass, and that, inasmuch as there was an adjournment after the completion of the count and before the making of the certificates, the law was violated, and the poll should be excluded from the count.

But it is respectfully submitted that this construction of the statute is unfair in its severity and is not in accordance with the law. This will clearly appear upon an examination of section 23 of the same statute, which provides that, "the canvass being completed, duplicate certificates of the result shall be drawn up by the inspector or clerk," &c. The certificates are to be drawn *after* the canvass shall be completed, and hence the drawing of the certificates is no part of the canvass. But even if making the certificates were a part of the canvass, your committee are clearly of the opinion that the officers of the election were guilty of nothing more than a mere irregularity, and that, in the absence of any fraud or the allegation of fraud, the disregard of a provision which is purely directory will never justify the exclusion of the returns of an election.

Upon this statement of the facts and the law, he must be a bold man, as well as a bitter partisan, who will claim that this precinct should be excluded from the count.

The following tabulated statements will show the vote upon the different theories suggested:

Jefferson County as returned by the board of county canvassers:

Official return for republican electors		2,660
Official return for democratic electors		737
Majority		1,923

Jefferson County as corrected:

Official return for republican electors		2,660
Deduct discrepancy at poll No. 1	5	
Deduct discrepancy at poll No. 8	4	
Votes added by Smyth at poll No. 8	6	
Deduct double votes at poll No. 8	4	
Disqualified votes of Jefferson County	149	
		168
		2,492
Official return for democratic electors	737	
Add discrepancy at poll No. 1	5	
Add discrepancy at poll No. 8	4	
		746
		1,746

Jackson County as returned by board of county canvassers:

Official return for democratic electors		1,397
Official return for republican electors		1,299
Majority		98

Jackson County as corrected:

Official return for democratic electors		1,397
Deduct discrepancy proved at Friendship church		19
		1,378
Official return for republican electors	1,299	
Add discrepancy proven at Friendship church	19	
		1,318
Majority		60

Alachua County as returned by county canvassers:

Official return for republican electors		1,984
Official return for democratic electors		1,267
Majority		717

Alachua County as corrected:

Official return for republican electors	1,984	
Deduct fraudulent votes at Archer No. 2	219	
		1,765
Official return for democratic electors		1,267
Majority		498

Leon County as returned by the county canvassers:

Official return for the republican electors		3,035
Official return for the democratic electors		1,003
Majority		2,032

Leon County as corrected:

Official return for republican electors	3,035	
Deduct fraudulent votes proven at Poll 13	72	
		2,963
Official return for democratic electors		1,003
Majority		1,960

Independent of the 29 votes in Clay County the official vote of the State as shown on the face of the returns is:

For the Tilden electors	24,439
For the Hayes electors	24,349
Majority	90

As corrected the vote will stand.

Official returns for the Tilden electors		24,439
Add votes at polls 8, pond 11, Clay County		29
Add discrepancy at poll 1, Jefferson County		5
Add discrepancy at poll 8, Jefferson County		4
		24,477
Deduct discrepancy at Friendship church, Jackson County		19
Total		24,458

Official return for Hayes electors		24,349
Deduct discrepancy at poll 1, Jefferson County	5	
Deduct discrepancy at poll 8, Jefferson County	4	
Deduct vote added by Smyth at poll 8, Jefferson County	6	
Deduct double tickets at poll 8, Jefferson County	4	
Deduct disqualified votes in Jefferson County	149	
Deduct fraudulent votes, poll 13, Leon County	72	
Deduct fraudulent votes, Archer No. 2, Alachua County	219	
		459
		23,890
Add discrepancy proven at Friendship church, Jackson County		19
Add votes at poll 8, pond 11, Clay County		6
Total		23,915
Majority for Tilden electors		543

By excluding the entire vote for frauds or irregularities at precincts Friendship church, Jackson County; Nos. 1 and 8, Jefferson County; No. 13, Richardson school-house, Leon County, and Archer No. 2, Alachua County, the result would be as follows, namely:

Total vote for the Hayes electors as per returns		24,355
Deduct:		
At Friendship church	44	
At poll No. 1, Jefferson County	570	
At poll No. 8, Jefferson County	493	
At poll No. 13, Leon County	176	
At Archer, No. 2	399	
		1,682
Leaving the true vote for the Hayes electors		22,673
Total vote for the Tilden electors as per returns		24,468
Deduct:		
At Friendship church	145	
At poll No. 1, Jefferson County	5	
At poll No. 8, Jefferson County	19	
At poll No. 13, Leon County	9	
At Archer, No 2	136	
		314
		24,154

Upon this theory the vote would stand as follows, namely:

Total vote for the Tilden electors	24,154
Total vote for the Hayes electors	22,673
Tilden's majority	1,481

If Friendship church, Jackson County; polls 1 and 8, Jefferson County; poll 13, Richardson school-house, Leon County; Archer No. 2, Alachua County, be rejected for fraud or irregularities, the vote of the State will stand as follows:

Official return for the Tilden electors		24,439
Add votes at poll 8, pond 11, Clay County		29
Add discrepancy at poll 1, Jefferson County		5
Add discrepancy at poll 8, Jefferson County		4
		24,477
Deduct vote of Friendship church	145	
Deduct vote of Archer No. 2	136	
Deduct vote of poll 13, Leon County	9	
		290
Total		24,187
Official returns for Hayes electors		24,349
Add votes proven at Friendship church		19
Add votes at pon 8, polld 11, Clay County		6
		24,374
Deduct poll 1, Jefferson County	570	
Deduct poll 8, Jefferson County	493	
Deduct Archer No. 2, Alachua County	399	
Deduct poll 13, Leon County	176	
Deduct disqualified votes in Jefferson County	149	
		1,787
Total		22,587
Leaving a clear majority for the Tilden electors of		1,600

It appears that Frederick C. Humphries, one of the candidates of the republican party of Florida for presidential electors, was appointed on the 3d of December, 1872, a shipping commissioner of the United States at the port of Pensacola, and that he qualified as such officer on the 9th day of December, 1872. This appears by the certificate of the clerk of the circuit court for the northern district of Florida, which is Exhibit 54. It also appears that he entered upon the duties of that office. The said certificate shows that there is no record in said court of his having resigned said office. The office of shipping commissioner is an office of trust and profit under the United States.

Your committee deem it but just to state that their examinations were conducted openly, and as far as practicable in the vicinity in which any fraud or irregularity was alleged to have been committed, in order that if the testimony given was untrue the fact could be easily shown and the truth readily ascertained. They gave the fullest opportunity to all parties desiring to present allegations of fraud or irregularity, and did examine into all charges which were made. Your committee are fully convinced that had not their examination been open to all and the evidence taken by them known to the public, and an opportunity given to all parties to show wherein the evidences were untrue, if in fact it were not true, their testimony could not be of any great service in determining the real facts in relation to the elections. There was not the slightest proof that the colored people of that State were in any manner restricted in the enjoyment of their political rights, but your committee were impressed with the very apparent disposition manifested on the part of the white people of Florida to treat the colored people and their rights with due consideration, and your committee believe that not only was special care taken by the supporters of the Tilden electors that no act should be done by them which could be construed to their disadvantage, but that they were particularly desirous to so conduct themselves in the matter of the election that the most exacting of the

partisans of the opposition should have no cause for even a doubt of the honesty of their motives. This fact, your committee believe, is entitled to great weight in the consideration of this election.

Your committee are of the opinion, from the examination made by them, that were the several precincts of the State purged of all illegal votes the majority for the Tilden electors would be largely increased. In closing, your committee declare that the evidence is perfectly conclusive that the State of Florida on the 7th day of November last cast her vote for the Tilden electors. There is no more doubt that the State of Florida cast her vote for the Tilden electors than there is that Massachusetts cast her vote for the Hayes electors, although not by so large a majority, but still by a majority clear and certain. The extent of the majority is not a fact affecting in the least the rights of those persons to the office to which they were fairly elected, the only material question being, did they have a majority.

It appearing that F. C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long were not elected as presidential electors for the State of Florida, any act done by them in the matter of voting for President and Vice-President of the United States is illegal and void, and no vote cast by them can be counted.

And it appearing by the certificate of Wilkinson Call, James E. Yonge, Robert Bullock, and Robert B. Hilton, the duly elected presidential electors for the State of Florida, that said electors did meet on the first Wednesday of December, A. D. 1876, (being the 6th day of December,) in the capitol at Tallahassee, and give their votes for President and Vice-President of the United States; and did then and there, as such electors, give and cast their votes by ballot for President of the United States, and did then and there, as such electors, give and cast their votes by ballot for Vice-President of the United States, giving four votes for Samuel J. Tilden, of New York, for President of the United States, and four other votes for Thomas A. Hendricks, of Indiana, for Vice-President of the United States, their vote is the legal vote of the State of Florida for President and Vice-President of the United States and must be counted.

Your committee recommend the passage of the following resolution:

Resolved, That at the election held on November 7, A. D. 1876, in the State of Florida, Wilkinson Call, J. E. Yonge, R. B. Hilton, and Robert Bullock were fairly and duly chosen as presidential electors, and that this is shown by the face of the returns and fully substantiated by the evidence of the actual votes cast; and that the said electors having, on the first Wednesday of December, A. D. 1876, cast their votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, they are the legal votes of the State of Florida and must be counted as such.

CHARLES P. THOMPSON.
REZIN A. DE BOLT.
A. T. WALLING.
JAMES H. HOPKINS.

EXHIBITS.

Exhibits are hereto annexed of the record and opinion of the supreme court of Florida in the case of The State of Florida *ex rel.* George F. Drew, and returns from the counties of Baker, Clay, and Duval, and the certificates upon and accompanying the same.

Record and opinion of the supreme court of Florida in the case of the State of Florida ex rel. George F. Drew.

Pleas in the supreme court of the State of Florida, at a special term of said court, held at the capitol, in the city of Tallahassee, in the month of December, A. D. 1876, in a certain cause therein pending, wherein the State of Florida, upon the relation of George F. Drew, was plaintiff, and Samuel B. McLin, secretary of state of the State of Florida, Clayton A. Cowgill, comptroller of public accounts of the State of Florida, and William Archer Cocke, attorney-general of the State of Florida, were defendants.

Be it remembered that on the 13th day of December, A. D. 1876, the relator in the case aforesaid, by Richard L. Campbell, R. B. Hilton, and George P. Raney, his attorneys, filed in open court his petition for a mandamus.

Whereupon, after reading and considering said petition, an alternative writ of mandamus was awarded, returnable on the 14th day of December, A. D. 1876, which said alternative writ was in the words and figures following, to wit:

The State of Florida to Samuel B. McLin, secretary of state, William A. Cocke, attorney-general, and Clayton A. Cowgill, comptroller, members of the board of canvassers of Florida, and to every of them greeting:

Whereas it has been suggested to us by the petition of one George F. Drew that a general election was held on the 7th day of November, A. D. 1876, in the several counties of this State, for the election of governor of the State and lieutenant-governor thereof, and for members of the assembly for all the counties of the State, and for senators from the several odd-numbered senatorial districts of the State, said election being held in pursuance of law and of proclamation duly made by the secretary of state. At said election, petitioner, George F. Drew, who was and is eligible and qualified to hold the office of governor of said State, was a candidate to be voted for by the voters of said State to fill said office, and that besides himself one Marcellus L. Stearns was a candidate for said office, and that other than himself and said Stearns there was no candidate or candidates voted for to fill the same. That by the returns of the said election received at the office of the secretary of state, and now on file in said office, the whole number of votes cast at said election for said George F. Drew were 24,613 votes, and the whole number of votes cast for said Stearns were 24,116 votes.

In pursuance of law, Samuel B. McLin, secretary of state, William Archer Cocke, attorney-general, and C. A. Cowgill, comptroller of public accounts, constituting board of State canvassers of elections, assembled, convened, and organized as such board at the office of the secretary of state on the 27th day of November, A. D. 1876, to canvass the votes of said State given at the said election for electors of President and Vice-President of the United States, and for governor and lieutenant-governor of Florida, and for members of the Congress of the United States and members of the Legislature of Florida.

That on their said organization of said board they proceeded to canvass and count the vote cast at said election for electors of President and Vice-President.

That in the making of such canvass and count of the electoral vote, as the said George F. Drew is informed and believes and avers, the said board undertook to exercise and did exercise and usurp judicial functions and powers in this: that they went behind the face of the election returns from divers counties of the State, and did, upon certain affidavits or pretended affidavits, and upon other pretended evidence, discard the vote of the county of Manatee, and did refuse to canvass and count and enumerate the votes of the counties of Jackson, Hamilton, and Monroe, as shown by the returns of and from said counties of said election, and that they determined to pursue and have pursued the same course in the canvass and count which they pretend to have made of the votes cast at said election for the office of governor and lieutenant-governor and members of the Legislature, and have refused to count the entire vote of the county of Manatee as shown by the returns from said county to have been cast in said county for said officers; and have refused to canvass and count the votes of the counties of Jackson, Hamilton, and Monroe, as shown by the returns from said counties to have been cast at said election for said officers. And that said board, as said George F. Drew is advised, have and can exercise no judicial functions or powers under the constitution of this State, or at most only quasi-judicial powers, in the discharge of their duties as a board of State canvassers of elections; and that it is and was their duty to examine the papers received by the secretary of state and purporting to be election returns of said election, and, after ascertaining that they appear to be genuine, to declare the result of said election as shown by said returns.

That the said board of State canvassers, or a majority of them, pretend that they have already concluded, completed, and performed the canvass of the said votes cast at the said election for governor and lieutenant-governor and members of the Legislature, which the said George F. Drew denies, and avers that the contrary of is true; that they have not, as the law requires, canvassed and counted and enumerated the votes cast at said election in the counties of Jackson, Manatee, Hamilton, and Monroe; that their said pretended canvass of the returns from said counties, if any such has been made, which he does not admit, is a nullity; as is their said pretended canvass of the returns of the votes of the several counties of the State cast at said election for said officers.

That by reason of the failure and refusal of the said board to canvass and count and enumerate all the votes of all the counties of the State cast at said election for the said office of governor, on file in the office of the said secretary of state, and upon the completion of the said canvass and count and enumeration, to do further as required of them by law in such case made and provided, the said Drew is prevented from receiving the certificate to which he is entitled certifying that he has been elected to said office; that by the failure of the said board to canvass and count and enumerate the votes of the said counties of Jackson, Hamilton, Manatee, and Monroe, as shown by the returns of said election on file in said office of the secretary of state, they have made it to appear that said Stearns has been elected to said office of governor. Whereas if they had canvassed and counted and enumerated the said returns of the votes cast in said counties, together with like returns from the other counties of the State, it would manifestly have appeared, and would manifestly appear, that the said Drew was and has been elected to said office.

That returns have been received of the said election at the office of the secretary of state from the several counties of the State wherein elections have been and were held on said 7th day of November, for the election of governor and lieutenant-governor and members of the Legislature, and that it is the duty of the said secretary of state, and the said attorney-general, and the said comptroller of public accounts to meet at the office of the secretary of state, and proceed to canvass the returns of the said election, and determine and declare who has been elected to the said office of governor of said State as shown by said returns.

That the said State canvassing board, in canvassing the return from the county of Jackson, went behind the return of the county canvassing board of said county and threw out the Campbellton precinct vote, where the said George F. Drew received 214 majority of the votes cast at said precinct, and they threw out the whole vote of Friendship church precinct, in said county, where the said Drew received 101 majority of the whole vote cast at said precinct.

That the said board went behind the return from the county of Monroe, and threw out the entire vote of one precinct in said county, to wit, precinct known as No. 3, at which said Drew received a majority of 342 votes of the entire vote cast there. Said board refused to canvass and count the return from the county of Manatee, in which county, as shown by the said returns, the said George F. Drew received a majority of 236 votes of the entire vote cast in said county.

That said board went behind the return from Hamilton County and threw out the vote of a precinct in said county that gave the said George F. Drew a majority of 138 votes of the whole vote cast there.

That the said board, in throwing out the entire vote cast at said two precincts in Jackson County, and at said one precinct in Monroe County, and said one precinct in Hamilton County, claimed the right to act and did act upon *ex parte* affidavits to impeach the returns from said counties.

That said Drew alleges that said board in making their said *said* pretended canvass of the returns from the said counties of Jackson, Hamilton, Monroe, and Manatee, exceeded their powers, and that they should have confined their canvass of said returns to what was shown or appeared on the face of said returns, the same not appearing to be unintelligible or fraudulent, but genuine and *bona fide*.

That said Samuel B. McLin, secretary of state, and William Archer Cocke, attorney-general, and Clayton A. Cowgill, comptroller of public accounts, have failed and refused to meet and convene and re-assemble as a board of State canvassers and canvass and count all the election returns on file in said office of said secretary of the said election for the office of governor, held on the 7th day of November, 1876, from each and every of the counties in this State wherein an election was held for said office, and especially have they failed and refused to canvass and count such election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe, and have refused to determine from a canvass and count and enumeration of all the votes cast for the said office of governor at said election in all the counties of the State, as shown by said election returns received at the office of the secretary of state, who has been elected by the highest number of votes to said office, as shown by said returns, and as such board to make and sign a certificate as required by law containing in words written at full length the whole number of votes given at said election, as shown by the said returns for the said office of governor of said State of Florida, and the number given for each person voted for for said office, and in and by such certificate declare the result of said election for governor of said State.

That by reason of said failure and refusal of said Samuel B. McLin, secretary of state, said William Archer Cocke, attorney-general, and said Clayton A. Cowgill, comptroller of public accounts, board of State canvassers aforesaid, the said Drew has been prevented and is prevented from receiving and obtaining from the said secretary of state the certificate which is made by law *prima facie* evidence of his election to said office, and to which by law he is entitled.

That said George F. Drew, the petitioner, is entirely without remedy in the premises, unless it be afforded by the interposition of this court through writ of mandamus.

Wherefore your petitioner, the said George F. Drew, prays that the writ of mandamus may be issued by this court and directed to the said Samuel B. McLin, secretary of state, the said William Archer Cocke, attorney-general, and the said Clayton A. Cowgill, comptroller of public accounts, commanding them forthwith to meet, and convene, and re-assemble, as a board of State canvassers, in the office of the secretary of state, to canvass and count all the election returns on file in said office of said secretary of state of the election for the office of governor held on the 7th day of November, 1876; and that as such board of State canvassers they do canvass and count the election returns for the said office from each and every of the counties of this State wherein an election was held for said office; and, especially, that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe; and that they do determine from a canvass, and count, and enumeration of all the votes cast for the said office of governor at said election in all the counties of the State, as shown by the election returns of said election as received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor as shown by said returns; and that they do as such board make and sign a certificate, as required by law, containing in words written at full length the whole number of votes given at said election as shown by said returns for the said office of governor of the State of Florida, and the number of votes given for each person voted for for said office and in said certificate declare the result of said election for governor of said State; and that such other order may be had in the premises as justice may require.

Now, therefore, we, being willing that full and speedy justice should be done in the premises, do command you, Samuel B. McLin, secretary of state, and you William Archer Cocke, attorney-general, and you, Clayton A. Cowgill, comptroller of public accounts, that you forthwith meet and convene and re-assemble as a board

of State canvassers, in the office of the secretary of state, to canvass and count all the election returns on file in the said office of the secretary of state of the said election for the office of governor, held on the 7th day of November, A. D. 1876, and that as such board of State canvassers you canvass and count the election returns for the said office from each and every of the counties of this State wherein an election was held for said office; and, especially, that you do canvass and count the election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe, and that you do determine from a canvass and count and enumeration, and tabulation of all the votes cast for the said office of governor at said election in all the counties of the State, as shown by the election returns of said election received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor as shown by said returns; and that you do as such board make and sign a certificate, as required by law, containing, in words and figures written at full length, the whole number of votes given at said election, as shown by the said returns, for the said office of governor of the State of Florida, and the number of votes given for each person voted for for said office, and in said certificate declare the result of the said election for governor of said State, so that you show cause why you have not done so before our supreme court, at the capitol in Tallahassee, at eleven o'clock a. m. on the 14th day of December, A. D. 1876; and have you then there this writ.

Witness the Hon. E. M. Randall, chief-justice of the supreme court of Florida, at Tallahassee, this 13th day of December, A. D. 1876, and the seal of said court.

FRED. T. MYERS,
Clerk of the Supreme Court of Florida.

And thereafter, to wit, on the 14th day of December, A. D. 1876, the said alternative writ having been returned, duly served upon the said defendants, it was ordered by the court that the issues in this cause be made up by Saturday morning next, the 16th day of December.

Upon which said day the said defendants, McLin and Cowgill, by their attorney, J. P. C. Emmons, and the said defendant, William Archer Cocke, in person, filed their answers to the said writ in the words and figures following, to wit:

In the supreme court of the State of Florida.—Special term, December, 1876.

In the matter of the petition of George F. Drew for and the alternate writ of mandamus commanding Samuel B. McLin, secretary of state; William A. Cocke, attorney-general, and Clayton A. Cowgill, comptroller, members of the board of canvassers of Florida, to re-assemble as a board of State canvassers and count all the election returns on file in said office in said secretary of state of election for the office of governor, held on the 7th day of November, 1876; and that as such board of State canvassers they do canvass and count the election returns for said office from each and every of the counties of this State wherein an election was held for said office, and especially that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe; and that they do determine, from the canvass, and count, and enumeration of all the votes cast for the said office of governer at said election in all the counties of the State, as shown by the election returns of said election as recorded at the office of the secretary of state, who has been elected by the highest number of votes to the office of governor as shown by said returns; and that they do as such board make and sign a certificate as required by law:

To the honorable the supreme court of the State of Florida:

The said Samuel B. McLin and Clayton A. Cowgill ask leave to say that they protest and aver now and at all times that this honorable court has no jurisdiction in the premises as set forth in the alternate writ issued in this matter, and cannot grant what the petitioner therein prays for and which said alternate writ commands to be done, unless good reasons are shown why they should not be called upon to act as commanded.

But for answer thereunto, or to so much thereof as is necessary to answer unto, the said Samuel B. McLin and Clayton A. Cowgill, two of the respondents in said matter, for themselves jointly and severally, pray leave to say:

That they admit that there was an election held on the 7th day of November, 1876, as set forth in said alternate writ, and that the persons to be voted for at said election were as therein set forth. And they further admit that the said George F. Drew was eligible as alleged, and that there were no other candidates for the office of governor except the said George F. Drew and Marcellus L. Stearns as alleged; but that, according to the best recollection of these respondents, there were 2 or 3 scattering votes cast at said election for persons other than those hereinbefore named as candidates for the office of governor.

But they deny that, as appears by the returns of the said election received at and on file in the office of the secretary of state, that the true vote cast at said election for George F. Drew was 24,613, and that the true vote cast for said Marcellus L. Stearns was 24,116.

And these respondents, further answering, say that they, with the said William Archer Cocke, did convene and organize as a board of State canvassers at the office of the secretary of state on the said 27th day of November, 1876, and did proceed to canvass the returns from all the counties in which an election had been held, and continued said canvass until the said board had canvassed and passed upon returns from all the counties in said State, and did ascertain from such canvass of the returns from all the counties in said State the true vote cast at said election for each and every of the persons voted for at said election, and did declare the result thereof and certify the same as required by the law providing for the holding and conduct of said election, as required by the law of said State as enacted in 1868 and as finally amended in 1872, which said law was in force at the time of and during the holding and conduct of said election, and is still in force now and at the time of the filing of the petition and the issuance of the writ herein now being answered unto.

And that said canvass of the said several returns was fully completed and ended on the early morning, to wit, at the hour of about half past one o'clock of the 6th day of December, 1876, and the said board by its unanimous vote so declared; and that nothing remained to be done thereafter to complete the entire labors of said board but the preparation of the proper certificate of the result thereof as had been ascertained, and the preparation of which certificate the board unanimously directed its clerk to prepare, which was thereafter done and signed by these respondents, and duly filed in the office of the secretary of state, these respondents constituting a majority of said board. That board then adjourned without day.

And these respondents, further answering, say that they deny that in the canvass aforesaid, in the ascertainment of the result of said election, in making up and certifying to the same as required by said law of 1868, they were guilty of any usurpation whatever.

And these respondents, further answering, say that in relation to the said county of Manatee it appeared from the return of said county, and from evidence received by said board, that the said return was so irregular, and false, and fraudulent that said board was unable to determine the true vote for any officer or member voted for at said election, and said board so certified; and they did not include such return in their determination and declaration in the said certificate of the result of said election hereinbefore referred to.

And these respondents, further answering, say that, as to the counties of Jackson, Hamilton, and Monroe, it was shown by evidence that the returns therefrom were severally false and fraudulent, and that the board determined from the evidence, with reference to each of said counties, what the true vote therein was for each officer and member voted for at such election; and the result of such determination was acted upon in declaring the result of said election and certifying thereto as aforesaid.

And these respondents, further answering, say that in the action that was had by said board, as aforesaid, as to the counties of Hamilton and Monroe, the vote of said board was unanimous; and in the action in relation to Jackson County the action was by a majority of said board.

And, further, that as to the said counties—Manatee, Jackson, Hamilton, and Monroe—showing was made and evidence received from both parties and unanimously acted upon by said board.

And these respondents, further answering, say that as to that part of the suggestion as contained in said writ that said Drew is entirely without remedy except through the intervention of this honorable court by its writ of mandamus, they respectfully submit that each and every of the officers and members voted for at such election have full, perfect, and ample remedy, the former through the courts of law by relation in the nature of *quo warranto*, and the latter by and through the respective branches of the Legislature to which they may claim to have been duly and legally elected; and that any action which might be ordered by this honorable court through the writ prayed for would have no legal effect upon either forum who might, in the pursuit of the proper remedy, be called upon to act.

And these respondents further respectfully submit to this honorable court that said board having canvassed all the returns from all the counties in said State in which an election was held on the said 7th day of November, and determined and declared who had been elected to any office or member by the true vote cast at said election, and made and signed the certificate required by law in such case made and provided, and adjourned without day, that its powers as a board cease.

SAMUEL B. McLIN,
Secretary of State.
C. A. COWGILL,
Comptroller.

Sworn to and subscribed before me this 16th day of December, A. D. 1876.

FRED. T. MYERS,
Clerk of the Supreme Court of Florida.

J. P. C. EMMONS,
Of Counsel for Respondents.

In the supreme court of the State of Florida.

THE STATE OF FLORIDA EX REL. GEORGE F. DREW
vs.
SAMUEL B. McLIN, SECRETARY OF STATE, C. A. COWGILL, comptroller of public accounts, and Wm. Archer Cocke, attorney-general for the State of Florida.

The separate answer of Wm. Archer Cocke to an application before the supreme court of the State of Florida for a writ of mandamus against the said S. B. McLin, C. A. Cowgill, and your respondent, the said William Archer Cocke, filed by George F. Drew and others.

The said respondent answers and says that he neither denies nor assents to the statements of law set forth in the said paper asking the intervention of the writ of mandamus against the members of said canvassing board. Your respondent further states that the charge of rejecting the votes of Manatee, Hamilton, Monroe, and Jackson Counties is not applicable to him in conducting the canvass for the election of State officers which occurred in this State on the 7th of November ultimo.

He further states it was his opinion that the votes in the counties aforesaid should have been counted, and he so indicated by his vote as a member of the State canvassing board.

This respondent, further answering, disclaims that he has usurped power as a member of said board, or advised others so to do. But, in relation to the allegations in the petition for a mandamus to the contrary notwithstanding, he avers that he has followed the law in all respects, and submits the questions of law involved in this case to the honorable court.

WM. ARCHER COCKE,
Attorney-General and ex officio member of the State Canvassing Board of Florida.

Whereupon the said relator, by his attorneys, moved to strike out the answer of the said defendants, McLin and Cowgill, "because the same is evasive, argumentative, and uncertain and insufficient, and does not state facts so that a judgment of the court can be founded thereon."

Whereupon, after a hearing of the parties, the following order was made by the court:

The motion to strike from the files the answer of the respondents, Cowgill and McLin, having been argued and submitted, it is considered by the court that as to the rejection by the respondents, as State canvassers, of the election returns or the papers purporting to be returns from any county, the answer be amended, so as to set forth and show the specific causes and grounds for such rejection, and the defects existing in such returns; and also, that, as to the rejection by the said respondents, as such canvassers, of any portion of the votes included in any return from any county, the answer be amended so as to set forth the specific causes and grounds of such rejection in each and every of the instances of such rejection; and that the amendments be made and filed by Monday, the 18th instant, at twelve o'clock at noon.

And thereafter, to wit, on the day and year last aforesaid, the said respondents, Cowgill and McLin, by their attorney, filed an amended return herein, which is in the words and figures following, to wit:

In supreme court, special term, December, 1876.

GEORGE F. DREW
vs.
SAMUEL B. McLIN ET AL. } Mandamus.

And these respondents, the said McLin and Cowgill, in compliance with the order of this honorable court, make these amendments to the return filed to the alternate writ of mandamus issued herein.

And say that said board did not include the return from said county of Manatee in its determination and declaration of the vote cast at said election, upon the ground of irregularity and fraud in the conduct of the election on the said 7th day of November, 1876.

And these respondents further say that in the county of Clay 29 votes were added to the vote cast for George F. Drew and 6 votes were added to the vote cast for Marcellus L. Stearns, upon the ground that said votes had been improperly rejected by the county canvassers of the vote of said county at said election.

And further, in relation to said county of Clay, that 4 votes cast for George F. Drew at said election were deducted, and 2 cast for Marcellus L. Stearns were deducted, upon the ground that said votes were cast by non-residents of the county.

And these respondents further say that in relation to the county of Hamilton, the vote of precinct No. 2 was deducted from the vote cast in said county as appeared from the returns, upon the ground of gross violation of the election law and fraud in the conduct of the election.

These respondents further say that 5 votes were deducted from the vote cast in Hernando County as appeared from the returns therefrom, upon the ground that said votes were illegally cast.

And these respondents further say that 537 votes were deducted from the vote cast in the county of Jackson as appeared from the face of the return, upon the ground of irregularity and gross fraud in the conduct of said election.

These respondents further say that 2 votes were deducted from the vote cast in

Leon County as apparent upon the face of the return, upon the ground that said votes were illegal.

And these respondents further say that the board deducted from the vote cast in the county of Jefferson, as appeared from the return, 61 votes, upon the ground that said 61 votes were fraudulently cast.

And these respondents further say that 7 votes were deducted from the vote cast in the county of Orange, upon the ground that said votes were illegally cast.

And these respondents further say that the vote of one precinct in the county of Monroe was deducted from the vote, as appeared from the return from said county, upon the ground of irregularity in the conduct of the election and fraud in the conduct of the inspectors of said election in said precinct.

SAMUEL B. McLIN.
C. A. COWGILL.

Sworn to and subscribed before me this 18th day of December, A. D. 1876.

W. M. McINTOSH,
Notary Public for Leon County.

J. P. C. EMMONS,
of Counsel for Respondents.

And these respondents, further answering, say, as to the said county of Manatee, that said board did not include the vote cast in said county as it appeared on the face of the return, upon the ground that it appeared in evidence that there was such irregularity and fraud in the conduct of the election in said county in receiving votes of persons not registered, and there being no registration-list furnished inspectors, and no designation of voting-places, and no notice of election, that said board could not ascertain the true vote.

J. P. C. EMMONS,
Counsel for Respondents.

And upon the same day came the relator, by his attorneys, and filed his demurrer to the answer of the respondents, in the words and figures following, to wit:

Supreme court of Florida, December special term, A. D. 1876.

STATE OF FLORIDA EX REL. GEORGE F. DREW *vs.* SAMUEL B. McLIN ET ALS. } Mandamus.

The relator, George F. Drew, demurs to the answer of the respondents, McLin and Cowgill, as amended, on the ground that the same is insufficient in law.

Points of demurrer.

First. The board of State canvassers could not lawfully exclude or reject the county returns or votes from the county of Manatee, or the precinct returns or votes from the other counties stated in the answer to have been excluded or rejected, upon the grounds stated in said return or answer, nor could they legally make any addition of votes to any returns, as stated in said answer.

Second. The said answer shows that said board illegally excluded the return from the county of Manatee, and made the additions to and deductions from the votes as they appear by the returns from the other counties mentioned in their said answer.

Third. The adjournment of the board before having made a legal canvass of the votes of the several counties, as shown by the returns therefrom, is no reason in law why they should not re-assemble and canvass the votes of the several counties as they appear upon the face of the returns,

Fourth. The allegation in the said answer that each of the officers and members voted for at said election has his remedy, as therein stated, is no sufficient reason in law why the relator should not have his remedy in the premises by mandamus.

R. L. CAMPBELL,
R. B. HILTON,
GEO. P. RANEY,
For Relator.

We certify that the above demurrer is, in our opinion, well founded in law, and we further say it is not interposed for delay.

R. L. CAMPBELL.
R. B. HILTON.
G. P. RANEY.

DECEMBER 18, 1876.

Respondents join in demurrer.

J. P. C. EMMONS,
Counsel for Respondents.

And after hearing of the parties by their attorneys, and argument of the said demurrer, and upon the 22d day of December, A. D. 1876, the court read its opinion herein, which said opinion is in the words and figures following, to wit:

Supreme court of Florida, special term, December, A. D. 1876.

THE STATE OF FLORIDA ON THE RELATION OF GEORGE F DREW *vs.* SAMUEL B. McLIN, SECRETARY OF STATE, CLAYTON A. COWGILL, comptroller, and William Archer Cocke, attorney-general of the State of Florida. } Mandamus.

WESTCOTT, J., delivered the opinion of the court.

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 on those cases expressly provided for by this constitution.

"The judicial power of the State shall be vested in a supreme court, circuit court, county courts, and justices of the peace."

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 to 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. 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 enfored 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, (4 Wis., 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.

This brings us to the consideration of the only remaining general question as to the powers of the board under the statute.

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 it 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 Fla., 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 was 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.

Under this act it became the duty of the State board to determine ministerially the result, but necessarily by the exercise of discretion and judgment; they must first determine that the papers before them were genuine, and that they were executed in form and matter substantially according to the requirements of the statute, and that they were, in fact and in law, the returns of the election. This, as was said by this court in a former case, was the exercise of a quasi-judicial power. To the extent here indicated, a judgment in the nature of a judicial function is necessarily exercised; for if it be otherwise the whole law is inoperative in respect to the power of the board to do any act whatever. The constitutional provision that the officers of one department of the government are strictly forbidden to do any act or to exercise any function pertaining to any other department, unlessly expressly provided for in the constitution, must be taken in connection with the provision (section 6, article 14) authorizing and requiring the Legislature to provide for ascertaining the result from the "returns of elections." This is clearly an express authority for providing that "returns of elections" must be received, considered, and passed upon by such officers or persons as might be designated by the Legislature. And the necessary conclusion is that such officers may be authorized by the Legislature to inquire into the truth or falsity of the returns sent to them, and if, upon such inquiry, they be satisfied that the return does not show the vote actually cast at the election, but that it states a falsehood as to that fact, they may lay aside the vote and refuse to count the return, as is provided in the act of 1872.

"If, as is here alleged by the relator, the respondents neglected to examine and include returns duly and legally made from several of the counties, and, therefore, but partially performed what they were by law required to do, it must be considered that they have not complied with the law, and that they must be required to do so by means of the process here invoked." This leads to a careful examination of the pleadings herein made.

The case is before us upon a demurrer to the return of the respondents to the alternative writ. The alternative writ sets up the counting and computing by the canvassers of the votes given as shown by the returns from certain counties named. It alleges that returns of said election from the several counties of the State, wherein elections have been and were held on the 7th day of November for the election of governor, have been received at the office of the secretary of state; that there has been a pretended canvass of such returns, and that, as to the counties of Jackson, Hamilton, Monroe, and Manatee, the said canvassers have not confined themselves to a canvass of the returns from said counties, although the same were not unintelligible or fraudulent, but genuine and *bona fide*. The relator then prays direction to such board of State canvassers that they do canvass and count the election returns for the office of governor from each and every of the counties of the State wherein an election was held for said office, and that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe. The writ then proceeds in the usual and proper form, which is not necessary here to insert.

The issues presented by the answers, original and amended, are special and precise, setting up in each case, where the returns from any of the said counties were not counted and computed, the particular reason and cause for such action by the board. The question arising upon the demurrer is, Do these answers show sufficient cause in law why the peremptory writ should not be awarded? We examine each of the reasons assigned in the answer as to the several counties, being guided and controlled in our conclusion by our views of the powers of the board as hereinbefore defined.

As to the county of Jackson:

The answer sets up that 557 votes were deducted from the votes cast in the county of Jackson, as appeared from the face of the return, upon the ground of irregularity and gross fraud in the conduct of the election.

Upon the face of this answer, and in view of the express allegations of the alternative writ as to the genuineness, intelligibility, and *bona fide* character of the returns of the votes cast in this county, and in view of the express admission by the pleadings that such return was a genuine return of votes cast, the only question raised here is whether, under this statute, the canvassers can reject a return of votes cast, or any of the votes cast, for irregularity or fraud in the conduct of the election.

Whether irregularities or fraud in an election will authorize the rejection of a vote cast, counted, and returned in a genuine, *bona fide* return, is a question of law, not within the power of this board to determine. If the return was regular, genuine, and *bona fide*, as it was admitted to be by the pleadings, it was the duty of the board to count it.

As to the county of Hamilton:

The answer alleges that there was a deduction made from the votes cast at one precinct, as appeared from the face of the return, upon the ground of gross violation of the election law and fraud in the conduct of the election. What has been said as to Jackson County covers this case, and there is no necessity for repetition

As to the county of Monroe:

The answer alleges that the vote at one precinct was deducted from the vote as appeared from the return from said county, upon the ground of irregularity in the conduct of the election and fraud in the conduct of the inspectors of said election at said precinct. What has been said covers the matter of irregularity in the election. As to fraud in the conduct of inspectors at a precinct, it is not a ground upon which the canvassers can reject a return from the county which is genuine and *bona fide*. What is fraud in such an inspector is a question of law, so also the question whether such fraud by inspectors can vitiate an election is a question of law. Both are judicial questions, beyond the power of the board to determine.

As to the county of Manatee:

The answer sets up that said board did not include the return from said county of Manatee in its determination and declaration of the vote cast at said election, upon the ground of irregularity and fraud in the conduct of the election on said 7th day of November, 1876. The matter of irregularity and fraud here alleged has already been considered in the case of other counties.

The answer alleges further as to this county, that the board did not include the vote cast therein, as it appeared on the face of the return, because it appeared in evidence that there was such irregularity and fraud in the conduct of the election in said county in receiving votes of persons not registered, and there being no registration-list furnished inspectors, and no designation of voting-places, and no notice of election, that said board could not ascertain the true vote.

A return of *votes cast* in a county at a general election, of which notice is given throughout the State by the proper executive authority, no notice of election by local officers (county) having been given, is not a return either irregular, false, or fraudulent, within the meaning of the statute regulating and defining the powers and duties of the State canvassers.

Like the question of the legality of a vote, this is a question of law to be determined by a court—a judicial question beyond the power and jurisdiction of a ministerial officer under the law, constitutional and statutory. A return of votes cast in a county at such *general election*, duly signed by acknowledged county officers, and regular in form, of which election no notice by county officers as to polling-places is given, (the time of election being according to the general notice,) is a return which the State canvassers must count, as it is neither irregular, false, nor fraudulent within the meaning of the statute. Whether such vote is effective to vest the office is a question judicial in its character, which this court upon mandamus should no more determine than should the State canvassers. Such canvassers must count such returns, and so this court should order. Whether all these votes so returned are legal votes is another question, which neither the State canvassers can determine in their action, nor should this court determine it when it is sought to direct them to perform ministerial duties.

As to the counties of Hernando, Orange, and Leon:

The answer states that a number of votes were deducted from the returns of votes cast in said counties because they were illegally cast, and that a vote was deducted from the return of Jefferson County because it was fraudulently cast. These, as we have before said, are questions which the law does not authorize the board to determine. They must count these returns as they admit them by the pleadings to be returns within the meaning of the statute. They nowhere allege the returns to be so "irregular, false, or fraudulent" that they cannot determine the vote cast from them.

As to the county of Clay:

The answer states that 35 votes were added upon the ground that said votes had been improperly rejected by the county canvassers of the vote of said county at said election, and that 6 votes cast were deducted upon the ground that said votes were cast by non-residents of the county. It follows from the view we have taken of the law applicable to the powers and duties of the State canvassers, that any statement of votes by precinct inspectors, which were not included in the canvass made by the county canvassing board, cannot be counted by the State board, the powers of the latter being confined by law to counting only such votes as are duly returned by the county board. Such votes cannot be legally included in the estimates of the State canvassing board.

The question of jurisdiction raised in the pleadings, as well as the other questions of practice and power, are all adjudicated in the case of the State on the relation of Bloxam *vs.* The Board of State Canvassers, 13 Fla., 74, 5-6, and it is unnecessary to repeat here what is there said.

Under the pleadings, and the constitution and the statute as applied to them, our judgment is that the demurrer must be sustained and the peremptory writ must be awarded.

Whereupon the said respondents, Cowgill and McLin, by their attorney, made and entered a motion herein in the words and figures following, to wit:

And the said respondents, McLin and Cowgill, come and move the court to file an amended return to the alternative writ issued in this case, setting forth among other things the character of the returns mentioned therein, as the same appear upon the face therof.

And afterward, to wit, on the 23d day of December, A. D. 1876, the said motion having been withdrawn, the judgment of the court herein was entered in the words and figures following:

STATE OF FLORIDA ON THE RELATION OF GEORGE F. DREW, plaintiff,
vs.
SAMUEL B. MCLIN, SECRETARY OF STATE, WILLIAM ARCHER Cocke, attorney-general, and Clayton A. Cowgill, comptroller of the State of Florida, respondents.

This day came the parties, by their attorneys, and thereupon the matters of law arising upon the relator's demurrer to the answers, original and amended, of the respondents, being argued, it seems to the court that the said answers and the matter therein contained are not a sufficient answer in law to the alternative writ issued herein, and that said return is insufficient. Therefore it is considered that a peremptory writ be awarded, directed to the said Samuel B. McLin, secretary of state, William Archer Cocke, attorney-general, and Clayton A. Cowgill, comptroller, board of canvassers of election of the State of Florida, commanding them that they forthwith meet and convene and re-assemble as a board of State canvassers in the office of the secretary of state, to canvass and count all election returns on file in the said office of the secretary of state of the said election for the office of governor, held on the 7th day of November, A. D. 1876, and that as such board of State canvassers they "canvass and count the returns for said office from each and every of the counties of this State, wherein an election was held for said office, and especially, that they do canvass and count the said election returns from the said counties of Jackson, Hamilton, Manatee, and Monroe, and that they determine from a canvass and count and examination and tabulation of all the votes cast for said office of governor at said election in all the counties of the State, as shown by the election returns of said election received at the office of the secretary of state, who has been elected by the highest number of votes to the said office of governor, as shown by the said returns, and that they do, as such board, make and sign a certificate, as required by law, containing in words and figures, written at full length, the whole number of votes given at said election as shown by said returns for the said office of governor of the State of Florida, and the number of votes given for each person voted for for said office, and in said certificate declare the result of the said election for governor of the said State.

And that they do perfectly execute this writ on or before the 27th day of December, A. D. 1876, and how they shall have executed it make return to our supreme court on that day by four o'clock p. m. in writing, to be filed in the clerk's office of said court.

The section of the statute defining the powers and duties of the board of canvassers which the court construed in this case is as follows:

SEC. 4. On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. 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 such 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 said board shall make and sign a certificate, containing, in words written at full length, the whole number of votes given for each office, the number of votes given for each person for each office, and for member of the Legislature, and therein declare the result, which certificate shall be recorded in the office of the secretary of state in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government.

I, Fred. T. Myers, clerk supreme court of Florida, do hereby certify that the foregoing pages, numbered from 1 to 21, inclusive, constitute a true transcript of the record of the judgment in the case of The State of Florida *ex rel.* George F. Drew *vs.* The Board of State Canvassers up to the issuing of the peremptory writ, but it does not embrace the proceedings after the issuing of that writ, nor the petition for the alternative writ.

Witness my hand and the seal of said court at Tallahassee, Florida, this 10th day of January, A. D. 1877.

[SEAL.]

FRED. T. MYERS,
Clerk Supreme Court of Florida.

In the supreme court of Florida.—Special term, 1876-'7.

THE STATE OF FLORIDA ON THE RELATION OF GEORGE F. Drew
vs.
SAMUEL B. MCLIN, SECRETARY OF STATE, CLAYTON A. Cowgill, comptroller, and William Archer Cocke, attorney-general of the State of Florida.

WESTCOTT, J., delivered the opinion of the court:

The court propose not only to dispose of the motion in this case made and submitted this morning, but also to announce our views in reference to the whole subject-matter of what is called a return to the peremptory writ in this cause.

The first and only general question involved in this whole matter is, What is in form and substance the legal and proper paper to be filed by a respondent in response to a peremptory writ of mandamus?

The second question is, Have the respondents complied with the law in this respect?

The third question is, In case they have or have not complied with the law, what is the proper order to be made by the court in this behalf?

To the first question, What is the legal and proper paper to be filed by a respondent in response to a peremptory writ of mandamus? Upon this question there is no conflict in the authorities. "There is strictly no *return* to a peremptory writ. It is to be obeyed, and a certificate is made of what has been done." This is the language of Mr. Justice Woodward in delivering the opinion of the supreme court of Iowa, (9 Iowa, 335,) and such is the view announced by all the courts, English and American, so far as the cases decided by them upon the subject have been examined by us. (Tapp. on Man., 61, 389, 445, and 456.) The granting "a peremptory writ implies that the party has been fully heard, and therefore he can allege no reason why he has not obeyed it." Such is the language of Chief-Justice Ruffin, of the supreme court of North Carolina, in the case of The State *vs.* Robert Jones *et al.* (1 Ired., 414.) If such be the necessary inference, and in this case such inference corresponds with the fact, for the parties have been fully heard, then the pleadings, so far as the propriety of granting the writ is concerned, and as to matters of defense to the action proper, are closed, and the necessary result is that no such matter can be considered or be made the subject-matter of any response to this peremptory writ.

We have to apply these plain, simple principles of law to what here purports to be a response to the peremptory writ. The first paper which we have on file connected with what purports to be a "return" to the writ is the certificate which constitutes the evidence and statement of a canvass made by the board of State canvassers of votes cast at a general election held in this State on the 7th of November, A. D. 1876. The statute regulating this subject provides that the board shall make and sign a certificate containing in words written at full length the whole number of votes given for each person for each office and for member of the Legislature, and therein declare the result, which certificate shall be recorded in the office of the secretary of state, in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government.

The proper and only legal place of deposit of this original certificate constituting the evidence of important action by State authorities is the office of the secretary of state. It is, under the statute, the basis of important official action which the

law imposes upon him, and it should be on the files of his office as evidence of the fact that the certificate recorded and published by him is a correct copy of the original, and that his duty in this respect has been properly discharged. As to this paper, therefor, it is improperly and illegally on the files of this court. Under the statute, it has its proper place, and to that place it is as much the plain duty of this court to send it as it is the manifest duty of this officer to receive and file it. Therefore it is the order of the court that the clerk of this court deliver this paper to the secretary of state of the State of Florida, and the clerk of this court is directed to transmit to said officer at the same time a certified copy of so much of this opinion as refers to the proper place of deposit of this certificate.

The second paper on file connected with what purports to be a "return" is what is called a "protest" of the respondents Cowgill and McLin. This court is not, and should not be, offended at the filing of any respectful and proper protest to any or all of its actions at the proper time, and under circumstances which authorize such action. Such protest will always, when so filed, receive that respectful and calm consideration which it is the right of every man to have at the hands of this court. In this case, the matter of jurisdiction which this "protest" proposes again to raise was made the subject of defense by the respondents Cowgill and McLin. We have heard them fully. We have determined that we have jurisdiction. It is our duty to enforce it. It is the duty of the respondents to obey. Under the circumstances of this case, and as a response, setting up matters of defense as to which these parties have been already heard, it is not properly here. We cannot hear further argument as to this matter. We cannot act as though the pleadings proper in this case were now open to amendment. The pleadings are closed, and the simple duty of the respondents is to obey the writ and to make response showing their obedience.

Again: this paper, like the first paper we have considered, purports to set up a canvass made of votes cast for other persons and officers than George F. Drew and Marcellus L. Stearns, or other persons, for governor. The only relator in this case is George F. Drew. All of the other persons mentioned in these papers as receiving votes for various offices, and who are declared elected to such offices, are in no manner parties to this controversy. As a judicial tribunal, we should take no action which can directly affect their rights or approve any action by the board of canvassers affecting their rights, except according to the law of the land, which is, after notice, hearing, and trial. In a pleading in equity this would be impertinent and irrelevant matter. In a common-law proceeding it is surplusage, to be quashed and set aside upon motion. It is, therefore, ordered that the same be set aside and quashed as surplusage, having no connection with any proper response to this peremptory writ. This court is not a board of canvassers. If the board see proper to canvass the returns of votes with reference to offices other than that of governor, in conformity to their duty as defined by this court, that is a matter as to which we can decide nothing. It is not here involved.

As to the separate answer of respondent William Archer Cocke, attorney-general of the State of Florida, it must be set aside and quashed. Its approval, like the approval of what purports to be a protest, would be approval by this court of action by this board, affecting others than the relator in this cause.

This brings us to the consideration of the particular motion here made. It must be denied. This court cannot simply strike out that portion of the protest sought to be stricken out under this motion, thus leaving a large partof this paper, which we have already stated must be quashed.

In determining this matter, the court must be permitted to say that its decision here establishes, in all future proceedings by mandamus, what is in form and substance a proper response to a peremptory writ. It becomes us to be careful, and that we do not prescribe a rule of practice which may hereafter be shown, as applied to the rights of this people, to be erroneous. The conclusion we reach is that these respondents have made no response which this court can accept. Their duty is plain and simple under this peremptory writ. It is to canvass, count, and add up returns of votes cast in the several counties in this State for the persons voted for for the office of governor. This act involves writing to the extent of one or two pages, and we think the duty can be performed in two or three hours.

The order is that the return to the peremptory writ is quashed; that the paper purporting to be a certificate of a canvass of votes cast on the 7th of November, A. D. 1876, at a general election in this State, be returned to the office of the secretary of state by the clerk of this court; that what purports to be a protest, as well as the return signed by William Archer Cocke, attorney-general, be quashed; that an order be made repeating the peremptory writ, and directing a strict compliance with the order and direction of the court in this behalf; and that the respondents do perfectly execute the duty heretofore and hereby enjoined upon them by half past five o'clock p. m. of this day.

I, Fred. T. Myers, clerk supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from one to ten inclusive, contain a true copy of the original opinion on file in my office, in the case of The State of Florida, *ex rel.* George F. Drew, *vs.* The Board of State Canvassers, rendered on a motion to strike out certain portions of a paper filed by respondents Cowgill and McLin, called a "protest."

In testimony whereof, I have hereunto set my hand and the seal of said court, at Tallahassee, Florida, this 11th day of January, A. D. 1877.

[SEAL.]

FRED. T. MYERS,
Clerk Supreme Court of Florida.

At a supreme court for the State of Florida, continued and held at the capitol, in the city of Tallahassee, pursuant to adjournment, on Tuesday, the second day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, Hon. Edwin M. Randall, chief-justice; Hon. James D. Westcott jr., Hon. R. B. Van Valkenburgh, associate justices.

THE STATE OF FLORIDA, ON THE RELATION of George F. Drew,
vs.
SAMUEL B. MCLIN, SECRETARY OF STATE, Clayton A. Cowgill, comptroller, and William Archer Cocke, attorney-general of the State of Florida.

And now, on reading and filing the certificate of the respondents, under date of January 1, 1877, and the additional certificate of the respondents, filed this day, and the relator not objecting, it is considered by the court that the said respondents have substantially complied with the mandate of this court in this behalf. But because the respondents have incorporated in their said certificate a detailed statement of votes cast in the several counties at the late election, which said detailed statement was not required by the order of this court, and with which this court in this proceeding has no concern; and in the making and incorporating such statement in their said certificate, the said respondents have unnecessarily encumbered the record of this court with matter not pertinent or material; it is therefore ordered by this court, of its own motion, that all such detailed statements be, and the same is, hereby quashed and struck out, leaving and saving the rest and residue of said response to stand as a substantial compliance with the requirements of the law as to the matter before this court. It is further considered and adjudged that the respondents Samuel B. McLin and Clayton A. Cowgill pay the costs of this proceeding.

I, Fred. T. Myers, clerk supreme court of Florida, do hereby certify that the above is a true extract from the minutes of said court, and a correct copy of the final order in the case of George F. Drew *vs.* The Board of State Canvassers for Florida.

Witness my hand and the seal of said court, at Tallahassee, Florida, this 10th day January, A. D. 1877.

[SEAL.]

FRED. T. MYERS,
Clerk Supreme Court of Florida.

EXHIBIT A.

Presidential electors—Frederick C. Humphries, Charles H. Pearce, William H. Holden, Thomas W. Long.
For governor—Marcellus L. Stearns.
For lieutenant-governor—David Montgomery.
For Congress, first district—William J. Purman.
For the assembly, Leon County—Denard Quarterman, William F. Thompson, William H. Ford, Edmund C. Weeks.

EXHIBIT C.

Certificate of the result of election, to be signed by inspectors and clerk of election.—(See section 23 of the general election law.)

STATE OF FLORIDA, *Leon County:*

We, the undersigned, inspectors and clerk of an election held at Richardson's S. H., in the county of Leon, and State aforesaid, on the 7th day of November, in the year of our Lord, 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872, do hereby certify that the result of the said election was as follows, namely:

That the whole number of votes cast for electors of President and Vice-President was 186, of which Frederick C. Humphries received 177 votes; Charles H. Pearce received 177 votes; William H. Holden received 177 votes; Thomas W. Long received 177 votes; James E. Yonge received 9 votes; Wilkinson Call received 9 votes; Robert B. Hilton received 9 votes; Robert Bullock received 9 votes.

For governor of the State of Florida, Marcellus L. Stearns received 177 votes; George F. Drew received 9 votes.

For lieutenant-governor of said State, David Montgomery received 177 votes; Noble A. Hull received 9 votes.

For Representatives in Congress, William J. Purman received 177 votes; Robert H. M. Davidson received 9 votes.

For members of the assembly, Denard Quarterman received 177 votes; William F. Thompson received 177 votes; William H. Ford received 177 votes; Edmund C. Weeks received 177 votes; David W. Gwynn received 9 votes; Richard C. Parkhill received 9 votes; Virgill Harris received 9 votes; Peter Brown received 9 votes.

For constables, Madison G. Gardiner received 105 votes; Bradley Robinson, 105 votes; Taylor Sherman, 105 votes; Sidney A. Trent, 105 votes; Robert S. Cox, 105 votes; Eleburn Sims, 105 votes; Allen Twine, 105 votes; Jacob Wiley, 105 votes; Benjamin Scott, 105 votes; Benjamin Rollins, 105 votes; Richard Pooser received 105 votes; Christopher Gray, 105 votes; Bartley Mitchell, 9 votes; Michael Hall, 9 votes; Willis Jackson, 9 votes; Couch Micken, 9 votes; Jack Shepard, 9 votes; Jerry Bentley, 9 votes; Samuel Lockman, 9 votes; Charles Newburn, 9 votes; Joseph Perkins, 9 votes; Robert Crowell, 9 votes; George Dorsey, 9 votes; William Shaver, 9 votes.

Witness our hands, at Richardson's, in the county aforesaid, this 7th day of November, A. D. 1876.

JOSEPH BOWES,
Inspector of Election.
ISAAC DENT,
Inspector of Election.
LAWRENCE R. BOOTH,
Inspector of Election.
WILEY JONES,
Clerk of Election.

STATE OF FLORIDA,
Leon County:

I, Charles H. Edwards, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the original return of election held at Richardson school-house precinct No. 13, in said county, on the 7th day of November, 1876, on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 5th day of December, A. D. 1876.

[SEAL.] C. H. EDWARDS, *Clerk.*

(Indorsed:) No. 13. Exhibit C. E. L. P. December 13, 1876. Filed November 9, 1876. E. L. Edwards.

EXHIBIT 1.

I, Samuel B. McLin, secretary of state, do hereby certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

Witness my hand and the great seal of the State this December 13th, A. D. 1876.

[SEAL.]

SAM'L B. McLIN,
Secretary of State.

Certificate of the county canvassers. (See section 24, act of August 26, 1868.)

STATE OF FLORIDA,
Alachua County:

We, the undersigned, Louis A. Barnes, sheriff county stated, and Irving E. Webster, clerk of the circuit court of the county aforesaid, and William H. Belton, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid on the eleventh day of November, the same being four days after the general election held in the county of Alachua, and State aforesaid, on Tuesday, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, *the* under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 3,237, as follows, viz: Marcellus L. Stearns received 1,977; George F. Drew received 1,260.

That the whole number of votes cast for lieutenant-governor was 3,237, as follows: David Montgomery received 1,971; Noble A. Hull received 1,266.

The whole number of votes cast for Presidential electors was 13,004, as follows, viz: Frederick C. Humphries received 1,984; Charles H. Pearce recived 1,984; William H. Holden received 1,984; Thomas W. Long received 1,984; James E. Yonge received 1,267; Wilkinson Call received 1,267; Robert B. Hilton received 1,267; Robert Bullock received 1,267.

That the whole number of votes cast for Representatives in Congress was 3,242, as follows, viz: Horatio Bisbee, jr., received 1,972; Jesse J. Finley received 1,255, J. Willis Menard received 15.

That the whole number of votes cast for State senator was 3,218, as follows, namely: Josiah T. Walls received 1,974; Thomas F. King received 1,243; J. Willis, Menard received 1.

That the whole number of votes cast for member of the assembly was 6,444, as follows, namely: Leonard G. Dennis received 1,963; William K. Cessna received 1,961; J. M. Sparkman received 1,244; P. B. H. Dudley received 1,244; T. C. Gass received 16; George J. E. B. Washington received 16.

Witness our hands and seals of office at Gainesville, in the county aforesaid, this thirteenth day of November, A. D. 1876.

L. A. BARNES,
Sheriff County Court of —— County.
IRVING E. WEBSTER,
Clerk of the Circuit and County Courts of Alachua County.
W. H. BELTON,
Justice of the Peace of Alachua County.

Deduct on account of illegal votes at Waldo, 13 votes from the Tilden electors and 4 votes from the Hayes electors.

Canvassed. SAMUEL B. McLIN, *Chairman.*

(Indorsed:) Exhibit 1. E. L. P. Dec. 14, 1876. Alachua.

EXHIBIT 2 A.

Certificate of the county canvassers. (*See section 24, act of August 6, 1868.*)

STATE OF FLORIDA,
Baker County:

We, the undersigned, , judge of the county court of the county stated, and M. J. Coxe, clerk of the circuit court of the county aforesaid, and John Durman, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 10th day of November, the same being three days after the general election held in the county of Baker, and State aforesaid, on Tuesday, the 7th day of November A. D. 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor of Florida was 378, as follows, namely: George F. Drew received 236 votes; Marcellus L. Stearns received 142 votes.

That the whole number of votes cast for lieutenant-governor was 380, as follows, namely: Noble A. Hull received 238 votes; David Montgomery received 142 votes.

That the whole number of votes cast for presidential electors was 381, as follows, namely: Wilkinson Call received 238 votes; James E. Yonge received 238 votes; Robert B. Hilton received 238 votes; Robert Bullock received 238 votes; Frederick C. Humphries received 143 votes; William H. Holden received 143 votes; Charles H. Pearce received 143 votes; Thomas W. Long received 143 votes.

That the whole number of votes cast for Representative in Congress was 381, as follows, viz: Jesse J. Finley received 238 votes; Horatio Bisbee, jr., received 143 votes.

That the whole number of votes cast for member of Assembly was 370, as follows, viz: Bryant H. Gurganus received 222 votes; George P. Canova received 148 votes.

Witness our hands and seal of office, at Sanderson, in the county aforesaid, this 10th day of November, A. D. 1876.

——— ———,
Judge of the County Court of Baker County.
M. J. COXE,
Clerk of the Circuit Court and County Courts of Baker County.
JOHN DORMAN,
Justice of the Peace of Baker County.

I, Samuel B. McLin, secretary of state, do certify that the within is a correct transcript of the original returns now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876.

[SEAL.] SAML. B. McLIN,
Sec. State.

EXHIBIT 2 B.

I, Samuel B. McLinn, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876.

[SEAL.] SAML. B. McLIN.
Sec. State.

Certificate of the county canvassers. (*See section 24, act of August 6,1868.*)

STATE OF FLORIDA,
Baker County:

We, the undersigned, —— ——, county judge of the above stated county, and M. J. Coxe, clerk of the circuit court of the said county, and John Dimin, a justice of the peace of the said county, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 13th day of November, the same being sixth day after the general election held in the county of Baker, and State aforesaid, on Tuesday, the 7th day of November, A. D. 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 378 votes, as follows, viz: George F. Drew received 236 votes; Marcellus L. Stearns received 142 votes.

That the whole number of votes cast for lieutenant-governor was 380 votes, as follows, viz: Noble A. Hull received 238 votes; David Montgomery received 142 votes.

That the whole number of votes cast for presidential electors was 381 votes, as follows, viz: Wilkinson Call received 238 votes; James E. Yonge received 238 votes: Robert B. Hilton received 238 votes; Robert Bullock received 238 votes; F. C. Humphries received 143 votes; C. H. Pearce received 143 votes; W. H. Holden received 143 votes; T. W. Long received 143 votes.

That the whole number of votes cast for Representatives in Congress was 381 votes, as follows, namely: Jesse J. Finley received 238; Horatio Bisbee, jr., received 143.

That the whole number of votes cast for member of the assembly was 370 votes, as follows, namely: B. H. Gurganes received 222; G. P. Canova received 148.

Witness our hands, at Sanderson, in the county aforesaid, this 13th day of November, in the year of our Lord 1876.

——— ———,
Judge of the County Court of —— County.
M. J. COXE,
Clerk of the Circuit and County Courts of Baker County.
JOHN DIMIN,
Justice of the Peace of Baker County,

EXHIBIT 2 C.

I, Sam'l B. McLin, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of the secretary of state.

Witness my hand and the great seal of the State this December 13, 1876.

[SEAL.] SAM'L B. McLIN,
Sec. of State.

Certificate of the county canvassers. (*See section 24, act of August 6, 1868.*)

STATE OF FLORIDA,
Baker County:

We, the undersigned, Elisha W. Driggers, judge of the county court of the county stated, and Andrew A. Allen, sheriff of the circuit court of the county aforesaid, and William Green, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 13th day of November, the same being six days after the general election held in the county of Baker, and State aforesaid, on Tuesday, the 7th day of November, in the year of our Lord 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor was 219 votes, as follows, namely: Marcellus L. Stearns received 130 votes; George F. Drew received 89 votes.

That the whole number of votes cast for lieutenant-governor was 219 votes as follows, namely: David Montgomery received 130 votes; Noble A. Hull received 89 votes.

That the whole number of votes cast for presidential electors was 219 votes, as follows, namely. Frederick Humphries received 130 votes; William H. Holden received 130 votes; Thomas W. Long received 130 votes; Wilkinson Call received 89 votes; James E. Yonge received 89 votes; Robert B. Hilton received 89 votes; Robert Bullock received 89 votes; Charles H. Pearce received 130 votes.

That the whole number of votes cast for Representatives in Congress was 219 votes, as follows, namely: Horatio Bisbee, jr., received 130 votes; Jesse S. Finley received 89 votes.

That the whole number of votes cast for member of assembly was 215 votes, as follows, namely: George P. Canova received 131 votes; Bryant W. Gurganus received 84 votes.

Witness our hands and seals of office, at Sanderson, in the county aforesaid, this 13th day of November, A. D. 1876.

ELISHA W. DRIGGERS,
Judge of the County Court of Baker County.
ANDREW A. ALLEN,
Sheriff of the Circuit and County Courts of Baker County.
WILLIAM GREEN,
Justice of the Peace of Baker County.

Canvassed:
Amended by canvassing all the precinct returns.
SAML. B. McLIN, *Chairman.*

143 Hayes electors.
238 Tilden electors.

EXHIBIT 3.

I, Samuel B. McLin, secretary of state, do certify that the within transcript is a true copy of the original return now on file in the office of the secretary of state.

Witness my hand and great seal of the State, this December 13, 1876. Constable vote not included.

[SEAL.] SAML. B. McLIN,
Sec. of State.

EXHIBIT NO. 53.

STATE OF FLORIDA,
Baker County:

Be it known that, on the 10th day of November, A. D. 1876, that the following notice commanding respectively M. F. Coxe, clerk of the circuit court in and for Baker County, and John Dorman, a justice of the peace in and for said county, to be and appear at the village of Sanderson for the purpose of canvassing the votes polled at an election held on the 7th day of November, A. D. 1876, in said county, when a President, Vice-President of the United States, and a governor and lieutenant-governor of the State of Florida, and a member of the Forty-fifth Congress of the United States, and a member of the General Assembly of the State of Florida, and constables in and for Baker County were voted for; that said notices were in words and figures as follows:

SANDERSON, FLORIDA,
November 10, 1876.

M. J. COXE,
Clerk of the Court:

Meet me at Sanderson on Monday, November 13, 1876, to canvass the vote of Baker County.

E. W. DRIGGERS,
County Judge.

SANDERSON, FLA,
November 14, 1876.

JOHN DORMAN,
Justice of the Peace, Baker County:

Meet me at Sanderson November 13, 1876, to canvass the vote of Baker County.

E. W. DRIGGERS,
Judge Probate.

That on Monday, 13th November, A. D. 1876, M. J. Coxe, clerk as aforesaid, and John Dorman, justice of the peace as aforesaid, did respond to said notice in their own proper person, and were willing, prepared, and desirous of canvassing the said votes polled at the election aforesaid; that immediately upon the arrival of the said Coxe and the said Dorman, that E. W. Driggers, judge of probate of said county of Baker, and author of the notices above written, and A. A. Allen, sheriff of said county of Baker, did at once absent themselves from said village of Sanderson, and by such absence did prevent the organization of the board of canvassers of said county; that every effort was made to secure their presence, but without avail; that the said Coxe and the said Dorman remained in the village of Sanderson the entire day, hoping for the return of one or both of such officers, that the convass might proceed according to law; that said Driggers and said Allen were absent for some hours, and did not return until three or four o'clock, p. m.; that immediately upon their return the said clerk did, in the presence of said Dorman, request the judge of probate to aid them in the organization of the board of canvassers and to proceed to make the canvass of said vote polled as aforesaid, and that the said Driggers, judge of probate as aforesaid, positively refused to participate in the canvass; that upon his refusal the said Allen, sheriff as aforesaid, was requested to act and positively refused to act as one of the board of canvassers; that after both officers whose duty under the law it was to have aided in said canvass had positively declined to do so,

and six days, within the law, requires the canvass to be made having nearly expired, that the said Coxe and the said Dorman did make an earnest effort to procure another justice of the peace to aid them in making the canvass, but were unable to do so, that having failed to procure the aid of an additional justice of the peace, that they, the said Coxe and the said Dorman, proceeded to canvass the said votes.

M. J. COXE, [L. S.]
Clerk Circuit Court, Baker County.

I do certify that I did request E. W. Driggers, judge of probate in and for the county of Baker, to assist in the organization of the board of canvassers to canvass the vote of Baker County polled at the election above mentioned, and that he positively refused to do so. And I certify that on his refusal that I did make the same request of A. A. Allen, sheriff of said county of Baker, to participate in the organization of said board of canvassers and to aid in canvassing the votes polled at the election above mentioned, and that he refused so to do; and the said M. J. Coxe made the same request of them, was likewise refused; and I further certify that the facts set forth above as true.

JOHN DORMAN, [L. S.]
Justice of the Peace in and for the County of Baker.

I, W. D. Bloxham, secretary of state of Florida, do hereby certify that the above is a true and correct copy of the certificate on file in my office relating to the canvass of the votes of Baker County, in said State, at the late election held for President and Vice-President.

In testimony whereof I hereunto set my hand and cause the great seal of the State to be affixed. Done at Tallahassee, the capital, this the 19th day of January, A. D. 1877.

W. D. BLOXHAM,
Secretary of State.

I, Samuel B. McLin, secretary of state, do certify that the within is a correct transcript of the original returns now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876. (Constables not included.)

[SEAL.]

SAM'L B. McLIN,
Secretary of State.

Certificate of the county canvassers. (*See section 24 of the general election law.*)

STATE OF FLORIDA,
Clay County:

We, the undersigned, Ozias Buddington, county judge of the above-stated county, and O. A. Buddington, clerk of the circuit court of the said county, and Samuel Jackson, a justice of the peace of the said county, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid on the 9th day of November, in the year of our Lord 1876, the same being two days after the general election held in the county of Clay, and State aforesaid, on Tuesday, the 7th day of November, in the year of our Lord 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

There was returned at Green Cove Springs precinct No. 1, by the inspectors at the election, the following votes, to wit:

For Samuel J. Tilden, for President, 74 votes.

For Thomas A. Hendricks, Vice President, 74 votes.

That the whole number of votes cast for governor was 407 votes, as follows, viz: George F. Drew received 287 votes; Marcellus L. Stearns received 120 votes.

For President, Tilden, 74 votes.

For Vice-President, Thomas Hendricks, 74 votes.

That the whole number of votes cast for lieutenant-governor was 406 votes, as follows, viz: Noble A. Hull received 287 votes; David Montgomery received 119 votes:

That the whole number of votes cast for presidential electors was 409 votes, as follows, namely: Wilkinson Call received 286 votes; James E. Yonge received 287 votes; Robert B. Hilton received 287 votes; Robert Bullock received 287 votes; F. C. Humphries received 122 votes; C. H. Pearce received 121 votes; W. H. Holden received 122 votes; T. W. Long received 122 votes.

We, the county canvassers, would hereby report that at precinct No. 8 (No. 11 pond) there was no evidence of the inspectors of the election of said precinct being sworn, but the clerk was. The vote of said precinct was as follows, which we did not count in our returns:

George F. Drew, for governor, received 29 votes; Marcellus L. Stearns, for governor, received 6 votes.

Noble A. Hall, for lieutenant-governor, received 29 votes; David Montgomery, for lieutenant-governor, received 6 votes.

Presidential electors received as follows: Wilkinson Call received 29 votes; James E. Yonge received 29 votes; Robert B. Hilton received 29 votes; Robert Bullock received 29 votes; F. C. Humphries received 6 votes; C. H. Pierce received 6 votes; Wm. H. Holden received 6 votes; T. W. Lang received 6 votes.

Representatives in Congress: Jesse J. Finley received 29 votes; Horatio Bisbee, jr., received 6 votes.

State senator: John C. Richard received 28 votes; Benjamin E. Tucker received 6 votes.

For member of the assembly: Mathew A. Knight received 23 votes; George N. Borden received 11 votes.

For constable, M. R. Minton received 21 votes.

That the whole number of votes cast for Representative in Congress was 406 votes, as follows, namely: Jesse J. Finley received 286 votes; Horatio Bisby, jr., received 120 votes.

That the whole number of votes cast for State senator was 402 votes, as follows, namely: John C. Richard received 276 votes; B. E. Tucker received 126 votes.

That the whole number of votes cast for member of Assembly was 389 votes, as follows, namely: M. A. Knight received 251 votes; G. N. Bordin received 138 votes.

Witness our hands at Green Cove Springs, in the county aforesaid, this 9th day of November, A. D. 1876.

OZIAS BUDDINGTON,
County Judge of Clay County.

O. A. BUDDINGTON,
Clerk of the Circuit Court of Clay County.

SAMUEL JACKSON,
Justice of the Peace of Clay County.

Canvassed: 29 given to Tilden, No. 8 precinct; 4 illegal votes from Tilden; 6 votes given to Hayes electors; 2 from Hayes electors *pro rata*.

SAML. B. McLIN, *Chairman.*

EXHIBIT No. 8.

I, Samuel B. McLin, secretary of state, do certify that the within is a correct transcript of the original return now on file in the office of secretary of state.

Witness my hand and great seal of the State this December 13, 1876. (Constables not included.)

[SEAL.]

SAML. B. McLIN,
Secretary of State.

Certificate of the county canvassers. (*See section 24, act of August 6, 1868.*)

STATE OF FLORIDA,
Duval County:

We, the undersigned, William A. McLean, judge of the county court of the county stated, and Edwin Higgins, clerk of the circuit court of the county aforesaid, and John L. Edwards, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 10th day of November, the same being three days after the general election held in the county of Duval, and State aforesaid, on Tuesday, the 7th day of November, 1876, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 8, 1868, and an act amendatory thereto approved February 27, 1872. We do hereby certify, from the returns on file in the office of the clerk aforesaid—

That the whole number of votes cast for governor of Florida was 3,800, as follows, viz: Marcellus L. Stearns received 2,298; George F. Drew received 1,502.

That the whole number of votes cast for lieutenant-governor was 3,774, as follows, to wit: David Montgomery received 2,226; Noble A. Hull received 1,498.

That the whole number of votes cast for presidential electors was 3,804, of which Frederick C. Humphreys received 2,367; William H. Holden received 2,367; Charles H. Pearce received 2,366; Thomas W. Long received 2,366; James E. Yonge received 1,437; Robert B. Hilton received 1,437; Robert Bullock received 1,437; Wilkinson Call received 1,436; Marcellus L. Stearns received 1.

That the whole number of votes cast for Representatives in Congress was 3,803, as follows, viz: Horatio Bisbee, jr., received 2,331; Jesse J. Finley received 1,468; J. Willis Menard received 4.

That the whole number of votes cast for member of the Assembly was 3,804, as follows, viz: Alfred Grant received 2,290; Joseph E. Lee received 2,286; Columbus Drew received 1,514; Joshua L. Burch received 1,507; Horatio Bisbee, jr., received 1; Jesse Oxendine received 1.

Witness our hands and seals of office, at Jacksonville, in the county aforesaid, this 11th day of November, A. D. 1876.

_____, _____,
Judge of the County Court of —— County.

EDWIN HIGGINS,
Clerk of the Circuit and County Courts of Duval County.

JNO. L. EDWARDS,
Justice of the Peace of Duval County.

We, Edwin Higgins, clerk of the circuit and county courts of Duval County, Florida, and John L. Edwards, justice of the peace of said county, and members of the canvassing board, do hereby further certify that William A. McLean, judge of the county court in and for said county, was present during the entire canvass of the returns of election, the result of which is contained in the foregoing certificate, and that he refused to sign the said certificate. We also certify that the said William A. McLean has made no objection to the correctness of said certificate.

Witness our hands and seals at Jacksonville, in said county, this 11th day of November, 1876.

EDWIN HIGGINS,
Clerk of the Circuit and County Courts of Duval County, Florida.

JNO. L. EDWARDS,
Justice of the Peace for Duval County, Florida.

STATE OF FLORIDA,
County of Duval, ss:

Be it remembered that on this 13th day of November, A. D. 1876, at ten o'clock a. m., I, clerk of the circuit court in and for said county, have duly recorded the foregoing certificate of county canvassers in the public records of said county, in the book required by law to be kept for that purpose, pages 16, 17, 18, 19, 20, 21, and 22.

In witness whereof I have hereunto set my hand and the seal of said court this day and year above written.

[SEAL.]

EDWIN HIGGINS, *Clerk.*

Canvassed the return after comparing it with the certified precinct returns.

SAM'L B. McLIN, *Chairman.*

MINORITY REPORT.

The following are the views of the minority of the committee as subsequently presented:

On the 4th day of December last the House of Representatives passed the following resolution:

"*Resolved*, That three special committees, one of fifteen members to proceed to Louisiana, one of six members to proceed to Florida, and one of nine members to proceed to South Carolina, shall be appointed by the Speaker of the House to investigate recent elections therein and the action of the returning or canvassing boards in the said States in reference thereto, and to report all the facts essential to an honest return of the votes received by the electors of the said States for President and Vice-President of the United States, and to a fair understanding thereof by the people; and that for the purpose of speedily executing this resolution the said committee shall have power to send for persons and papers, to administer oaths, to take testimony, and, at their discretion, to detail subcommittees, with like authority to send for persons and papers, to administer oaths, and to take testimony; and that the said committees and their subcommittees may employ stenographers, clerks, and messengers, and be attended each by a deputy sergeant-at-arms; and said committees shall have leave to report at any time, by bill or otherwise."

On the following day the Speaker of the House appointed Messrs. THOMPSON of Massachusetts, DE BOLT of Missouri, WALLING of Ohio, HOPKINS of Pennsylvania, WOODBURN of Nevada, and DUNNELL of Minnesota the committee to proceed to Florida to investigate the recent election held therein and report the action of the canvassing board of said State.

The committee left the city of Washington on the morning of the 8th of December, and commenced their duties in Tallahassee on Wednesday, the 13th of the month. Hon. S. B. McLin, secretary of the State of Florida, was the first witness. He was examined in regard to the original tabulated statement that was made up on the night of the 5th and morning of the 6th of December by the clerks of the board of State canvassers. This statement is Exhibit 41 in the printed testimony taken by the committee.

To the end that a construction might be given to the resolution under which the committee were appointed and were then beginning to act, Mr. WOODBURN offered the following resolution:

"*Resolved*, That it is the sense of this committee that under the resolution of the House of Representatives of the United States creating it and defining its duties it is authorized only to investigate the manner of the election of the electors for President and Vice-President in the State of Florida at the late election, and the action of the returning or canvassing board of said State in reference thereto, and to report to the said House of Representatives all the facts essential to an honest return of the votes received by the said electors of the said State of Florida."

Mr. HOPKINS presented the following resolution as a substitute for the foregoing:

"*Resolved*, That the resolution under which this committee acts is sufficiently ex-

plicit as to the powers and duties of the committee, and cannot be limited or restricted by any action of ours."

Adopted.

YEAS—Messrs. De Bolt, Walling, and Hopkins—3.

NAYS—Messrs. Woodburn and Dunnell—2.

The following resolution was then offered by Mr. DUNNELL:

"*Resolved*, That the secretary of state of the State of Florida be requested to furnish to this committee certified copies of all documents, affidavits, and other papers furnished him or the canvassing board of the State, and upon which said board acted in determining and declaring who were chosen electors for President and Vice-President of the United States for the said State of Florida at the election held November 7, 1876, and that said copies be made a part of our report to the House of Representatives."

The motion was lost.

YEAS—Messrs. Woodburn and Dunnell—2.

NAYS—Messrs. De Bolt, Walling, and Hopkins—3.

This action of the majority was to the minority a matter of very great surprise. The committee had been sent to Florida to investigate the recent election in that State, and to report the action of the returning board therein. The character of this action would unmistakably depend upon the evidence which the board had before it when the canvass was made. Frauds were charged in this and that county, democratic as well as republican. Irregularities more or less fatal to a fair expression of the will of the people had also been charged. These alleged frauds and irregularities had been accompanied with affidavits and other proofs. The canvassing board had acted upon them, and would have made the canvass in violation of law if it had not done so. The minority desired to know precisely the grounds upon which the board had made its important finding and then judge, whether it acted honestly or otherwise, and whether or not its findings could be sustained by the laws of the State.

This request of the minority for these papers and documents on file in the office of the secretary of state was twice refused by the majority. As a result we were compelled throughout the entire investigation to grope our way in the dark. We protested against this action of the majority and now report it to the House of Representatives, and we deem it our duty further to report that in no instance were we consulted in regard to the precincts or counties to be investigated, where or how the investigation should be carried on. We here report that many precincts where frauds were committed, and upon which the State canvassing board acted, were not investigated by the committee. They were as many in number as were inquired into.

We claim that a full inquiry into each and every alleged fraud and irregularity was the only inquiry which the House resolution contemplated. This resolution had for its professed object "to report all the facts essential to an honest return of the votes received by the electors of the said State for President and Vice-President of the United States, and to a fair understanding thereof by the people."

We submit that the investigation made in Florida was not complete; that the committee do not and cannot report "all the facts" essential to a fair understanding by the people.

When twenty or more precincts are attacked before the State canvassing board and the board acts upon the frauds or irregularities alleged to have been committed therein, being governed by affidavits laid before it and by oral testimony, no one can reasonably contend that an investigation which shall deserve a just consideration can be made by ignoring every particle of evidence upon which the board acted, when but ten of these precincts are inquired into and the other ten shunned as if from fear that disclosures there might overturn the findings in the other ten, who will claim that such an investigation deserves the honor of the name? The want of these documents thus withheld was felt at every step of our investigation, and rendered us unable, in many instances, to make that defense of the canvassing board which it justly deserved We believed then, as we do now, that the board acted with singular fidelity and the utmost fairness. The majority of that board, in many of the most important and sharply contested cases, relied upon the democratic attorney-general and acted under his advice and with him.

Attorney-General Cocke has been lauded in the democratic press of the country for his great learning and distinguished personal integrity.

We needed and sought the evidence which was deemed sufficient by him and the balance of the board. The majority had the assistance of the chairman of the democratic State committee of Florida and of a democratic lawyer from New York, who were well supplied with copies of papers and ample data touching the different precincts which underwent investigation.

Unable to obtain the affidavits and other papers for our guidance an attempt was made to obtain the minutes of the board made during its final session. We here copy from page 70 of the printed testimony:

WILLIAM LEE APTHORPE sworn and examined.

By Mr. DUNNELL:

Question. What is your name?

Answer. William Lee Apthorpe.

Q. Where do you reside?

A. In Tallahassee, Florida.

Q. State whether or not you were the clerk of the canvassing board of the State of Florida during this late canvass of the electoral and State votes.

A. I was.

Q. State whether or not you kept the minutes of the canvassing board.

A. I did.

Q. Have you those minutes in your possession?

A. I have.

Q. Will you please read those minutes?

A. The whole of the minutes are pretty voluminous. I have brought the minutes of the first and the last day. The first day's proceedings simply show the organization of the canvassing board and the last day's proceedings the finding of the board.

Mr. DUNNELL. Will you now read to the committee the minutes of the final action of the canvassing board? I mean their action upon the contested-election cases passed upon by the board at that final meeting, and upon whose final action the result of the election held November 7 was proclaimed in the State

The CHAIRMAN. I will simply say that that sufficiently appears from the tabulated statement of the canvassing board and the returns made by the canvassing board on the certificates of the county returns, already in evidence. The reading of the minutes is, therefore, not allowed.

Q. (To the witness.) Do you say that the other minutes are the minutes of testimony?

A. The introduction of testimony on either side.

Q. Affidavits and oral testimony?

A. Yes, sir.

Q. And the organization of the board?

A. Yes, sir.

It is not true that the indorsements on the county returns give the reasons therefor? The grounds upon which the action was taken were our great need. These minutes were of comparatively little value to us in our investigations yet they do give the history of the canvass and the vote of the different members of the board. We here give place to these minutes. They show the action of the canvassing board in each case:

Certified copy of minutes of proceedings of State board of canvassers at their final session, December 5 and 6, 1876.

TUESDAY, *December* 5—10. a. m.

Board met in private session. It was ordered that those counties which were not contested be first taken up and canvassed.

The following counties were then canvassed according to the face of the returns, namely: Brevard, Bradford, Calhoun, Dade, Escambia, Franklin, Gadsden, Marion, Putnam, Polk, Santa Rosa, Sumter, Saint Johns, Suwannee, Taylor, Volusia, Wakulla, Walton, and Washington—twenty-four counties.

At two o'clock p. m. the board took a recess until four p. m., at which hour it reassembled and proceeded with the canvass.

BAKER COUNTY

was taken up and canvassed according to the precinct returns by unanimous vote of the board.

CLAY COUNTY.

Twenty-nine votes were added to and 4 illegal votes taken from the democratic electoral and State vote, and 8 votes were added to and 2 illegal votes taken from the republican vote; and with these amendments of the returns the county was canvassed by unanimous vote.

HERNANDO COUNTY.

Five illegal votes were deducted from the democratic electoral vote; and with this deduction the county was canvassed by unanimous vote.

NASSAU COUNTY.

Canvassed according to face of return by unanimous vote.

ORANGE COUNTY.

Seven illegal votes were deducted from the democratic electoral and State vote, and with this deduction the county was canvassed by unanimous vote.

JEFFERSON COUNTY.

Sixty illegal votes were deducted from the republican vote, and with this deduction the county was canvassed by unanimous vote.

LEON COUNTY.

Two illegal votes were deducted from the republican vote, and with this deduction the county was canvassed by unanimous vote.

MANATEE COUNTY.

This entire county was thrown out of the canvass on account of the entire absence of any and all legal steps in preparation for the election and in holding the same. The vote stood as follows: The secretary of state and the comptroller for its rejection, and the attorney-general for retaining it.

DUVAL COUNTY.

This county was canvassed by comparing the county return with the several precinct returns, on account of the former not bearing the signature of the county judge. The vote stood: Secretary of state and comptroller for canvassing the county, attorney-general for rejecting it.

HAMILTON COUNTY.

Eighty-three democratic votes and 58 republican which had been illegally added to the electoral vote, on the face of the return, were thrown out. Jasper precinct No. 2, giving 321 votes for George F. Drew and 183 votes for M. L. Stearns, for governor; 322 votes for N. A. Hull and 181 votes for D. Montgomery, for lieutenant-governor; 323 votes for the democratic electors and 185 votes for the republican electors; 320 votes for Jesse J. Finley and 184 votes for H. Bisbee, jr., for Congress; 235 votes for N. J. Patterson and 257 votes for J. N. Bell, for State senator; 167 votes for J. N. Reid, 295 votes for W. J. J. Duncan, and 29 votes for J. W. Grey, for member of the assembly, was thrown out of the canvass on account of gross violation of the election law by the inspectors in not completing the canvass without adjournment; in allowing unauthorized persons to handle the ballots and assist in the count; in adjourning over night and going to another place, and in signing returns next day which they had not themselves made or verified and the contents of which they did not know. With these deductions the county was canvassed by unanimous vote.

MONROE COUNTY.

Precinct No. 3, Key West, giving 401 votes to the democratic electoral and State tickets and 59 votes to the republican, was thrown out of the canvass on account of gross violation of the election laws by the inspectors in adjourning before the completion of the canvass and completing it the next day in a different place and without public notice. The vote on its rejection was unanimous, the attorney-general deciding in reply to a question put to him as to the legal effect of these violations of the law that it must be thrown out. With this deduction the county was canvassed.

ALACHUA COUNTY.

Seventeen illegal electoral votes (4 republican and 13 democratic) at Waldo precinct were thrown out unanimously. A vote was taken on retaining or throwing out Archer precinct No. 2, and the secretary of state and comptroller voting to retain it and the attorney-general voting to throw it out, it was retained and the county canvassed with the before-mentioned deductions.

JACKSON COUNTY.

Campbellton precinct, giving for the republican electoral and State tickets 77 votes and for the democratic electoral and State tickets 291 votes, were thrown out of the canvass on account of violation of the election laws by the inspectors in removing the ballot-box from the election-room at the adjournment for dinner into an adjoining store and having it there unsealed and concealed from the public during said adjournment; in not counting the ballots at the close of the polls and comparing them with the number of names on the poll-list, and because only 76 republican ballots were counted out of the ballot-box, whereas one hundred and thirty-three persons swear that they voted the full republican ticket at that poll. The vote of the board was as follows: Secretary of state and comptroller for rejecting it, attorney-general for retaining it.

Friendship Church precinct, giving for the republican electoral and State tickets 44 votes and for the democratic electoral and State tickets 145 votes, was thrown out of the canvass on account of violation of the election laws by the inspectors in placing the ballot-box in such a position as to be out of sight of the voter and of the public; in placing a supervisor at the window to receive the ballots instead of an inspector; in not making and completing the canvass at the polling-place and without adjournment and in view of the public, but in a bed-room two miles away, and in not counting the ballots and comparing them with the number of names on the poll-list. As to this precinct the vote of the board was as follows: The secretary of state and comptroller for rejecting it and the attorney-general for retaining it. With these deductions the county was canvassed.

The list of counties having now been gone through, at a little after twelve o'clock Tuesday night, the board, by unanimous vote, declared the State canvass concluded, and directed the clerk to prepare a certificate of the result. On suggestion of the attorney-general he was requested to call in some friend to look over the clerk's

figures and verify the footings. He introduced Mr. Pasco, who examined and found said footings correct.

The certificate of the electoral vote having been prepared and verified, it was signed by two members of the board, the secretary of state and the comptroller, the attorney-general declining to sign it, saying that he would prepare a protest setting forth his reasons. The board then (at three o'clock on the morning of the 6th) adjourned to allow time for the clerical labor of preparing the certificate of the result of the canvass at large.

This, having been completed and verified, was signed on the 8th December as of date of the 6th, the day when the canvass was completed

WM. LEE APTHORPE,
Clerk of Board of Canvassers.

SAML. B. MCLIN,
Secretary of State and Chairman of Board of Canvassers.

I do hereby certify that the above is a true copy of the minutes of the final session of the State board of canvassers State of Florida, held on the 5th and 6th days of December, A. D. 1876.

WM. LEE APTHORPE,
Clerk of Board of Canvassers.

TALLAHASSEE, FLORIDA, *December* 12, 1876.

SAML. B. MCLIN,
Secretary of State and Chairman Board of State Canvassers.

It has been claimed that the canvassing board of Florida, in their canvass made in December last, acted in disregard of their former practice as well as against law. We here allude to Senate Report No. 611, of this session of Congress, to the testimony of Hon. William Archer Cocke, a member of the late canvassing board, a member of the democratic party, and recently appointed to a judgeship in Florida by the new democratic governor of that State. See page 5.

Testimony of William Archer Cocke.

Question. As such attorney-general, are you a member of the State canvassing board?

Answer. I am.

Q. And you served in that capacity at the recent election?

A. I served in that capacity in relation to the late election.

Q. And also at any former election?

A. At the former election—the election of 1874.

Q. Did the board of 1874, in canvassing the returns, go behind the returns in any sense to ascertain the true vote?

A. I believe they did, sir; but I am not absolutely certain. I think there was a contest in reference to the returns from Jefferson and Leon Counties, and the returns from each county came before the circuit court; and the difficulty was that it was thought that the county canvassers had not sent up true returns from some precincts; the circuit court directed the county canvassers from some precincts in Jefferson, and in this county, to send up full copies of the returns; those copies came up, and the board acted upon those copies which it had gotten through the intervention of the court, the board not appearing by counsel or in any way, but by parties outside. My impression now is that the board in 1874 acted from these returns which had been sent to the board through the action of the circuit court of this circuit.

Q. Did you at that time give an opinion as to the power of the board in the canvassing of the returns?

A. I did, sir.

Q. Did the board receive this opinion in 1874 and act upon it?

A. They acted upon it.

Q. Did the board this year proceed upon the same theory—upon your opinion?

A. Yes, sir; I think they did.

We now call attention to section 4 of an act of the Legislature of Florida approved August 6, 1868, entitled "An act to amend an act to provide for the registration of electors and the holding of elections."

"SEC. 4. On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature, or Representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. 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 such 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 said board shall make and sign a certificate, containing in words written at full length the whole number of votes given for each office, the number of votes given for each person for each office and for member of the Legislature, and therein declare the result; which certificate shall be recorded in the office of the secretary of state in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government."

Agreeably to the provisions of the above section, the secretary of state, comptroller of accounts, and attorney-general canvassed the votes of the State cast on the 7th day of November, 1876. The minutes of the board found above indicate the construction the entire board placed upon that portion of the section which authorized the board to exercise quasi-judicial powers in their canvass of the county returns. We here quote that clause of the above section:

"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 such 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."

Acting under the above section and giving to it the construction which had not been hitherto denied or even questioned, the board found that the republican presidential electors had been elected by majorities as follows; Frederick C. Humphries had a majority of 926 votes. Charles H. Pearce had a majority of 921 votes. William H. Holden had a majority of 929 votes. Thomas W. Long had a majority of 924 votes. The election of these men was duly certified and the governor of the State gave them the required certificate of election. These electors met at the capitol of the State on the first Wednesday of December and cast their votes for President and Vice-President of the United States.

We contend that the action of the board was conclusive and final. The board had performed all the duties imposed upon it by the law and agreeably to its provisions; when they had signed the tabulated statement of the canvass they ceased to be a board. They had declared the electors chosen agreeably to the laws of the State. They were the officers who should make the canvass, and were empowered to reject all returns which were so irregular, false, or fraudulent that the true vote could not be determined. The Legislature of the State had clothed these officers with the power to canvass the returns. They had acted, and when the result was declared they ceased to be State canvassers.

IRREVERSIBLE DECISION OF THE CANVASSING BOARD.

This irreversible decision of the legal canvassing board of the State of Florida, which was required by the statute to find out and declare the result of the election, is to be found in authentic and conclusive form in its certificate of the result of the canvass made by a majority of the board in pursuance of the statute and duly recorded as required by the law in the office of the secretary of state.

A duly authenticated copy of this certificate, accompanying the certificate of the Hayes electors, was duly forwarded to and is now in the possession of the President of the Senate. That certificate is as follows:

OFFICE OF SECRETARY OF STATE,
Tallahassee, Florida, December 6, 1876.

We, the undersigned, Samuel B. McLin, secretary of state; Clayton A. Cowgill, comptroller, and William Archer Cocke, attorney-general of said State, constituting a board of State canvassers in and for said State of Florida, do hereby certify that we met at the office of the secretary of state, at the capitol, in the city of Tallahassee, on the 27th day of November, A. D. 1876, and proceeded to canvass the returns of a general election held in the State aforesaid on the 7th day of November, A. D. 1876, for electors of President and Vice-President of the United States.

We do certify, from the returns on file in the office of the secretary of state aforesaid, that the whole number of votes cast at said election for electors as aforesaid, was forty-four thousand six hundred and twenty-seven, (44,627,) of which—

Frederick C. Humphries received twenty-three thousand eight hundred and forty-nine (23,849) votes.

Charles H. Pearce received twenty-three thousand eight hundred and forty-four (23,844) votes.

William H. Holden received twenty-three thousand eight hundred and forty-eight (23,848) votes.

Thomas W. Long received twenty-three thousand eight hundred and forty-three (23,843) votes.

James E. Yonge received twenty-two thousand nine hundred and twenty-three (22,923) votes.

Wilkinson Call received twenty-two thousand nine hundred and nineteen (22,919) votes.

Robert B. Hilton received twenty-two thousand nine hundred and twenty-one (22,921) votes.

Robert Bullock received twenty-two thousand nine hundred and nineteen (21,919) votes.

Witness our hands and seals this 6th day of December, A. D. 1876.

SAML. B MCLIN,
Secretary of State and ex officio Chairman of the Board State Canvassers.

C. A. COWGILL,
Comptroller and ex officio member of Board of State Canvassers.

It is this decision of the board embodied in and evidenced by the foregoing certificate which the majority of the committee declare to be so "wholly illegal" and "absolutely void" that they would not even examine the evidence upon which the board acted, preferring undoubtedly that a committee of this House should itself canvass and declare the result of the presidential election in Florida. Unfortunately for the majority, a committee of either House of Congress is not provided by the Florida statute as the method to be adopted for canvassing and declaring the result of a presidential vote of that State.

MISREPRESENTATION AS TO THE SUPREME COURT'S DECISION.

The attempt to impair the decision of the canvassing board by reference to the late decision of the supreme court in the case of George F. Drew *vs.* Governor Stearns can have no effect, because founded upon a misrepresentation of the decision of the court. It is claimed by the majority that the court held that the board had no judicial powers whatever, and that having exercised such powers, its canvass was a "bald usurpation," to be utterly disregarded. This is an erroneous claim. The supreme court did not undertake to destroy or impair in the slightest degree the right of the board of canvassers given by the statute to receive evidence showing that a county return was so irregular, false, or fraudulent that the true vote could not be ascertained therefrom. But they did decide that when it was shown to the board that the return was so irregular, false, or fraudulent, the board must throw out the whole county return, and did not in the opinion of the court have judicial powers to purge the vote, rejecting that which was irregular, false, or fraudulent, but preserving so much of the return as certified the true vote and include the same in its determination and declaration.

This is the whole sum and substance of the decision of the court. It is true that on account of the condition of the pleadings and proofs at the time of the decision the court, for the purposes of the contest for governor, held that the returns from all the counties brought to their attention must be considered true and *bona fide* returns; wherefore, according to their opinion, they must be counted. They did not determine, but expressly admitted the contrary, that if, as a matter of fact, upon the evidence shown the board, it should be their opinion that any returns were so irregular, false, or fraudulent that the true vote could not be ascertained, they might be rejected entirely, although they could not purge, and reject in part, and count in part.

Upon the misrepresentation of this decision much misapprehension has been created as to its effect upon the electoral vote of the State of Florida. How unfounded is such misapprehension will be apparent on considering two facts:

1. The litigation between Drew and Stearns was confined by the pleadings and expressly by the court in its decision to the controversy between the two rival candidates for governor. The republican State ticket having run about four hundred votes behind the Hayes electoral ticket, it might well be, in a case of closeness and doubt, that a tribunal, revising the decision of the canvassing board, might find that the democratic State ticket and the republican electoral ticket were chosen.

2. The canvassing board, acting under the express order of the court in the case of Drew against Stearns, made upon the pleadings in that case and canvassing according to the face of the returns but rejecting totally any return which they found to be so irregular, false, or fraudulent that the true vote could not be ascertained, reported in their return to the court upon the recanvass as follows:

"They return the following as the determination and declaration of the result of such recanvass, to wit: Of the candidates for governor, George F. Drew received 24,179 votes; Marcellus L. Stearns received 23,984 votes. And the undersigned make further return to the court, and say that though not ordered so to do by the court, for various reasons, they deemed best to make, while re-assembled as a board as aforesaid, a recanvass of the said returns of the said election on file in the office of the secretary of state, of and concerning the election of other officers voted for at said election, which will be found in the certificate of the result of such recanvass hereto appended as part of this return. And the undersigned further inform the court that we regard our former canvass of the returns of the election for electors of President and Vice-President of the United States, on file in the office of the secretary of state, as conclusive. Yet, in view of the decision of the supreme court, we have re-examined the said returns and find that a recanvass of them according to the said decision would show that of the candidates for said electors Frederick C. Humphreys received 24,215 votes, Charles H. Pearce received 24,211 votes, Thomas W. Long received 24,209 votes, William H. Holden received 24,215 votes, James E. Yonge received 24,004 votes, Wilkinson Call received 24,001 votes, Robert B. Hilton received 24,001 votes, Robert Bullock received 21,001 votes.

"All of which is respectfully submitted.

"(Signed)—Samuel B. McLin, secretary of state and chairman board of State canvassers; C. A. Cowgill, comptroller of public accounts."

The foregoing return utterly annihilates the pretense of the majority, that this decision of the supreme court of Florida had, if even in any event any decision of that court could have, any effect whatever upon the electoral vote; and, as before stated, the supreme court, in accepting the final return of the canvassing board, giving the same results as above as to the governor, expressly limit their opinion to the case and the pleadings and proof before them, and the court have never touched the electoral vote nor expressed any opinion as to what would be the effect of a recanvass of that vote upon the principles laid down by them.

THE SUPREME COURT'S OPINION ERRONEOUS.

Whatever justification there may have been for the decision of the court arising from the precise condition of the pleadings before them, it is respectfully submitted by the minority that, as a general proposition under the statute, the rule laid down by the court is erroneous and ought not to be regarded as correct law. Neither the court nor the majority of the committee can ignore the following plain language of the statute:

"I. 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 such officer or member, they shall so certify, and shall not include such return in their determination and declaration.

"II. 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."

This statute of Florida, first passed in 1872, was a new statute, expressly enacted to prevent the embodiment in a declaration by a canvassing board of *irregularity, falsehood, or fraud at the polls*. It is a wise and beneficial statute, intended to prevent candidates apparently elected through fraud or falsehood from holding their offices even for a single moment under a *prima facie* certificate of election; it is therefore to be construed liberally, and in such a way as to most effectually and promptly carry out the objects for which it was enacted. The minority do not need to cite the numerous authorities on this point.

That a liberal construction of the statute allows the board to receive evidence of fraud and allows it to be shown to them, that falsehood existed in the election, seems too plain for argument, and it has already been shown that such was the practice deliberately adopted at the instance of the democratic party, advised to be correct by the legal opinion of the democratic Attorney-General Cocke, and never doubted or disputed until it suited the purposes of the democracy at the close of the late canvass on December 6.

Indeed, the power of the board to allow it to be shown, on evidence, that a return was so irregular, false, or fraudulent that the true vote could not be ascertained was not seriously disputed by the court. The point of its decision was, as has been stated, that where falsity and fraud were shown the board could not throw out the return in part and count it in part. But this decision is contrary to all the election decisions to be found in the books. The cases to the point that it is the duty of a tribunal authorized to prevent the effect of fraud at elections to separate the fraudulent from the true vote and preserve the latter, are fully stated in the report of the majority in considering the case of Leon County. They are referred to by the minority as a complete refutation of the opinion of the court that the slightest irregularity, fraud, or falsity appearing or shown to exist in a Florida county return requires the rejection of the whole vote of the county.

THE NEW DEMOCRATIC LEGISLATURE OF FLORIDA CANNOT BY STATUTE CHANGE THE RESULT OF A PRESIDENTIAL ELECTION.

Having shown that it cannot be claimed that the supreme court of Florida either intended to or did change the electoral result, the minority call brief attention to the attempt made to impair the declared result of the presidential election by the present democratic Legislature. That Legislature was canvassed into office by the same board which canvassed and declared the presidential result. The board at the same time declared that Marcellus L. Stearns was re-elected governor. The supreme court ordered a recanvass of the vote for governor, and the board, in obedience to the mandate, declared the election of Drew for governor by about two hundred majority, but stated on the same principle (there being four hundred difference between the State and electoral tickets) that the Hayes electors by the same rule would have at least two hundred and eleven majority.

Governor Drew and the Legislature commenced their functions January 2, and immediately went to work by legislation to endeavor to change the presidential election. The Legislature passed an act requiring the new board of canvassers which had just been appointed by the governor to go to work and recanvass the presidential vote. The new board reported that they thought the Tilden electors were chosen, and the Legislature declared by another act that they thought so too; and then the democratic candidates for electors certified that they thought so also, and that they had voted for Tilden. This whole proceeding, after the State of Florida had appointed its electors in accordance with its statute law, and those electors had voted and certified the result to the President of the Senate, is a mere farce, utterly unworthy of notice either by this committee or by Congress. It has been repeatedly held that after the Legislature of a State has chosen a United States Senator the functions of the State are exhausted, and therefore the State could no more reverse or change its action than it can alter the Constitution of the United States.

THE QUO WARRANTO PROCEEDINGS BEFORE JUDGE WHITE ARE A NULLITY.

In further pursuance of the democratic policy, of overthrowing, either by chicanery or violence, the legally accomplished result of the presidential election, a proceeding upon information, in the nature of a *quo warranto*, was commenced by the four democratic candidates for electors before Judge White, of the local circuit court, having jurisdiction of certain subjects in Leon County, where Tallahassee is situated; and this judge has within the last few days assumed to render an adjudication that the republican electors were not chosen, and that the democratic electors were chosen; and the transcript of this decision, after an appeal to the supreme court of the State, is relied upon to upturn and reverse the recorded State action of Florida, which ended and ceased to be reviewable within the State on the 6th day of December, 1876.

It is not the purpose of the minority now to anticipate Congress in any discussion of the absurdity of this attempt, by the decision of a petty local judge, to change the result of a presidential election; and they content themselves with simply stating their belief that the fullest discussion will result in establishing the principle that when a State has exercised the political function of choosing presidential electors in such manner as the Legislature of the State has appointed, and the electors so chosen and declared elected by the proper tribunal, established by the election laws of the State for that purpose, have met upon the day fixed by Congress and duly cast their votes and certified the same to the President of the Senate, the power of the State over the subject is at an end. Neither by a recanvass, by a legislative statute, nor by a decision of its courts can this political State action, once deliberately and lawfully taken, be subsequently reversed.

LOCAL INVESTIGATIONS.

We now call attention to our views in regard to the investigations made by the committee in the different counties visited and inquired into. Manatee was not visited by the committee. One witness was examined in regard to the election in that county. He and the witnesses in regard to Monroe County were examined at Tallahassee. Baker and Clay Counties were inquired into in Duval County. Alachua, Duval, Hamilton, Jackson, Jefferson, and Leon Counties were visited by the committee.

The undersigned have conscientiously reviewed the testimony taken in all the localities named, and respectfully ask the attention of the House to our views thereon.

ALACHUA COUNTY.

Archer Precinct No. 2, in this county, underwent an examination conducted by a subcommittee consisting of THOMPSON, HOPKINS, and DUNNELL. The regular returns from this precinct, signed by all the officers of the election, show that the republican presidential electors received 399 votes and the Tilden electors received 180 votes. No sooner had this election been held than attempts were made to overcome the large republican majority in this precinct, a majority, however, no larger than had been given in previous and unquestioned elections. When the returns from the county were canvassed the ballot-box was found to contain but 277 votes or ballots, 215 for Hayes's electors and 62 for the Tilden electors. We may here state that the law does not require a preservation of the ballots. The poll-list and the duly certified returns are the only means which the law recognizes to judge of the legality or the regularity of an election. The tally-sheets are not required to be returned to the county board of canvassers. We do not doubt that the ballot-box was broken open by some one after it had been returned to the clerk's office. With a poll-list agreeing with the returns made out and signed by all the officers of the election, the two democratic as well as the two republican officers, no person acting in the supposed interest of the republican party could have any motive for breaking open the ballot-box. There could have been no temptation to such a course. It is our theory that the democrats intended to overcome by fraud the large republican majority in that precinct. They could do this in no way so well, as they supposed, as by tampering with the ballot-box. It was evident from the testimony that the precinct was visited by leading men in the democratic party on the day of election; that it was in fact a rendezvous for the leaders of the party in that section—going there from Gainesville and many other points.

Two of the officers of the election, Vance and Black, swear that the vote was declared on the night of the election, and that the Hayes electors had 399 votes and the Tilden electors had 180 votes. These numbers correspond with the returns signed by all the officers. Floyd Dukes, one of the inspectors, a colored man, and who could not read or write, admitted that he touched the pen when his name was signed to the returns, and Green R. Moore, one of the inspectors, admitted that he authorized Vance or Black to sign his name to one of the returns, but swore that he did not authorize him to sign the other; but there is no evidence but his own doubtful testimony that he limited his authority to sign but one return. This is wholly unreasonable, for there were two returns to be signed, and the general direction to sign the return would very naturally be taken as authority to sign all the papers necessary for full returns. These men, Green R. Moore and Floyd Dukes, have a history in connection with this election. After the election they went before one Judge Dawkins, a democratic lawyer at Gainesville, and made an affidavit that they did not sign the returns and that the returns were false. They made oath that the Hayes electors had at the Archer precinct No. 2, 180 votes, and the Tilden electors 136 votes.

In a few days they each signed another affidavit taking back all they swore to in the former affidavit signed before Judge Dawkins or in his office, alleging that they signed it through bodily fear, and then when the State canvassing board was in session they went to Tallahassee and took back all they had sworn to concerning the Dawkins affidavits.

Green R. Moore, with this record, and as if to blacken it still more if possible, came before your committee and testified that he signed the second affidavit for the sum of $100. He testified that one Mr. Barnes passed him the money. This Mr. Barnes denied before your committee. Mr. Barnes is the sheriff of the county of Alachua and a gentleman of high character. He was sustained by Judge Cessna, Colonel Raymond, and others who were present when Moore claimed that the $100 had been given to him if he would sign the second affidavit.

The testimony shows that more bystanders heard the vote declared as 399 for Hayes and 180 for Tilden, and so swore before your committee, and as respectable in character for truth than there were who testified to the other declaration, namely, 180 for Hayes and 136 for Tilden. The returns as made must be presumed to be true and cannot be overcome except on clear testimony. Here are two unimpeached officers swearing to their correctness; the two other officers, with their disgraceful record, swearing against them. The testimony of Vance and Black, with regard to the count, the returns, and the manner of their making, remains unimpeached, except by the testimony of Moore and Dukes, who by their double swearing are entitled to no consideration and would have none in a court of law.

The bold and reckless conspiracy to break down the true count and declaration of votes at the Archer precinct lacked success, even in the estimation of the bad men who had formed it. That success might be assured, one Samuel Y. Flemming was put upon the stand as he was before the State canvassing board, who testified that he was at the election at Archer from the opening to the close of the polls and kept a record of every man who voted. He swore that his record of 304 contained the names of *all* who voted except the names of the five officers who voted on the inside of the house. According to the testimony of this witness there were 308 who voted, and yet he testified that he heard the vote declared as follows: 180 for the Hayes electors and 136 for the Tilden electors. He gave no explanation of the discrepancy between the 308 and 316, the number of votes which he swore were cast. The majority of your committee hailed the coming of this man Flemming with great satisfaction. They speak of him and his testimony as follows:

"There cannot be the least ground of mistake as to the existence of this fraud. The evidence showed that one Samuel Y. Fleming, a merchant and a man of intelligence and probity, who was most thoroughly acquainted with the voters at Archer and vicinity, did at the request of various persons remain all day at the polls to take the name of every person who voted from the outside of the room in which the ballot-box was placed, and it was proven that the officers only voted from the inside of the room where the ballot-box was. He intended to take the name of every person voting, remaining the entire day at the polls, and he is quite certain that he did take the name of every person voting. He took the names of 304, making, with the four who voted from the inside of the room, 308 votes. His evidence is the only reliable evidence as to the number of votes cast; no other one has given any testimony as to votes cast whose word is entitled to credit. It is possible that Fleming may have made a mistake as to eight votes, or that eight more ballots may have been voted from the inside of the room, still there is no evidence to satisfy any one that Fleming is not absolutely correct!"

The testimony of Fleming is the anchor of the majority; without his testimony these charges of fraud at Archer utterly and hopelessly fall. They say, "His evidence is the only reliable evidence as to the number of votes cast." All other evidence is unreliable because he claims a record which he kept and its correctness. One S. E. Tucker was called by the majority to uphold and sustain the testimony of Fleming. We leave with the House the testimony of Fleming and Tucker by calling attention to the following extract from Senate Report No. 611, pages 14 and 15:

"As the only method of determining the truth, with conflicting statements of Fleming and Tucker on one side, and Black and Vance and some others on the other, the first claiming that there were only 180 republican votes and the latter that there were 399 such votes, the committee undertook to verify the vote actually cast by the testimony of the voters. This was difficult to accomplish, as directly after the election many of the colored voters scattered off for employment, the crops having been gathered. But it was proved by the individual voters that 321 republican votes were cast at that poll, where only 180 were conceded by the democrats,

and more votes than Fleming's list contained, showing the comparative unreliability of that list. A considerable number of others, who were working at distant points, and were alleged to have voted, could have been obtained if the committee had remained to await their attendance.

"An analysis of the names of persons who swore before us that they voted the republican ticket at this poll shows, further, that 217 of these voters only are on Fleming's list; that 104 of the republican voters escaped his notice entirely; and the names he further confesses to have voted there cover the republican voters that the committee did not have time to call before them, readily making up their vote to the full claim of 399, and leaving no room for a claim of 136 democratic votes. That the poll-list had been badly tampered with is evident from the fact that 58 of those whom Fleming says voted are not on the poll-list, and 43 of those who swore they voted are on the poll-list but not on Fleming's list. Taking the testimony together, in connection with Fleming's admissions, it appears that the republican majority was 280, even out of the 316 votes allowed to have been cast by the democrats. Where, then, did the democratic 136 votes come from? It is apparent from all the circumstances that they were not cast—they were mostly fraudulent. In 1872 the democratic vote in Archer (where there was then but one poll) was 44, and in 1874 it was only 25. At the late election there were two polls, and nearly all the whites voted at poll No. 1, where the democratic vote was returned as 98 and the republican as 54. This would show an increase of 209 democratic votes in the precinct in the last two years, which was impossible, as we shall show. The republican majority in 1874 in the whole precinct was 268; at the late election it was only 239. Their whole vote in 1874 was 293; at the late election, 453, a natural increase, for it was shown by the testimony that two other precincts, mostly settled by colored people, had been discontinued, and the voters had gone to Archer as the nearest point. It was shown, also, that there has been a very large increase in the colored population of that part of the county on account of the fact that there is a considerable amount of Government land there subject to entry, and which is being taken up rapidly by colored people who are unable to buy land in other counties. It was shown that there were four republican campaign clubs within the limits of the precinct, containing a membership of over 450 persons.

"It was admitted by the democratic witnesses that there has been but a slight increase in the white population within the last two years. No one of the democratic witnesses claimed that there were more than twenty-five colored democrats in the whole precinct, and almost that number voted at poll No. 1, if there were 98 democratic votes there, as only 79 of the 152 voters at that poll were white, and some of these were republicans. Further, the democratic witnesses utterly broke down as soon as called upon to name the democrats who voted at poll No. 2. They did not identify a dozen, and no one in behalf of that party undertook to verify the democratic vote as the republican vote was verified."

If there was any repeating at this voting-place it must have been done by democrats voting in the name of absent colored men. The minority claim, as they can with the fullest confidence, that the honest majority for the Hayes electors in this precinct was larger than 219, the majority given in the legal returns made by the officers of the election.

If the majority of your committee had made some investigation into the alleged democratic frauds in Waldo precinct and Archer No. 1 in this county, their report to the House in its reference to Alachua County would have had less of unsustained statement about republican frauds committed therein. We are compelled further to report in regard to this investigation in Alachua County that the majority of the committee would let in no light which they could prevent. The minority learned that the grand jury of Alachua County inquired into the election at Archer No. 2, and after the poll-list was seen and four or five witnesses had been examined, made a presentment that the election was in all respects legal and fair. We here cite the effort of the minority to obtain the finding of the grand jury. (See page 160, part 1, of the testimony:)

IRVING E. WEBSTER recalled and examined.

By Mr. DUNNELL:

Question. While the poll-list of precinct No. 2 was in your possession, was it taken by you before the grand jury of this county?

Answer. It was.

Q. For what purpose?

A. For examination.

Q. Was or was not the election on the 7th of November, at Archer precinct, made the subject of investigation by the grand jury of this county?

A. It was.

Q. Did the grand jury make any presentment on that matter?

A. They did.

Q. Have you, as clerk of that county, a record of their presentment?

A. Yes, sir.

Q. Please produce and read it.

Mr. DUNNELL. I ask that the records be read giving the findings of the grand jury.

The CHAIRMAN. I object to that. If there is any indictment found, I am ready that should appear. If there was no indictment found, I am also willing that that should appear, but any statement made by the grand jury, independent of not finding a bill, I certainly do not want to cumber the record with.

Mr. DUNNELL. I don't want any statement. I want the presentment of the grand jury.

The CHAIRMAN. If there was any bill found I am ready to let it go in, but any other presentment I object to.

By Mr. DUNNELL:

Q. Was the finding of the grand jury in the form of an indictment or a presentment?

A. A presentment.

Q. I now ask that you read from the records that presentment.

The CHAIRMAN. I object to that.

The question was ruled out.

BAKER COUNTY.

There are three returns from Baker County, one of which is signed by the county judge, sheriff, and justice of the peace. Each of the others is signed by the county clerk and a justice of the peace.

The return signed by the judge, sheriff, and justice of the peace shows 189 votes for the democratic electors and 130 for the republican electors. The other two returns show for the democratic electors 381 votes and for the republican electors 143 votes.

The question arises which of these three returns is the legal one under the laws of the State of Florida governing the canvass of the precinct returns from the different counties.

Section 24 of the act entitled "An act to provide for the registration of electors and the holding of elections" reads as follows: "On the sixth day after any election, or sooner, if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk and take to their assistance a justice of the peace of the county, (and, in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several officers and persons as shown by the returns on file in the office of such clerk or judge."

Though it is doubtless the law that the majority of the board of county canvassers may make a valid return, still it is clear from the provisions of the statute that no legal canvass of the precinct returns can be made unless there are three persons present, namely, the county judge, the clerk of the circuit court, and a justice of the peace, the sheriff acting instead of either of the two former in case of absence, sickness, or other disability.

It therefore follows that, if a canvass of the precinct returns be made by a less number of persons than is required by law, it cannot in any sense be a legal canvass, and the return based thereon is as worthless as the paper upon which it is written.

The evidence of Martin L. Cox, the clerk, and John Dorman, a justice of the peace, both democrats, shows that the county judge, on the 10th day of November, gave them notice in writing to meet him on the 13th of November at the clerk's office, at the county seat of Baker County, to canvass the returns from the different precincts. About one hour after the service of said notice, the clerk and justice of the peace convened at the clerk's office and canvassed the returns. Neither of them claims that the county judge was absent or in any way disabled from participating in the canvass on that day. They did ask, it is true, the sheriff to assist in the canvassing of the returns, who properly replied that he did not feel justified in so doing without conferring with the county judge, who would be in town that evening.

The county judge, being apprised of the premature and illegal action of the clerk and justice of the peace and construing such action as a refusal to convene with him to canvass the precinct returns of the county, met with the sheriff and a justice of the peace on the day stated in the written notice hereinbefore mentioned at the clerk's office and canvassed the said returns.

The return made out and signed by these three officers, being in all respects regular on its face, was adopted and declared by the State canvassing board when canvassing the election returns from the various counties of the State of Florida to be the only legal return from Baker County, as the minutes of the said board will show. But the members of that board, believing they had the legal right to exercise quasi-judicial powers as well as ministerial, a right which was never before questioned by the courts or citizens of that State, went behind this return and determined the vote of Baker County by counting the precinct returns. In so doing they counted the returns from two precincts which had been rejected by the county canvassing board composed of the judge, sheriff, and a justice of the peace, because of reliable information communicated to them of frauds and illegalities in the conduct of the election at the said precincts.

By virtue of the recent and extraordinary decision of the supreme court of the State of Florida, compelling by writ of mandamus the State canvassing board to recount the votes cast at the last election for the candidates for governor of that State as shown by the regular county returns, the said board had no other alternative than to count the vote of Baker County as shown by the returns signed by the judge, sheriff, and justice of the peace, it being the only legal return from that county.

The majority of the committee commenting in their report upon the validity of the certificate or return from Duval County, lay down the rule that no legal canvass can be made by less than three of the officers designated by law. Apply this rule to Baker County, and it is manifest that no legal canvass of the precinct returns was ever made by the clerk and the justice of the peace, Dorman, and, therefore, no legal return could be based thereon.

It is claimed by the majority, in support of the return signed by the clerk and justice of the peace, that their action was legal, because it is alleged in a paper accompanying their return, dated on Monday the 13th day of November, that the county judge and sheriff positively refused to participate with them in the canvass and that, in view of the fact that the time within which the said canvass should be made according to law would expire on the said Monday, they proceeded to canvass the vote. The evidence clearly shows that instead of making a canvass of the votes on the 13th, as shown by the precinct returns, they merely made a duplicate of the certificate or return they signed in such hot haste three days before. If it be claimed by the majority that the *paper* above referred to strengthens in the slightest degree the *pretended return* signed by the clerk and justice of the peace, the minority deem it proper to state that they never knew of the existence of the said paper until a few days ago. It was not introduced in evidence before the committee while in Florida, and had it been on file in the secretary of state's office it was the duty of that officer, in obedience to the *subpœna duces tecum* served upon him by order of the committee, to produce it with the return. When it was made or signed is unknown, for it bears no date, nor does the certificate of Dorman, which is part of the said paper, bear any date. It bears no evidence that it was filed in the office of the secretary of state. The minority are of the opinion that it was written, signed, and filed in the said office since the departure of the committee from Florida, for the purpose of being used by the new State canvassing board appointed by Governor Drew in making a canvass of the votes cast at the late election for President and Vice-President, by order of the present democratic Legislature of the State of Florida. W. D. Bloxham, the present secretary of state, makes a certificate bearing date the 19th day of January, 1877, that the *paper* referred to is a correct copy of the one on file in his office, relating to the canvass of the votes of Baker County at the late election for President and Vice-President. Considering the diligence exercised by the committee, it is almost impossible that any such paper signed by Martin J. Coxe, the clerk, and John Dorman, justice of the peace for Baker County, could have been on file in the office of the secretary of state on the 6th day of last December, when the State board canvassed the votes for the presidential electors, or during the investigation of the committee, have escaped observation.

MANATEE COUNTY.

The return from this county gives the democratic electors 262 votes and the republican electors 26 votes. The only witness from this county examined by the committee was Edgar H. Graham, a democrat, and county judge of Manatee. His testimony shows that the conduct of the election was characterized by a gross disregard of every essential requirement of law governing the holding of elections. The laws of Florida provide that a complete copy of the list of names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county before the hour appointed for opening the election. According to the testimony of Graham, there were nine polling-places but there was no copy of the list of registered voters furnished to the election officers of any precinct. It is the duty of the county commissioners to appoint the inspectors of election for each poll, to designate the places for voting, and cause to be posted in conspicuous places in the vicinity of each polling-place three notices of such designation. The evidence shows there were no inspectors appointed in the manner required by law, but in the language of the witness were self-appointed. The county commissioners, regardless of their sworn duty, failed to designate any places for voting and to give any notice whatever of the time and place of holding the election.

The authorities are uniform that provisions of law which regulate the time and place of holding elections go to the substance of the election and are to be construed as mandatory. Judge Cooley in his work on Constitutional Limitations says the general rule upon this subject is: "Where by the express provision of the statute the election is to be held after proclamation or notice announcing the time or place, or both, and where no such proclamation has been made or notice given, the election is void." The only notice of the time and place of holding election was given at democratic mass-meetings in two precincts of the county. Graham says he notified some of the leading men of the county but does not pretend that a single republican had any sort of notice whatever. There were no votes cast at two of the precincts, and at only one of the nine precincts was a single republican vote polled.

The evidence further shows that at least two hundred electors staid away from the election for the reason, as Graham states, that there was no clerk, and nearly as many more could not get an opportunity to register.

By virtue of the decision of the supreme court of Florida the return from this county was counted for Drew for governor by the State canvassing board. It was rejected by the board, in canvassing the votes for presidential electors, upon strong proof that more than 50 per cent. of the voters regarded the election as a mere farce. It is recklessly charged in the majority report that the then governor of Florida, who was a candidate for re-election, determined to defraud the people of that county of their votes by accepting the resignation of the clerk of the circuit court and failing to appoint his successor until a short time before the election. Is this true? To show that it is not we call attention to the testimony of Graham, introduced as a witness by themselves, a member of the democratic party and the judge of the county, on page 102 of the record, wherein he states that Mr. Green was appointed to fill the vacancy in the clerk's office on the 1st day of October, at least five weeks before the election; that he saw his bond and administered to him the oath of office. Where, then, is the evidence showing in the language of the report "a clear attempt to put obstacles in the way of the exercise of the right of suffrage by the voters of a whole county by the governor of a State in the interest of his party?" We assert that no such evidence was ever given before the committee and we respectfully challenge contradiction.

If the return from this county be valid it seems to us that legislative enactments made to secure the purity of elections and to give a just expression to the will of the people through the ballot-box should be regarded as wholly meaningless.

LEON COUNTY.

Voting-precinct No. 13 in Leon County was the first to be examined by the committee. The evidence shows that there were appointed for this precinct by the county commissioners three inspectors, two republicans and one democrat. When the polls were opened, at precisely eight o'clock in the morning, Amos Rouse, the democratic inspector, was not present. Joseph Bowes, one of the republican inspectors, testified before the committee (page 12) as follows:

"Question. What was done by yourself and others in the absence of Mr. Rouse?

"Answer. When the time arrived for opening the polls I made proclamation that the time had arrived for opening the polls, and that as one of the inspectors appointed by the county commissioners had not appeared, it was the privilege of the electors present to elect another inspector. I asked them who they would choose. Archy Crowell nominated Isaac Dent, and Isaac Dent was unanimously chosen inspector."

Much unsuccessful effort was made by the majority of your committee to show that the polls were opened before eight o'clock. The evidence clearly establishes the fact that the election in this precinct was conducted in perfect compliance with the laws of the State and the regulations issued by the secretary of state. So fairly was the election managed that Amos Rouse, the democratic inspector who was soured in the morning because Isaac Dent was elected inspector to fill his place, testified that he told Mr. Bowes just before the polls were closed that he had seen nothing wrong. (Page 45.)

Mr. Bowes also testified (page 13) as follows:

"Mr. Rouse said to me, in the presence of Mr. Richardson, that in the morning he felt a little dissatisfied; but since he had seen how things had gone he felt perfectly satisfied there was no attempt at fraud whatever; he never saw a fairer election. He said so in the presence of Mr. Richardson."

Mr. Rouse and Mr. Richardson did not contradict this statement though they were both on the stand as witnesses.

There can be no charge that the counting of the votes was not done in the most open manner and in the presence of democratic as well as republican voters. There can be no charge made that a false count or return was made. The election was an eminently fair one.

When the votes were counted out from the box, after the polls were closed, two kinds of republican ballots were found, a small-sized ballot and a large-sized one.

The majority of your committee at once assumed that these small ballots were not thrown by voters, as the larger ones were; that the vote in precinct No. 13 was fraudulent to the exact number of these small ballots; or, in other words, that the box was stuffed by these small ballots. The number of them was 73. This assumption of the majority was utterly without warrant, but it was the ever-present specter at which the majority struck.

We now call attention to the evidence in regard to these small ballots.

As will be seen by the testimony of Bowes on pages 12 and 13 these small ballots were printed by order of the republican executive committee; that they were printed for a specific purpose; that they were cast at No. 13 precisely as the other ballots were cast; that they were taken from ballot-distributers; that they were taken by the proper officer and placed in the ballot-box. Bowes testified that he gave out five hundred of these ballots to different parties for general use on election day. Some were given to one Richard Conyers and some to one Archy Crowell in that precinct. When asked for what purpose these ballots were printed the chairman of the committee objected to the question. The printed testimony incorrectly states that the question was not pressed, for it was pressed. Any statement concerning the reason for their printing would interfere with the assumption of the committee that they were used fraudulently, and hence the objection of the chairman.

Inasmuch as the majority of the committee objected to the above question, we deem ourselves justified in stating the notoriously declared purpose of the executive committee in issuing so small ballots. It was that the republican ticket could be known from its size by the colored voters of the county as so many of them could not read. Just before election the democratic committee surreptitiously got hold of one of these ballots for the purpose of sending out democratic tickets of the same size, hoping thereby to deceive the ignorant colored voters. When this was found out the republicans had a larger ballot printed with a red line across it. This was not done till some of the small tickets had been given out. Not all of them which had been given out for use in precinct No. 13 were recalled or supplanted by the larger ballots, and thus some of them were used by the voters in that precinct.

Amos Rouse testified that none of these small ballots were passed in by voters during the day, and in his examination by a "nod of assent" swore that he was watching all day though it appears in the testimony of Bowes that they were cast and that Rouse was not within sight of the ballot-box all day. Rouse also swore that he never heard of any surprise on the part of any one but himself when the small ballots were counted out; that he did not tell anybody about it till "after the returning board canvassed the votes" or "about that time."

One Samuel J. Flemming swore in regard to voters in precinct No. 13 whom he knew and whom he did not know, and for the purpose of showing that there were too many votes thrown in that precinct, and on cross-examination swore, as will be seen on page 66, in regard to matters about which he knew nothing. It will also appear that he made his discovery about the time Amos Rouse made his, and that was when the canvassing board was in session.

He made an affidavit before Robert Gamble, who was secretary of the democratic mass-meeting held at Tallahassee just before election, which voted to give aid and preference to every colored man who would vote the democratic ticket. This witness testified about this affidavit as follows:

Question. What was it about?
Answer. It was about that precinct election.
Q. What was said in the affidavit about it?
A. About just what I have been talking to-night; more votes being polled there than there were men. That is the principal thing in it.
Q. Did it say anything about the opening of the polls?
A. Yes, sir; that was the principal thing. The opening of the polls; that is what I didn't like: for him to open the polls before they ought.
Q. Are you certain that in this affidavit you said anything about the number of votes being an excessive number?
A. I don't recollect.
Q. When was the first time you heard anything about an extra number of votes in that precinct?
A. It was some of the times coming to Tallahassee; I don't remember when.
Q. You did not hear about it in the region there?
A. No, sir.
Q. You heard about it first in Tallahassee?
A. Yes, sir.
Q. Were you down here during the time of the excitement of the canvassing of the polls and votes in this State?
A. I don't know what time you call the excitement.
Q. The excitement preceding the promulgation of the vote. I mean after the election.
A. I came down to town frequently.
Q. You say that no one asked you to make an affidavit?
A. No; not that I remember particularly.
Q. You will not say but that you were asked to do it, will you?
A. It might have been. Some one might have proposed for me to make an affidavit to certain facts as far as I knew. That proposition might have been made to me.
Q. How did you know personally about the opening of the polls in the Richardson school-house precinct?
A. By talking to Mr. Rouse and Mr. Roberts.
Q. Then what you knew was hearsay, was it?
A. Yes, sir.
Q. Then you made affidavit to matter that was merely hearsay with you, as to the opening of the polls?
A. No, I did not. I made the affidavit now, and I recollect what it was. It was about the time I met Mr. Rouse on the road, and how far he had to go, and how far I had to go, and what it was that passed between us.
Q. You knew nothing about the opening of the polls except by hearsay, did you?
A. No, sir; but I said when I saw Colonel Beard and the men who were to be challengers come back that something was wrong up there. I suspected something was wrong, and I went to inquire about it.
Q. Did you make an affidavit of that fact?
A. I think I did.
Q. Of your suspicion that something was wrong?
A. Yes, sir. It was my opinion that Rouse had plenty of time to be there to open the polls. I think I did say that.
Q. Where did the owners of these plantations which you have mentioned within the precinct vote, if you know?
A. No, sir; I don't know exactly. Some of them voted at No. 5, where I was, and some voted at Richardson's school-house; very few.
Q. It is very frequent that men pass from what is called one voting precinct into another to vote, is it not?
A. O, yes.
Q. What is popularly called the Richardson school-house people come out of one into another one to vote?
A. Yes; I did myself.
Q. And voters go into the Richardson district who do not live there?
A. Yes.
Q. Any person has a right to vote in any precinct where he pleases?
A. O, yes.

Such a witness is not just the one to upset the presidential election in a State.

We would further report in regard to this precinct that while the poll-list and registration-list agreed in the number of names on the one and checked upon the other, and that while the ballots in the box agreed with the votes reported, yet the evidence taken by the committee *seemingly* shows that a certain number of persons, who apparently voted at No. 13, did in fact vote elsewhere in the county, and that some of these persons did not vote at No. 13. Some forty-five names were on the poll-list of No. 13, which were also found on other poll-lists in the county. But the examination was far from satisfactory. The examination which formed the basis of the conclusion that there had been fraudulent votes was conducted as follows, page 28:

Question. Look at the poll-list and registration-list of precinct No. 13, and state whether you find the name of James Spears thereon.

Answer. The name of James Spears appears on the poll-list of No. 13, and a check is made between the names of James and Soloman Spears on the registration-list. As there is no Soloman Spears on the poll-list, I should say that that check was meant for James Spears.

Q. Look at the poll-list and registration-list of precinct No. 4, and state whether you find thereon the name of James Spears.

A. Jas. Spears appears upon the poll-list of precinct No. 4, and is also checked on the registration-list as James Spears.

Q. Is there any Jas. Spears on the registration-list?

A. No, sir.

Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of Will Rambo.

A. His name appears upon the poll-list of No. 13, and is also checked on the registration-list.

Q. Look at the poll-list and registration-list of No. 4, and state whether you find his name thereon.

A. His name appears on the poll-list, and it is also checked on the registration-list.

Q. Is there more than one of that name on the registration-list?

A. Only one.

Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of John Gibson.

A. His name appears on the poll-list of precinct No. 13, and is also checked on the registration-list. There are two John Gibsons, but only one of them is checked in that precinct.

Q. Look at the poll-list and registration-list of precinct No. 2, and state whether you find his name thereon.

A. John Gibson appears on the poll-list of No. 2, and is also checked on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 9, and state whether his name appears thereon.

A. John Gibson appears on the poll-list of No. 9, and is also checked on the registration-list. There are two John Gibsons on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 13, and state whether you find thereon the name of George Smith.

A. George Smith appears on the poll-list of precinct No. 13, and one of the George Smiths is checked on the registration-list.

Q. Look at the poll-list of No. 1, and state whether you find his name thereon.

A. George Smith appears on the poll-list of precinct No. 1, and one George Smith is checked on the registration-list.

Q. Look at the poll-list and registration-list of precinct No. 2, and state whether you find his name thereon.
A. George Smith appears on the poll-list of precinct No. 2, and one George Smith is also checked on the registration-list.
Q. Look at the poll-list and registration-list of precinct No. 4, and state whether you find his name thereon.
A. George Smith appears twice on the poll-list of No. 4, and is also checked twice on the registration-list.
Q. How many George Smiths are there on the registration-list?
A. Four.

When forty-five names had been secured in the manner above indicated from all the poll-lists of the county, where more than four thousand votes were cast, the county was scoured to find the persons answering to these names.

Twenty-five of these persons were found. The names of twenty of them appear on pages 74, 75, 76, 77, 78, and 79. The others are on preceding pages. We will here show the manner in which these twenty-five men were examined by the examination of three of these voters, as found on page 77.

JACKSON JONES sworn and examined.

By the CHAIRMAN:

Question. What is your name?
Answer. Jackson Jones.
Q. What is your age?
A. About twenty-five years.
Q. Where do you live?
A. I live at Tuskawilla.
Q. Did you vote on the 7th of November last?
A. Yes, sir.
Q. Where did you vote?
A. At Tuskawilla.
Q. Do you know what precinct that is?
A. No, sir. I don't know the number of it.
Q. How far from here is Tuskawilla?
A. Thirteen miles.
Q. Which way?
A. East.
Q. Do you know where Richardson school-house is, precinct 13?
A. Yes, sir.
Q. Did you vote there on the 7th of November?
A. No, sir.
Q. Did you vote more than once on that day?
A. No, sir.
Q. Where were you during the day?
A. Right there present.
Q. All day?
A. Yes, sir.

MARK BOND sworn and examined.

By the CHAIRMAN:

Question. What is your name?
Answer. Mark Bond.
Q. Where do you live?
A. I live at Centreville precinct No. 9.
Q. How long have you lived in this county?
A. I was born in Centreville precinct.
Q. Where did you vote?
A. In Centreville precinct.
Q. Do you know where the Richardson school-house is, precinct 13?
A. No, sir.
Q. Did you vote more than once on election day?
A. No, sir.
Q. Do you know anybody else of your name?
A. No, sir.
Q. Do you know anybody of the name of Bond Marks?
A. No, sir.
Q. What ticket did you vote?
A. I voted for Drew.

JAMES RUSH sworn and examined.

By the CHAIRMAN:

Question. What is your name?
Answer. James Rush.
Q. Where do you live?
A. Centreville precinct.
Q. How long have you lived there?
A. I was born and raised up there.
Q. Did you vote at the last election?
A. Yes, sir.
Q. Where did you vote?
A. At the Centreville precinct.
Q. What is the number of that precinct, if you know?
A. I don't know.
Q. Do you know where the Richardson school-house is?
A. No, sir.
Q. Did you vote more than once at this election?
A. No, sir.
Q. Which way did you vote?
A. I voted the Stearns ticket.
Q. Is there any one else of your name in the county that you know of?
A. Not that I know of.

The other twenty-two persons were examined in a manner very similar. Twenty-five men were brought before the committee who swore that they did not vote at No. 13, but voted elsewhere, although there may be twenty-five men in the county whose names are not on the county registration-list, and who bearing the names of these twenty-five men rightfully voted in No. 13; and although the committee did not attempt to identify these men, yet the majority of the committee came to the solemn conclusion from such an examination going only to these twenty-five men that the seventy-four small ballots were fraudulently cast. When we remember that the colored people are almost annually in very many instances changing their names, and when we consider, among other things, that these twenty-five men were all colored, we cannot come to any conclusion against the election in No. 13. We certainly cannot come to the conclusion that 75 fraudulent votes were cast, and no rule of law would allow us to assume that a single fraudulent vote was cast beyond the 25 even if the evidence in regard to them shall be deemed reasonably conclusive. The vote in Leon County was not a large one, at least no more so than in the other counties of the State. There were 4,396 names on the county registration-list when sent out, and 150 names added on election day, making a total of 4,546. The number of votes cast was 4,038. For a presidential election, and in a State where the gubernatorial contest was especially exciting, and where there is so large a colored vote, we insist that the aggregate vote furnishes no evidence of fraudulent voting. We close our report on Leon County, denying that the evidence establishes the frauds claimed by the majority. We deny that it conclusively shows any fraud.

HAMILTON COUNTY.

The subcommittee, consisting of Messrs. THOMPSON, HOPKINS, and DUNNELL, commenced the investigation of Jasper and White Springs precincts in Hamilton County, at Live Oak, on the 21st of December. These two precincts had been thrown out by the State board of canvassers and for the following reasons:

"Eighty-three democratic and 58 republican votes which had been illegally added to the electoral vote on the face of the return were thrown out. Jasper precinct No. 2, giving 321 votes for George F. Drew and 183 votes for M. L. Stearns for governor, 322 votes for N. A. Hull and 181 votes for D. Montgomery for lieutenant-governor, 323 votes for the democratic electoral ticket and 185 for the republican electoral ticket, 320 votes for Jesse J. Finley and 184 votes for H. Bisbee, jr., for Congress, 235 votes for N. J. Patterson and 257 votes for T. N. Bell for State senator, 167 votes for J. N. Reid, 295 votes for W. J. J. Duncan, and 29 votes for J. W. Gray for member of the assembly, was thrown out of the canvass on account of gross violation of the election law by the inspectors in not completing the canvass without adjournment, in allowing unauthorized persons to handle the ballots and assist in the count, in adjourning over night and going to another place, and in signing returns next day which they had not themselves made or verified, and the contents of which they did not know. With these deductions the county was canvassed by unanimous vote."

E. Thomas Smith was the clerk in Jasper precinct, John E. Tuten, David Fryar, and George Smithson were the inspectors. The three officers first named were democrats and the last a republican. The evidence abundantly sustains the charges made before the canvassing board.

The adjournment before completing the canvass was not denied by any of the witnesses. The polls were closed at sundown, and they did not finish the count till four o'clock in the morning, the hour of first adjournment. The clerk testified that they adjourned at four o'clock in the morning till nine in the morning, and did not make out any returns, (page 113.) John E. Tuten swears to the adjournment before completing the canvass, and so did the other officers.

The counting was conducted in utter disregard of the law. The outsiders at an early hour took possession of the ballots and the tally-sheets. One of the inspectors commenced to count but soon gave way to one B. B. Blackwell, a democratic lawyer, who took the ballots from the ballot-box and participated in the count. After he had acted for a while one William H. Reynolds, another democratic lawyer, assisted in taking out the ballots and in counting. Then Hugh B. Patterson, another democratic voter, assisted in calling off the votes. Here are three outside men, all democrats, calling off the names from the ballots. While this was being done, George Smithson, the only republican officer, was out of the room by the fire with Fryar, a democratic inspector. It should here be stated that this Hugh B. Patterson, who read off the votes for a part of the time, was the son of the democratic candidate for the State senate.

The tally-sheet was also in the possession of outsiders. It is in evidence that B. B. Blackwell, the democratic lawyer who had read off part of the votes, also kept the tally-sheet for a while. Also it appears in the evidence that the tally-sheet was kept by Mr. Fryar and one Ancrum. Mr. Ancrum was another democratic unsworn assistant. The evidence does not show that there was any announcement of the vote before adjournment. When the adjournment took place Fryar took the ballot-box and Tuten took the key. We now invite attention to the manner in which it was kept. It was taken to the bar-room kept by Fryar and placed upon the counter. Fryar left it there for the balance of the night. Fryar himself left his bar-room and went some rods to another house to sleep. There slept in the bar-room Judge Bell, who was a candidate for the State senate, and one Duncan, the nephew of one of the democratic candidates for assembly. It would be exceedingly difficult to imagine a more shameless disregard of the ballot-box or the sacredness with which it should be regarded and protected till the canvass has been fully completed. There was nothing to prevent a gross tampering with it. These two men were interested in the contest. One was a candidate and the other the near relative of another candidate. The door was unlocked which separated the bed-room from the counter. The box remained there in the morning unguarded; many men coming in and going out.

The tally-sheet till the returns are made out is of absolute importance. It was left behind in the sheriff's office where the election was held—one witness says on the table, with no evidence that the door was locked; by another witness, that it was put into a trunk which he thinks was unlocked. The returns were made out during the forenoon of the 8th of November. There was the same outside interference. William H. Reynolds, the democratic lawyer, who had acted the night before, contrary to law, in counting ballots or reading off the names, and in keeping the tally-sheet, was present making out the returns. He filled out a part of the blanks in the returns. At this stage Henry J. Stewart, another democratic lawyer, enters to finish up the work. Stewart says he made out one return and he made it from "a copy, probably. It may have been made by Mr. Reynolds or somebody else." He could not say that the inspectors were present.

We cannot fail to report our full conviction that the State board acted in complete compliance with the law in throwing out this precinct.

The ballots, the tally-sheets, and the returns were almost entirely in the hands of outside party men. Every provision of the law regulating an election was disregarded. The letter, as well as the spirit of the law, was violated. We must call attention to one further fact: Mr. Stewart, who made out the returns, could not swear that the returns were read over to Fryar and Smithson when signed. It appears from the testimony of Smithson that he was told when he went home at four o'clock in the morning that he need not come back. He was so told by Fryar, one of the democratic inspectors. He was questioned about his conduct in the morning in connection with the returns, as follows:

Question. In the morning, who had the ballot-box?
Answer. It was in a chair in Mr. Fryar's bar-room.
Q. Mr. Fryar was there?
A. Yes, sir; he was there when I got there; I didn't get there until about nine o'clock.
Q. Then you went down to the room where you had had the vote the night before?
A. Yes, sir.
Q. When you got there what did you do?
A. I didn't do anything until they called me in the room to sign the return; I didn't do anything at all in the room.
Q. Where were you?
A. I was out there in the court-house yard.
Q. Who wrote the return?
A. I don't know that. Mr. Fryar and I were both out in the court-house yard for awhile, and he went in first, and came out there and told me that we had better go in, that they were ready for us; so we went in. He signed it, and then I did.
Q. Did you read the return yourself?
A. No, sir.
Q. Why didn't you read it to see whether or not it was right?
A. Well, nobody told me, and I didn't know anything about it. Nobody else read it. There were older ones than I was there.

In Jasper precinct we found a complete triumph of irregular proceedings. We had there the reading of the names on the ballots, the counting of the votes, and the keeping of the tally-sheets almost wholly committed to active partisans. We had the abandonment of the tally-sheet, and before the returns are made out, to the open table of the sheriff's office. We had the wicked and inexcusable surrender of the ballot-box to the surroundings of a bar-room, within the reach of two men who were personally interested in the result of the election; and finally we had

the returns made out by men unsworn, political intermeddlers, doing their work in the absence of the only republican officer of the election board. These returns were not read to Smithson, as he testifies. Ancram swears that when Blackwell read off the ballots he folded them and then handed them to Smithson, who put them into the box without reading them. The evidence shows clearly that Smithson was culpably negligent of his duties. He was no obstruction to the perpetration of fraud at a poll substantially taken possession of by men not sworn and wholly unauthorized to take any part in the business of the election. If the election at Jasper was a legal one, then a mob could run an election as well as a body of honest and duly qualified men. Reports of election cases in the House of Representatives could be adduced almost without number where polls have been thrown out with far less of intermeddling than in the case under consideration.

At White Springs precinct the clerk and inspector of election omitted to insert in the return the votes cast for the democratic and republican presidential electors. On the 13th of November, six days after the election, when the board of county canvassers met to canvass the precinct returns, the omission was for the first time discovered. The clerk and inspectors being apprised of the mistake, made out and signed a new return, or what is termed in the evidence, a supplemental return of the votes cast for the electors. When this second return was made, there was no board of election officers for White Springs precinct in existence. When they completed the canvass of the votes and signed the return on the night of the election and transmitted the said return and other papers to the proper officers, the board was dissolved; their functions as officers of the election ceased, and therefore their subsequent acts in that character were null and void. If this view of the law be correct, as we certainly claim it to be, 83 votes must be deducted from the vote of the Tilden electors and 58 votes from the vote of the Hayes electors.

JEFFERSON COUNTY.

It is claimed by the majority that in precinct No. 1 of this county five votes must be deducted from the vote cast for the Hayes electors and given to the Tilden electors, for the reason that on the day following the election the ballot-box was opened without authority and ten democratic ballots found therein; the return from that precinct showing that there were cast only five democratic tickets. Under no view of the evidence or the law applicable thereto is this claim tenable. The testimony of the two republican inspectors is corroborated by the democratic inspector and the democratic United States supervisor, who testified that the election at this precinct was honestly and fairly conducted; that during the canvass of the votes, after the close of the polls, they were present and saw every ballot counted and there were but five democratic tickets. The tickets were replaced in the box, which was returned, as required by law, to the clerk's office. The clerk's office was also used as a telegraph office, to which every one had access, and the box remained exposed, even during the clerk's frequent absence. The morning after the election a new light dawned on the democratic supervisor. He suddenly came to the conclusion that a fraud had been perpetrated upon the democrats who voted at this precinct, and demanded of the clerk a recount of the ballots. The clerk complied with his request, closed the doors, opened the box, counted the votes in his presence, and found instead of five ten democratic tickets. To make the proof of fraud stronger, ten witnesses testified before the committee, in direct examination, that they voted the democratic ticket. One of them, a colored man in the employment of a democrat, admitted in cross-examination that he told his friends after the election he voted the republican ticket. Three witnesses swore positively that he voted the republican ticket, one of whom gave the ticket to him and went with him to the place of voting and saw him hand it to the inspector, who swears it was a republican ticket. Two of them admitted they never read a name on their ticket, but supposed it was a democratic ticket, and one of the inspectors said he had good reason to believe some of them voted the republican ticket who claimed they had voted the democratic.

It cannot be seriously contended that this sort of evidence can affect the validity of an election return. The law is clear that a recount of the votes made by unsworn and unauthorized parties some time after the official count has been made, showing a different result, is not sufficient to establish fraud or even mistake in the official count.

Long's Store.—The majority claim that ten votes must be deducted from the republican vote cast at this precinct, because the proof shows twenty-three men voted the democratic ticket and the return showed only nineteen democratic votes and for the further reason that one Smythe, a republican inspector, added unlawfully to the return six republican votes to make the number correspond with the clerk's list. The principal witness relied on to prove the truth of these charges is one James H. Sanders, a democrat, an active, unscrupulous, and bitter partisan. His examination shows an utter disregard of the obligations of an oath, yet he was permitted to participate in the counting of the votes (though not a member of the board of inspectors) and to handle the ballots. In the language of a witness, he was a kind of a middle-man. If colored men were suspected of voting the republican ticket illegally Sanders was the man to prove it. It was claimed that a colored man named Morris Williams voted, without being registered, a republican ticket. No one knew it but Sanders, who came forward and swore that he saw Morris put a folded ticket in the ballot-box, and that he could see the flag on the inside of it, though thirty feet away, a large and boisterous crowd being between him and the polls. In the majority report there is a statement that the ballot-box was, contrary to law, concealed from public view during the election day. How can this be true when Sanders, whose testimony was mainly relied on by the majority to prove that the non-residents, the non-registered, the convicts, and the repeaters voted the republican ticket, swears that he saw the ballot-box thirty feet away? His evidence detailing how the *six* votes were added is as follows:

"Smythe did not put the tickets in; he just figured with a pencil, and said I lack six votes and then put it in the certificates '512.' He added six. I told him I did not think he ought to put in all republican tickets. I thought he ought to divide it. Johnson, the democratic inspector, was there. I do not know whether he said anything or not."

Is there any probability of the truth of Sanders's story? There were no scratched tickets, so he must have added six votes, if Sanders tells the truth, to the vote for every candidate on the republican ticket for Federal, State, and county offices in the presence of the democratic inspector, who signed the return at the same time with Smythe according to the evidence, and complained of no fraud or irregularity. The testimony of Burton C. Gibbs, an inspector, of Smythe, and the clerk of the polls shows beyond any doubt the election was fairly and honestly conducted; that the number of votes returned corresponded with the number of names on the clerk's list, and that no votes were added by Smythe. Sanders alone contradicts them, and certainly he possesses none of the qualities of a witness whose testimony ought to be considered in the impeachment of a witness or a return.

The majority insist that fifty-two men voted illegally whose names appeared on the check-list lists and clerks' lists of the different polls. The evidence on which this claim rests is scarcely worthy of an allusion.

It is based upon the testimony of such men as Shirley T. Botts, secretary of the democratic club at Monticello, whose reckless statements and intemperate partisan zeal render it but of little value. He testified he kept a private check-list at one of the polls and he checked the names of about twenty persons who were not on the registration-list. On inspection of the official registration-list it appeared that most of these names were enrolled thereon. Where, for instance, the name of Thomas Hernandez appeared on his list as having voted, he claimed he was not a legal voter, his name not being registered. But the name of Thomas Fernandez did appear on the registration-list, and he did vote at the polls where Botts was stationed and at no other place. Now it is evident that when Fernandez announced his name Botts either designedly or by mistake checked the name of Hernandez for Fernandez. If the list of Botts contained the name of a voter who did not give his middle name but which appeared on the registration-roll, it was contended they were different persons. The testimony of this witness in reference to illegal voting will compare favorably with all the others who were examined on the same subject and in relation to repeaters and non-residents. Were it true that this number of illegal votes was cast there is no competent evidence that they voted the republican ticket. Besides, it is clearly shown that the clerk of the circuit court, who is *ex officio* registry agent, deputized one Beazly to register voters in the vicinity in which he lived. He qualified and entered upon the performance of his duties and registered not less than from fifty to sixty persons, four of whom testified before the committee that they were registered by Beazly and did vote. The evidence of the clerk shows that these names did not appear on what is known as the official registration-list which it was his duty to prepare. His excuse is that the Beazly list reached the printer at Jacksonville too late to be appended to the list already printed. Beazly's list was on file in Tallahassee and was inspected by Judge Cole, a respected citizen of Monticello, and others, who all agree as to the number of names thereon. If the persons registered by Beazley voted, as they could of right have done, and it is more than probable they did, there being a presidential and gubernatorial contest, this number must be deducted from the votes claimed to be illegal because of non-compliance with the registration laws, which disposes of the claim of the majority. The clerk, in failing to have the Beazly list printed, and to furnish a certified copy to the inspectors at each poll, committed a grave irregularity, but which in law does not vitiate or invalidate the certificate of the election.

The majority of the committee further demand that the votes of sixteen non-residents, twenty-nine repeaters, and twenty-four convicts be deducted from the aggregate republican vote as returned by the board of county canvassers. Nearly all those claimed to be non-residents testified before the committee that they were in all respects duly qualified electors of the county of Jefferson and State of Florida. The evidence adduced to contradict these witnesses is so uncertain, feeble, and indefinite as to be entitled to no weight whatever. As to the convicts, records of the courts of Jefferson County show that ten of them were convicted of felonies, four of whom produced full pardons duly authenticated. The remaining fourteen were convicted of petty larceny, a crime not punishable with death or by imprisonment in the State penitentiary.

The act of 1868 provides that no persons hereafter convicted of felony, bribery, perjury, larceny, or other infamous crimes shall be entitled to vote. The minority are clearly of the opinion that the true construction of the statute is, that they are not disqualified—petty larceny not being a felony or other infamous crime.

They also conclude that the votes of the six convicts who were never pardoned ought not to be deducted from the republican vote, as it is not shown what ticket they voted.

As to the repeaters, we admit that it is shown that twenty-nine persons appear as having voted twice, the same names appearing but once on the registration-list. There is no proof of identification of the illegal voter as the law requires, and it is not necessary the elector's name should appear on the registration-list to entitle him to vote. If he makes oath, on being challenged, that his name was once on the registration-list but has been improperly stricken therefrom, his vote must be received. There is no proof that there were no other persons of the same name in the county, nor as to what ticket they voted, and therefore no deduction should be made.

JACKSON COUNTY.

The returns from Campbellton precinct in this county show there were 291 votes cast for the Tilden electors and 77 for the Hayes electors. The evidence shows that when the polls opened at eight o'clock in the morning of the election day there was assembled such a great number of white and colored voters that it was deemed expedient, and agreed to by the leading men of both political parties for the purpose of facilitating voting and preserving order, that the whites should vote during the first hour and the colored men the succeeding hour, and thus alternate until the closing of the polls. The colored men by the adoption of this plan occupied two hours of the forenoon in voting. The evidence of James Gaston shows that seventy-six colored men and only about twelve or fifteen white men voted in the afternoon. It is clear that the whole white vote, with the exception of the number mentioned by Gaston, was polled before the adjournment at noon. The evidence of John McKinne, a lawyer and a native of Jackson County, who was a successful candidate on the democratic ticket for the Legislature, shows that he was familiar with the political complexion of the colored men living in the vicinity of Campbellton. He took an active part in furthering the success of his party on the day of election. He distributed democratic tickets among the colored men, yet he could not testify that more than fifteen of them voted the democratic ticket. If it be true that only about fifteen colored men voted the democratic ticket on the day of election, what became of all the votes of colored republicans cast during the two hours of the forenoon, the return showing only 77 republican votes, just one more than the number of colored votes polled in the afternoon? They must have gone where the "woodbine twineth."

It is further shown that, during the adjournment of the board of inspectors at noon, the ballot-box was removed from the place of voting into an adjoining room used as a store and left unprotected and unsealed, contrary to law, during the period of twenty minutes. Crump Buie, a colored man, whose evidence was sought to be impeached by several white democrats on the ground his character was not good for truth and veracity, swore that during the adjournment he sat on the steps leading to the door of the store in which the ballot-box was left and that he heard the noise of footsteps within and voices speaking in a low tone. The return from this precinct was rejected by the State canvassing board on the ground that it was false, and the true vote could not be ascertained therefrom.

The minority, considering that 132 colored men, qualified electors of Jackson County, made affidavits which are now on file in the office of the secretary of state at Talahassee that they each voted the straight republican ticket at this precinct on the day of election, fully indorse the action of the said board.

Friendship Church.—The return from Friendship Church precinct, in this county, shows the Tilden electors received 145 votes and the Hayes electors 44 votes.

The act of the Legislature of the State of Florida regulating the manner of holding elections provides that the ballot-box shall be exposed to the public view, and as soon as the polls of an election shall be finally closed, the inspectors shall proceed to canvass, publicly and without adjournment until completed, the votes cast at such election. It also provides that the votes shall be first counted, to ascertain if the number of ballots shall exceed the number of persons who shall have voted as may appear by the clerk's list, after which the ballots shall be replaced in the box and one of the inspectors shall publicly draw out and destroy unopened so many of such ballots as shall be equal to the excess.

The evidence shows conclusively the following state of facts: When the polls opened, Edmond Hayes, the only republican member of the board of inspectors, was delegated to receive the tickets from the voters at a window, the sill of which was at least six and a half feet from the ground. The ballot-box was completely concealed from the view of the voters during the entire day. Hayes took the tickets for about an hour, when he was ordered away from the window by a democratic inspector named Jacob Stephens, who acted in his stead during a portion of the day. In the afternoon one Jack Mozely, a democratic supervisor, contrary to law, took the place of the latter, and as he received the tickets passed them to Stephens, who stood a short distance behind him and between him (Mozely) and the ballot-box. No voter ever knew what became of his ballot after it reached the hands of Stephens. One Henry Long, a republican supervisor, was ordered out of the room

occupied by the officers of election by Stephens, who exhibited at the same time a large navy revolver. As soon as the polls closed the inspectors proceeded to canvass the votes, without first counting them to ascertain if the number of ballots corresponded with the number of names on the clerk's list. But four votes were counted, which Stephens put in his vest pocket, when in plain violation of law they adjourned and carried the ballot-box to the house of Mozely, two miles distant from the place of voting. They counted about forty votes in a private apartment, the door of which was closed against outsiders, when they again adjourned for about half an hour and went to supper in a different part of the house, leaving the ballot-box unguarded and unsealed, though a brother of Mozely and two other men were in a room but a short distance from that which contained the ballot-box. After supper they again met in the bed-room and counted the votes remaining in the box. Returns were made out and signed by the inspectors and clerk, and the ballots were thrown upon the bed and upon the floor, instead of being replaced in the ballot-box.

Sixty-three colored men, qualified voters, appeared before the committee and testified that they each voted the straight republican ticket at Friendship Church on the day of election. There was no attempt made to contradict or impeach the testimony of any of them. No democrat claimed that more than two colored men voted the democratic ticket at this precinct, one of whom, named Warren Law, made affidavit before a notary public, prior to the arrival of the congressional committee, that he cast a republican ticket, which said affidavit is on file in the office of the secretary of state. The majority of the committee attempted to show that many of these colored witnesses might be mistaken as to the character of the ballot they swore they had voted, for the reason they could not read or write and were liable to be deceived by a bogus ticket having a flag above the name of Rutherford B. Hayes, as did the regular republican ticket, (the democratic ticket having no device,) which was proven to have been largely circulated in Jackson County, doubtless for the purpose of deceiving the ignorant colored men. In this they utterly failed, for the evidence shows that when the votes were being counted no such ticket was discovered in the ballot-box.

The minority conclude from the foregoing facts that the proceedings in the conduct of the election at this precinct are so tainted with fraud that the true vote cannot be ascertained, and therefore the entire poll should be rejected.

Port Jackson.—The evidence in relation to the conduct of the election at Port Jackson precinct shows that the ballot-box was, contrary to law, concealed from the view of the voters during the whole of the election day. The sill of the window through which the ballots were handed to the inspector was at least seven feet high from the ground. The democratic clerk of the election board announced, at the opening of the polls, that no colored man would be permitted to vote at this precinct who had ever been *charged* with the commission of a crime. The board of inspectors, composed of a majority of democrats, refused to receive two republican tickets offered to one of the inspectors by two colored voters, on the ground that they had been indicted and convicted of larceny. They asserted they had never been convicted of any crime and demanded to be sworn in support of the truth of their assertions, which demand was refused.

No record of their conviction was introduced before the committee, and the evidence is conclusive that they had not been convicted of any crime.

It is further shown that four colored republicans offered their votes to the inspectors but they refused to receive them on the ground their names could not be found on the registration-list. The proof shows that they were duly registered and in all respects qualified voters. The minority are of the opinion that 6 votes must be added to the republican vote of this precinct.

MONROE COUNTY.

Messrs. THOMPSON, HOPKINS, and DUNNELL on the 18th of December commenced an investigation into the conduct of the election officers of precinct No. 3, at Key West, Monroe County. The conduct of these officers and the action of the State canvassing board will be found stated in the following extract from the minutes of the board, made on the 5th of December:

"Monroe County, precinct No. 3, Key West, giving 401 votes to the democratic electoral and State tickets and 59 to the republican, was thrown out of the canvass on account of gross violation of the election laws by the inspectors, in adjourning before the completion of the canvass, and completing it the next day in a different place and without public notice. The vote on its rejection was unanimous, the attorney-general deciding, in reply to a question put to him as to the legal effect of these violations of the law, that it must be thrown out. With this deduction the county was canvassed."

Before we analyze the testimony taken in this case we respectfully call attention to section 21 of the election laws of Florida:

"SEC. 21. As soon as the polls of an election shall be finally closed the inspectors shall proceed to canvass the votes cast at such election, and the canvass shall be public and continued without an adjournment until completed. The votes shall be first counted, and if the number of ballots shall exceed the number of persons who shall have voted, as may appear by the clerk's list, the ballots shall be replaced in the box and one of the inspectors shall publicly draw out and destroy unopened so many of such ballots as shall be equal to such excess."

The provisions of this section so far as they relate to a completion of the canvass before adjournment have always been regarded as mandatory by every State canvassing board since the passage of the act in 1868. The democratic attorney-general, Hon. Wm. Archer Cocke, voted with the secretary of state and comptroller of accounts to throw out this precinct, and for the reasons above given. The following memorandum was furnished us by the clerk of the canvassing board:

"The following is a joint memorandum handed me as clerk of the State canvassing board by Hon. C. A. Cowgill and Hon. Wm. Archer Cocke, members of said board, on the 8th of December, 1876:

[In the handwriting of Dr. Cowgill.]

"Points in Monroe County case, upon which the opinion of the attorney-general was asked by one member of the canvassing board with a view to acting according to that opinion.

"Do sections 21, 22, and 23, of chapter 1625, laws of Florida, imperatively demand that the canvass of votes cast at the election shall be made without adjournment, including the making of the certificate?

"When the evidence is contradictory as to the mere count of the vote before adjournment, and it is undisputed that the board adjourned and met next day in a different place, and, according to one inspector, counted all the votes over again, and, by testimony of Mr. Clark, arrived at a different result from that of the night before, and, according to another inspector, only made out the certificate, in view of this statement of facts, is this a legal canvass?"

"The attorney-general said it should be thrown out, and not counted:

[In the handwriting of Judge Cocke.]

"'The board took a recess to afford time to the clerk to make up a tabulated statement of the votes to be afterward compared with the returns. Before the certificate had been made out or the attorney-general was informed that the statement was made out, the attorney-general claimed the right to change his vote on the Monroe County State election, having voted in favor of throwing out precinct No. 3, in the electoral vote, the board not having adjourned, I claimed the right to change my vote in relation to precinct No. 3.'

"The following is the indorsement:

"'Memorandum handed the clerk by Dr. Cowgill and Judge Cocke.

(Signed) "'WM. LEE APTHORPE,

"'*Clerk.*

"'*December* 8, 1876.'"

The protest of the honorable attorney-general against throwing out this precinct followed only by a few hours his vote to throw it out. This change of position was a culmination with him of the demoralizing influence of the democratic visitors there in Tallahassee from the city and State of New York. The testimony taken in this case clearly shows that an adjournment took place before the canvass was completed; that the place at which the officers agreed to meet the second day was in another precinct, one witness calling at a public place and another a private place; that the votes were counted over three or four times the second day; that errors were found the second day; that the returns were made out from a corrected tally-sheet made the second day; that none of the voters of precinct No. 3 was present on the second day to witness the action of the officers, and that there is a disagreement as to the partial announcement of the vote the first day and before adjournment. The ballot-box, poll-list, and registration list were taken away from the view of the voters before the officers had completed their duties. The purity of the election which this section of the law was intended to secure was not preserved. This section does not permit an adjournment. The testimony of Dr. Harris may well be disregarded, for his own election to the State Legislature depended upon the vote of this precinct, and for the further reason that his testimony is in conflict with an affidavit which he made before the State canvassing board. Witness Kemp does not fully sustain the two Bartlums; Reyes emphatically contradicts them. The democratic officers took possession of the ballot-box, and Reyes, the only republican officer, was wholly ignored. We therefore are compelled to sustain the action of the canvassing board in rejecting this precinct. The action of the board had the approval of the attorney-general, and is fully in keeping with the action of every State canvassing board convened since the passage of the law.

CLAY COUNTY.

The majority say that the Clay County return was not irregular or false on its face, and therefore should not have been rejected by the canvassing board in its recanvass of the governor vote under the order of the court to throw out the whole return if so irregular or false that the true vote could not be ascertained.

In reply, we simply ask the majority to tell us the true vote of the county from the following accurate summary statement relating to the fraudulent vote from the face of the Clay County return:

Green Cove Springs: For Samuel J. Tilden for President, 74 votes; for Thomas A. Hendricks for Vice-President, 74 votes; for President Tilden, 74 votes; for Vice-President Thomas Hendricks, 74 votes. For presidential electors: republican electors, (naming them,) 122 votes; democratic electors, (naming them,) 287 votes. precinct No. 8, Pond, (not counted,) republican electors, (naming them,) 6 votes; democratic electors, (naming them,) 29 votes.

DUVAL COUNTY.

The validity of the return from this county, to the surprise of the minority, is questioned by the majority for the alleged reason that the board of county canvassers was composed of two instead of three persons. How they came to such a conclusion is a matter of the wildest conjecture, considering the testimony discloses no proof of the fact and every presumption of law is in favor of the legality of the acts of officers of election boards. Probably this conclusion is the offspring of extreme anxiety to find an offset to the Baker County return, based upon an illegal canvass made by two persons, as is clearly shown by the testimony. The return from this county, it is true, is only signed by the clerk and a justice of the peace, and accompanying it is a certificate showing the refusal of the judge to sign it. If there were no such certificate, the law is plain that a majority of a canvassing board may sign a return, the return being no part of the canvass and affording no presumption that the legal number of persons did not participate in the canvass.

The majority of the committee have seen fit to animadvert in bitter terms upon the conduct of republican officials because sixteen men confined in a jail voted in this county, some of whom were awaiting trial, three being convicted of felonies but not sentenced. There is no pretense made that they were not qualified voters, but an intimation is unjustly made that they voted the republican ticket under duress, without a scintilla of evidence to support it. We do not deem it our duty, under the resolution creating and defining the duties of the committee, to cast reflections on the conduct of democratic officials without clear proof, but we feel constrained to say that the reports of investigating committees should be regarded by the country as absolutely worthless if unwarranted assertions are to be taken as conclusions.

Alleged disability of Elector Humphries.

January 31, 1877, the majority took the testimony of James E. Yonge, who had been candidate for elector, to the effect that Frederick C. Humphries, one of the electors, had been a United States commissioner, and they also had annexed to their report a copy of Mr. Humphries's appointment. But Mr. Humphries resigned the office before November 7, 1876, and his resignation was duly accepted, and he was not such commissioner either November 7, 1876, when he was elected, or December 6, 1876, when he voted as elector, as appears by his sworn testimony before the State canvassing board of Florida, as follows:

Extract from testimony before the Florida State canvassing board, Monday, December 4, 1876.

FREDERICK C. HUMPHRIES sworn for the republicans.

Examined by the CHAIRMAN:

Question. Are you shipping commissioner for the port of Pensacola?
Answer. I am not.
Q. Were you at one time?
A. I was.
Q. At what time?
A. Previous to the 7th of November.
Q. What time did you resign?
A. The acceptance of my resignation was received by me from Judge Woods about a week or ten days before the day of election, which I have on file in my office. I did not think of its being questioned, or I would have had it here. He stated in his letter to me that the collector of customs would perform the duties of the office, and the collector of customs has since done so.

SUMMARY OF METHODS OF ESTIMATING FLORIDA'S VOTE.

As a summary of the various ways of estimating the vote of the State of Florida on the 7th of November, the minority submit the following:

I. If the vote be reckoned by the face of the returns which were opened by the board on the 28th of November, and unanimously declared, (Attorney-General Cocke concurring,) under the rule of the board, to be the regular returns, having all the legal formalities complied with, the majority for the Hayes electors is 43.

II. If the vote be reckoned by the official statutory declaration of the canvassing board exercising its jurisdiction under the State statute, in accordance with the practice adopted without objection, and by the advice of the democratic attorney-general, Cocke, and never disputed until the result of this canvass was about to be determined, which declaration in the belief of the minority is final and irreversible, the majority for the Hayes electors is 925.

III. If the vote be reckoned upon the principles laid down by the supreme court in their order to recanvass in the case of Drew *vs.* Governor Stearns, of not purging the polls of illegal votes and retaining the true vote, but of rejecting the whole county return when appearing or shown to be so irregular, false, or fraudulent that the true vote could not be ascertained, the result would be, according to the declaration of the board, a majority for the Hayes electors of 211.

IV. If the board had thoroughly reconsidered, according to the decision of the supreme court, the various county returns for the purpose of throwing out *in toto* all

that could be shown to be irregular, false, or fraudulent, instead of purging the returns of their illegalities and retaining the true vote, there should be thrown out the returns from the following counties—

Counties.	Tilden electors.	Hayes electors.
Baker	238	143
Clay	287	122
Hamilton	617	330
Jackson	1,397	1,299
Manatee	252	26
Total	2,801	1,920

leaving a majority for the Hayes electors of 791.

V. If the vote of the State were to be estimated according to the honest and true vote of the people at the polls, without regard to precinct, county, or State canvassers, the result would be, according to the judgment of the minority, a larger majority for the Hayes electors than the declared majority of 925.

CONCLUSION.

The minority, in conclusion, deem it but just to state that they entered upon the performance of their duties deeply impressed with the importance of the task enjoined upon them by the resolution of the House of Representatives creating the committee. We endeavored, as far as the infirmities of human nature would permit, to divest ourselves of all partisan prejudice and report truly the facts from the evidence, regardless of political consequences. We entertained the hope that the report of the committee would be unanimous, believing that the solemn judgment of all its members, composed as it was of men of both political parties, might tend to calm the public mind and aid in the solution of the vexed presidential problem. But the many proofless and extravagant claims made by the majority defeated the consummation of our wishes.

Feeling that we have been animated by the spirit of truth and justice in reaching our conclusions, we court an impartial but rigid examination of the evidence upon which they are based. Debarred from all access to the documentary evidence which influenced the judgment of the State canvassing board in rejecting the returns from certain precincts when canvassing the votes cast for presidential electors, our report, as well as that of the majority, must be necessarily imperfect. Significance should be attached to the failure of the committee to inquire into the conduct of the election in many counties wherein gross irregularities and frauds were alleged to have been committed.

We now call attention to the following extract from one of the closing paragraphs of the majority report, which is as well substantiated by the evidence as almost every other conclusion reached by the majority:

"There was not the slightest proof that the colored people of that State were in any manner restricted in the enjoyment of their political rights, but your committee were impressed with the very apparent disposition manifested on the part of the white people of Florida to treat the colored people and their rights with due consideration, and your committee believe that not only was special care taken by the supporters of the Tilden electors that no act should be done by them which could be construed to their disadvantage, but that they were particularly desirous to so conduct themselves in the matter of the election that the most exacting of the partisans of the opposition should have no cause for even a doubt of the honesty of their motives. This fact, your committee believe, is entitled to great weight in the consideration of this election."

If this be true, the nation owes a debt of gratitude to the majority of the committee which can never be repaid for this important discovery. We hail the announcement as the dawn of a better era. The bloody chasm is at length spanned, the *color line* is obliterated, and the broad white wings of peace overspread the land. It is strange no allusion is made to the evidence in support of this fact which the committee believe is entitled to so great weight. Perhaps the omission may be attributed to the brevity of the time occupied in the preparation of the report. We undertake to supply the omission by citing the following resolutions adopted by the executive committee of the supporters of Tilden in Jefferson County, a county containing more colored inhabitants than any other in Florida.

"RESOLUTIONS ADOPTED BY THE PEOPLE OF JEFFERSON COUNTY.

"1. That we pledge ourselves, each to the other, by our sacred honor, to give the first preference in all things to those men who vote for Reform; and that we give the second preference in all things to those who do not vote at all.

"2. That we affirm the principle that they who vote for high taxes should pay them, and that in employing, or hiring, or renting land to any such persons as vote for high taxes, that in all such cases a distinction of 25 per cent, or one-fourth, be made against such persons. That merchants, lawyers, and doctors, in extending credit to such persons, make the same distinction.

"3. That in all such cases we extend as little credit or use of our means as possible, leaving them to their chosen friends.

"4. That in the ensuing year we positively refuse to re-employ one out of every three who may then be upon our places and who voted against Reform and low taxes; and that a list of all such persons be published in the CONSTITUTION, in order that we may know our friends from our enemies.

"5. That we will consider it dishonorable and unneighborly for any farmer, planter, merchant, lawyer, doctor, or other person to violate any of the foregoing resolutions."

The evidence shows that these resolutions were extensively circulated and were posted in conspicuous places at each poll, for the inspection and information of the colored voters.

The next paragraph opens with the emphatic declaration that "there is no more doubt that the State of Florida cast her vote for the Tilden electors than there is that Massachusetts cast her vote for the Hayes electors." If this allegation is no better supported than that contained in the preceding paragraph, we are quite certain that bald assertions will have but little influence on the public mind.

For the reasons hereinbefore set forth, and from the evidence before the committee touching the action of the State canvassing board in counting and declaring the vote for presidential electors and the conduct of the election in the State of Florida, the minority of the committee recommend the passage of the following resolution:

Resolved, That at the election held on November 7, A. D. 1876, in the State of Florida, F. C. Humphries, Charles H. Pearce, William H. Holden, and T. W. Long were fairly and legally chosen as presidential electors by the legal voters thereof, and were duly declared elected; and that the said electors having on the first Wednesday of December, A. D. 1876, cast their votes for Rutherford B. Hayes for President and for William A. Wheeler for Vice-President, they are the legal votes of the State of Florida, and must be counted as such.

WILLIAM WOODBURN.
MARK H. DUNNELL.

The SPEAKER. The chairman of the committee suggests that the resolution of the majority be read.

Mr. CONGER. Not if that brings it before the House.

The SPEAKER. In presenting that suggestion to the House the Chair will see that no possible advantage is taken of the rights of any gentleman.

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

Mr. THOMPSON. I do not yield the floor.

The SPEAKER. The chairman of the committee simply asks that the resolution attached to the report of the majority of the committee shall be read for the information of the House.

Mr. CONGER. It will be in the RECORD to-morrow, and I would rather see it there than hear it read now when we are all tired.

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

The SPEAKER. The Chair thinks that the receiving and reading of the report was made under the condition stated by the gentleman from Michigan, [Mr. CONGER.] The Chair is apprised by the clerks that it will take full an hour to read the remainder of the report. The Chair thinks the gentleman from Massachusetts has in fact occupied his hour, and the Chair therefore recognizes the gentleman from California [Mr. PAGE] to make a motion to adjourn.

Mr. HOLMAN. Will not the report come up as unfinished business to-morrow?

The SPEAKER. Certainly.

The question was taken on the motion to adjourn; and on a division there were—ayes 71, noes 109.

Mr. PAGE. I call for tellers.

Mr. HOLMAN. I suppose there would be no trouble about this matter if it was understood that the resolution appended to the majority report would come up to-morrow as unfinished business. If that agreement be made there is no reason why the session of to-night should be prolonged.

The SPEAKER. The Chair must allow the House to judge whether it will adjourn or not.

Mr. SPRINGER. Is not this the unfinished business after the reading of the Journal to-morrow? I ask that as a parliamentary question.

The SPEAKER. Certainly it will be the unfinished business.

Tellers were ordered; and Mr. PAGE and Mr. SPRINGER were appointed.

The House divided; and the tellers reported—ayes 50, noes 109.

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

The yeas and nays were ordered, forty members voting therefor.

The question was taken; and there were—yeas 47, nays 144, not voting 98; as follows:

YEAS—Messrs. Adams, Bagby, George A. Bagley, John H. Baker, Ballou, Beebe, Bradley, Horatio C. Burchard, Cannon, Conger, Crounse, Dobbins, Dunnell, Flye, Fort, Foster, Haralson, Benjamin W. Harris, Hathorn, Hubbell, Kimball, Lapham, Lawrence, Lynch, MacDougall, McCrary, Miller, Monroe, Oliver, O'Neill, Page, Pierce, Pratt, Robinson, Sampson, Smalls, A. Herr Smith, Martin I. Townsend, Washington Townsend, Tufts, Waldron, John W. Wallace, G. Wiley Wells, Andrew Williams, William B. Williams, James Wilson, and Alan Wood, jr.—47.

NAYS—Messrs. Abbott, Ainsworth, Ashe, Atkins, John H. Bagley, jr., Banning, Bell, Blackburn, Bland, Bliss, Blount, Boone, Bradford, John Young Brown, Buckner, Samuel D. Burchard, Cabell, John H. Caldwell, William P. Caldwell, Candler, Carr, Cate, John B. Clarke of Kentucky, John B. Clark, jr., of Missouri, Clymer, Cochrane, Collins, Cook, Cowan, Cox, Culberson, Cutler, Davis, Dibrell, Douglas, Durand, Durham, Eden, Egbert, Ellis, Faulkner, Felton, Finley, Forney, Franklin, Fuller, Gause, Glover, Goodin, Gunter, Andrew H. Hamilton, Hardenbergh, Henry R. Harris, John T. Harris, Hartridge, Hartzell, Hatcher, Haymond, Henkle, Abram S. Hewitt, Goldsmith W. Hewitt, Hill, Holman, Hooker, Hopkins, House, Humphreys, Hunton, Hurd, Jenks, Frank Jones, Kehr, Lamar, Franklin Landers, George M. Landers, Lane, Le Moyne, Levy, Lewis, Lord, Lynde, Mackey, Maish, McFarland, McMahon, Metcalfe, Milliken, Mills, Money, Morgan, Mutchler, Neal, New, O'Brien, John F. Philips, Poppleton, Potter, Powell, Rea, John Reilly, Rice, Riddle, John Robbins, William M. Robbins, Miles Ross, Savage, Sayler, Scales, Schleicher, Sheakley, William E. Smith, Southard, Sparks, Springer, Stanton, Stenger, Stevenson, Stone, Swann, Teese, Terry, Thomas, Thompson, Throckmorton, Tucker, Turney, John L. Vance, Robert B. Vance, Charles C. B. Walker, Gilbert C. Walker, Walling, Walsh, Ward, Warner, Warren, Erastus Wells, Whitehouse, Whitthorne, Alpheus S. Williams, James Williams, Jere N. Williams, Willis, and Benjamin Wilson—144.

NOT VOTING—Messrs. Anderson, William H. Baker, Banks, Bass, Belford, Blair, Bright, William R. Brown, Burleigh, Buttz, Campbell, Cason, Caswell, Caulfield, Chapin, Chittenden, Crapo, Danford, Darrall, Davy, De Bolt, Denison, Eames, Evans, Field, Freeman, Frye, Garfield, Gibson, Goode, Hale, Hancock, Robert Hamilton, Harrison, Hays, Hendee, Henderson, Hoar, Hoge, Hoskins, Hunter, Hurlbut, Hyman, Thomas L. Jones, Joyce, Kasson, Kelley, King, Knott, Leavenworth, Luttrell, Magoon, McDill, Meade, Morrison, Nash, Norton, Odell, Packer, Payne, Phelps, William A. Phillips, Piper, Plaisted, Platt, Purman, Rainey, Reagan, James B. Reilly, Roberts, Sobieski Ross, Rusk, Schumaker, Seelye, Singleton, Sinnickson, Slemons, Stephens, Stowell, Strait, Tarbox, Thornburgh, Van Vorhes, Waddell, Wait, Alexander S. Wallace, Watterson, Wheeler, White, Whiting, Wigginton, Wike, Willard, Charles G. Williams, Wilshire, Fernando Wood, Woodburn, Woodworth, Yeates, and Young—98.

So the House refused to adjourn.

During the roll-call,

Mr. ROBBINS said: My colleague, Mr. YEATES, is detained from his seat by sickness.

Mr. CONGER. I move that the House take a recess until half past eleven o'clock to-morrow.

The SPEAKER. That motion is in order.

Mr. PAGE. I move to amend the motion of my friend from Michigan by substituting half past ten for half past eleven.

The question was taken on the amendment; and on a division there were—ayes 105, no 1.

Mr. CONGER. No quorum voted.

The SPEAKER. No quorum has voted and no motion is now in order except a motion to adjourn or a motion for a call of the House.

Mr. HOLMAN. I suppose there is no reason why the House should remain in session at this hour in the evening. I understood the

gentleman from New York [Mr. HEWITT] wanted to ask the unanimous consent of the House to submit some proposition; but, if not, I should be myself in favor of the motion to adjourn, and would make that motion.

Mr. CROUNSE. I move that the House adjourn.

The motion was agreed to; and thereupon (at eleven o'clock and thirty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

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

By the SPEAKER: A copy of the proceedings in information in nature of *quo warranto* in the case of The State of Florida *ex rel* Wilkinson Call *et als. vs.* Charles H. Pearce *et al.*, to the committee on the recent election in Florida.

Also, an authenticated copy of an act passed by the Legislature of Florida, entitled "An act to declare and establish the appointment by the State of Florida of electors of President and Vice-President," to the same committee.

By Mr. GEORGE A. BAGLEY: The petition of citizens of Herkimer County, New York, for the repeal of the statute limiting the time for applications for pensions, to the Committee on Invalid Pensions.

By Mr. BAKER, of Indiana: The petition of Elmore Wyatt and others of De Kalb County, Indiana, that pensioners receive pensions from the date of their discharge from the Army, to the same committee.

By Mr. BRADLEY: The petition of T. W. Nevins and 60 other citizens of Michigan, of similar import, to the same committee.

By Mr. CROUNSE: The petition of citizens of Nebraska for a post-route from Plum Creek to New Helena, Nebraska, to the Committee on the Post-Office and Post-Roads.

Also, the petition of A. D. Williams and others, for a post-route from Kenesaw to Riverton, Nebraska, to the same committee.

By Mr. DE BOLT: The petition of R. G. Whetmore and 44 other persons of Hamilton, Caldwell County, Missouri, for cheap telegraphy, to the same committee.

By Mr. FORT: The petition of O. A. Corwin and 300 other citizens of Ford County, Illinois, for cheap telegraphy, to the same committee.

By Mr. GAUSE: The petition of the trustees and superintendent of the Institute for the Blind at Little Rock, Arkansas, that an appropriation be made in aid of the printing-house for the blind at Louisville, Kentucky, to the Committee on Education and Labor.

By Mr. HARTZELL: The petition of William H. Conner and 29 other citizens of Randolph County, Illinois, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. HOUSE: Memorial of the Historical Society of Tennessee, that Congress purchase the papers of the General Count de Rochambeau, to the Joint Committee on the Library.

By Mr. HUNTER: The petition of citizens of Indiana, that Congress fix a uniform rate of interest upon money throughout the United States not exceeding 6 per cent. per annum, to the Committee on Banking and Currency.

By Mr. KIMBALL: The petition of James H. Marsh and 15 others, that the statute limiting the time for applications for pensions and preventing the payment of arrears of pension be removed, to the Committee on Invalid Pensions.

By Mr. LORD: Two petitions, signed by Henry W. Renell and others and A. A. Smith and others, of New York, of similar import, to the same committee.

Also, two petitions of James C. Knox, A. B. Green, Daniel Eaton, J. W. Bates, and others, and Silas L. Snyder, George W. Brown, Alexander H. Campbell, O. S. Kenyon, and others, of New York, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

By Mr. MORGAN: The petition of M. A. Gill, J. M. Gill, and 20 other citizens of Sarcoxie, Jasper County, Missouri, of similar import, to the same committee.

By Mr. NEW: The petition of citizens of Indiana, of similar import, to the same committee.

By Mr. O'NEILL: The petition of citizens of Philadelphia, for the repeal of the law limiting the time for applications for pensions and preventing the payment of arrears of pension, to the Committee on Invalid Pensions.

By Mr. PAGE: Memorial of Ed. F. Tyler, of Sacramento, California, that soldiers be granted additional bounty-land warrants, to the Committee on Public Lands.

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

By Mr. WALSH: The petition of Enos Ray, Alfred Ray, B. C. King, Henry Hoyle, J. W. Barker, W. B. Beall, and A. G. Osborn, trustees of Emory church, Brightwood, District of Columbia, for compensation for the use and occupation of said church property by the United States Army and for wood taken and used by said Army, to the Committee on War Claims.

By Mr. WELLS, of Missouri: Remonstrance of citizens of Missouri, against granting permission to build a bridge over the Missouri River at or near Glasgow, to the Committee on Commerce.

By Mr. WILLIAMS, of New York: The petition of E. W. Hunt, M. N. Nichols, and others, for cheap telegraphy, to the Committee on the Post-Office and Post-Roads.

IN SENATE.

THURSDAY, *February* 1, 1877.

The Senate met at eleven o'clock a. m. Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

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

HOUSE BILL REFERRED.

The bill (H. R. No. 3370) to amend the statutes in relation to damages for infringement of patents, and for other purposes, was read twice by its title and referred to the Committee on Patents.

REPORT OF DISTRICT BOARD OF HEALTH.

The PRESIDENT *pro tempore* laid before the Senate the following concurrent resolution from the House of Representatives; which was referred to the Committee on Printing:

Resolved by the House of Representatives, (the Senate concurring,) That 1,000 extra copies of the report of the board of health of the District of Columbia for the year 1876 be printed for use and distribution by said board.

DISTRICT POLICE COMMISSIONERS—VETO MESSAGE.

The PRESIDENT *pro tempore* laid before the Senate the action of the House of Representatives upon the bill (H. R. No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia; which was read, as follows:

IN THE HOUSE OF REPRESENTATIVES,
January 30, 1877.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the commissioners of the District of Columbia," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same, and it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

GEORGE M. ADAMS, *Clerk.*

Mr. EDMUNDS. I move that the bill and message be referred to the Committee on the District of Columbia.

The motion was agreed to.

PROCEEDINGS OF ELECTORAL COMMISSION.

Mr. EDMUNDS. I ask unanimous consent out of order, for the reason that I am obliged to leave the Chamber, to offer the following resolution, and I ask for its present consideration:

Resolved by the Senate, (the House of Representatives concurring,) That the public proceedings of the electoral commission appointed under the act of Congress approved January 29, 1877, as taken down under the direction of the commission, be printed in the CONGRESSIONAL RECORD; and also that a number of copies of the same, equal to the number of copies of the RECORD and of uniform size therewith, be printed separately; 500 copies thereof for the use of the commission, and the residue for the use of the Senate and House of Representatives.

The Senate proceeded to consider the resolution.

Mr. MERRIMON. I beg to ask the Senator if that will embrace the debates before the commission?

Mr. EDMUNDS. Yes, sir; it is understood, just as the proceedings of the Senate it will embrace everything that takes place in public.

Mr. WRIGHT. I understand that it is contemplated by the resolution that all the proceedings shall be published and printed in the RECORD, and that the same proceedings shall be printed separately in uniform size. What is the object of having that done?

Mr. EDMUNDS. It was stated by several gentlemen in considering the subject that they desired to have, just as in the impeachment trials that have occurred, the daily RECORD containing the proceedings and also, as was done in the impeachments, a separate volume of the same size that should contain those proceedings and nothing else. That was the object. I am told that is the way that has been usual.

The resolution was agreed to.

GOVERNMENT OF SOUTH CAROLINA.

Mr. ROBERTSON. I present resolutions adopted at a mass-meeting of the white and colored voters of Barnwell County, South Carolina, which I ask may be read and referred to the Committee on Privileges and Elections. These resolutions were offered by Mr. E. Mercer Sumpter, a prominent colored man of that county, and unanimously adopted, a large number of colored men being present.

The PRESIDENT *pro tempore*. The resolution will be read if there be no objection.

The Chief Clerk proceeded to read as follows:

BARNWELL COURT HOUSE, SOUTH CAROLINA,
January 15, 1877.

At a mass-meeting of the citizens of Barnwell County, South Carolina, held this day at Barnwell Court House, the following resolutions submitted by Mr. E. Mercer Sumpter were unanimously adopted:

"*Resolved*, That the 700 colored voters who enrolled their names in the democratic clubs, and the 976 who cast their ballots for General Wade Hampton and the candidates on his ticket, did so to secure to their native State honest government and home rule, and to free her from the thieving government under which she has so long suffered, from corrupt carpet-baggers and infamous scalawags"——

Mr. SARGENT. I should like to inquire what the paper is and how it is before the Senate.

Mr. ROBERTSON. These are resolutions presented by a prominent