By Mr. HART: The petition of citizens of Penfield, New York, for the establishment of postal savings-banks—to the Committee on Banking and Currency.

Also, papers relating to the claim of John Thompson—to the Committee of Claims.

By Mr. HENDEE: The petition of J. S. Brown and Daniel Breed, relative to the bill providing for a form of government for the District of Columbia—to the Committee for the District of Columbia.

By Mr. HEWITT, of New York: The petition of J. O. Whitehouse, Magovern & Co., Alexander Studwell & Co., Lee & Co., and others, against the repeal of the bankrupt law as to involuntary bankruptcy—to the Committee on the Judiciary.

By Mr. HOUSE: The petition of J. W. Yeatman, professor of physics and chemistry in the University of Nashville, Tennessee, and others, that microscopical slides and lenses be allowed to be transmitted through the mails—to the Committee on the Post-Office and Post-Roads.

By Mr. HUNTON: The petition of the administrator of Lawrence Foster, for compensation for property taken by the United States Army—to the Committee on War Claims.

Also, (by request,) the petitions of R. E. Adams, Armstead M. Buffington, Henry E. Butts, Elzey Chamlin, William Clendening, John W. Demory, Sophia E. Demory, Thomas W. Dorrell, Philip Fry, Albert Green, John Grubb, jr., William Grubb, Edward Harding, Samuel Hough, Mary A. Jones, Benjamin Leslie, A. M. Miller, Emma R. Moore, agent, &c., E. Potts, E. H. Potts, F. M. Potts, Henry Reed, James W. Ridgway, Joseph L. Russell, Richard Tavenner, John H. Thompson, Tabitha Waters, and John F. W. Waters, all of Virginia, for compensation for stock driven off by order of General Sheridan—to the same committee.

By Mr. JOYCE: The petition of citizens of Vermont, against reviving the income tax—to the Committee of Ways and Means.

By Mr. LANDERS: The petition of G. H. Hoyt and 47 others, of Stamford, Connecticut, of similar import—to the same committee.

By Mr. LORING: The petition of L. B. Harrington and others, of Salem, Massachusetts, of similar import—to the same committee.

By Mr. MACKEY: The petition of Bernard Brady, for an increase of pension—to the Committee on Invalid Pensions.

By Mr. McMAHON: The petition of John R. Reynolds, for compensation for property purchased and taken by the United States Army—to the Committee on War Claims.

By Mr. MORSE: The petition of citizens of Boston, Massachusetts, against any tax upon incomes—to the Committee of Ways and Means.

By Mr. PHELPS: The petition of Edwin D. Judd, relating to a pending resolution regarding the pay of officers in the Army—to the Committee on Military Affairs.

Also, the petition of William S. Benjamin, of Salem, Connecticut, for a duplicate certificate of discharge from the First New York Marine Artillery—to the same committee.

By Mr. POTTER: The petition of Georgine Thomas, widow of General Charles Thomas, for a pension—to the Committee on Invalid Pensions.

By Mr. REILLY: The petition of James B. F. Randall, for an increase of pension—to the same committee.

By Mr. ROSS: Resolutions of the Legislature of New Jersey, opposing the transfer of the life-saving service to the Navy Department—to the Committee on Commerce.

By Mr. SCHLEICHER: The petition of S. P. Gambia, to be reimbursed for expenditures while postmaster at San Antonio, Texas—to the Committee on the Post-Office and Post-Roads.

By Mr. SHELLEY: The petition of citizens of Lowndes County, Alabama, for the creation of a fund from the proceeds of the sales of public lands and other sources for distribution among the several States in aid of popular education—to the Committee on Education and Labor.

By Mr. SINNICKSON: The petition of Edward S. Bettle and other citizens of Camden, New Jersey, against reviving the income tax—to the Committee of Ways and Means.

Also, the petition of the publisher of the Cape May (New Jersey) Wave, for the abolition of the duty on type—to the same committee.

By Mr. STEELE: The petition of the publisher of the Piedmont Press, Hickory, North Carolina, of similar import—to the same committee.

By Mr. TOWNSEND, of New York: The petition of Peter A. Allendorf, for compensation for the loss of potatoes through acts of officers of the United States Army, in 1864—to the Committee on War Claims.

By Mr. TOWNSHEND, of Illinois: A paper relating to the pension claim of George W. Long—to the Committee on Invalid Pensions.

By Mr. TURNEY: The petition of citizens of Greene County, Pennsylvania, for the immediate repeal of the resumption act; the remonetization and free coinage of the standard silver dollar of 412½ grains; the gradual but speedy withdrawal of all national-bank currency and the substitution of Government notes or greenbacks instead thereof to be made receivable for all debts, public and private; and that the bonds now held by the Government as security for national-bank notes shall be paid for in Government notes and destroyed—to the Committee on Banking and Currency.

Also, a petition of citizens of Greene County, Pennsylvania, against any reduction of the tariff on wool—to the Committee of Ways and Means.

By Mr. VANCE: Papers relating to the claims of Levi Jones and the heirs of John C. Garland—to the Committee on Military Affairs.

By Mr. WHITTHORNE: Papers relating to the claim of A. J. Reed—to the Committee on War Claims.

Also, the petition of H. S. Wetmore, for a pension—to the Committee on Invalid Pensions.

Also, the petitions of A. Osborne and 86 others, citizens of Iowa; of Manooh Metz and 78 others, citizens of Maryland; of W. J. Andrews and 35 other citizens of Tennessee; and of Will. M. Kellogg and 81 other citizens of Illinois, for the amendment of the postal laws so as to allow the transmission of living bees through the mails—to the Committee on the Post-Office and Post-Roads.

By Mr. WILLIAMS, of Alabama: The petition of citizens of Seale, Russell County, Alabama, for the creation of a fund from the proceeds of the sales of the public lands and other sources for distribution among the several States in aid of popular education—to the Committee on Education and Labor.

By Mr. WILLIAMS, of Delaware: The petition of citizens of Kent County, Delaware, for an appropriation for a preliminary survey of Misspillion River, in Kent County, Delaware—to the Committee on Commerce.

Also, the petition of 52 citizens of Wilmington, Delaware, against a tax on incomes—to the Committee of Ways and Means.

By Mr. WILLIS, of Kentucky: The petition of John T. Moore and other citizens of Louisville, Kentucky, of similar import—to the same committee.

Also, resolutions of a mass-meeting of citizens of Louisville, Kentucky, asking further financial legislation—to the Committee on Banking and Currency.

By Mr. YEATES: Papers relating to the war claim of Z. Roughton—to the Committee on War Claims.

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## IN SENATE.

### TUESDAY, *March* 26, 1878.

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

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

#### COST OF SIOUX WAR.

The VICE-PRESIDENT laid before the Senate a message of the President of the United States, transmitting, in answer to a resolution of the Senate of December 7, 1877, additional reports from the military division of the Missouri on the subject of the cost of the Sioux war; which was ordered to lie on the table and be printed.

#### INTERMENT OF HON. J. E. LEONARD.

The VICE-PRESIDENT laid before the Senate the following resolution received yesterday from the House of Representatives; which was read:

*Resolved by the House of Representatives, (the Senate concurring,)* That a special joint committee of six Representatives and three Senators be appointed to meet the body of Hon. JOHN EDWARDS LEONARD, late a Representative of Louisiana, upon its arrival at New York, and escort it to the place of interment at West Chester, Pennsylvania.

*Resolved*, That the Clerk of the House be directed to communicate this resolution to the Senate.

*Ordered*, That Mr. ELLIS of Louisiana, Mr. MULLER of New York, Mr. TURNER of Kentucky, Mr. STEWART of Minnesota, Mr. CALKINS of Indiana, and Mr. WARD of Pennsylvania, be the said committee on the part of the House.

Mr. EUSTIS. I move that the Senate concur in this resolution, and that the President of the Senate be authorized to appoint the committee on the part of the Senate for the purpose stated.

The motion was agreed to.

#### PETITIONS AND MEMORIALS.

Mr. KERNAN presented the petition of John R. Porter and others, members of the New York Bar Association, praying for an increase in the number of circuit judges in the second circuit, comprising the States of Vermont, Connecticut, and New York; which was referred to the Committee on the Judiciary.

Mr. KERNAN presented the petition of Ives, Beecher & Co., and others, merchants and wholesale liquor dealers in the city of New York, praying for the passage of the House bill extending the time that whisky may remain in bond; which was ordered to lie on the table.

Mr. BAYARD. I present the memorial of Edward Betts, Edward T. Bellah, and 50 others, citizens of Wilmington, Delaware, and including both political parties, remonstrating against the passage of an act imposing a tax on incomes. I move that it be referred to the Committee on Finance.

The motion was agreed to.

Mr. FERRY presented the memorial of Peter W. Hornbach and 146 others, citizens of Point Saint Ignace, Michigan, and vicinity, fishermen, remonstrating against the passage of House bill No. 3689, to establish a board of fish commissioners to regulate and protect the fisheries of the great lakes; which was ordered to lie on the table.

Mr. CAMERON, of Pennsylvania, presented the petition of Mary and Albert F. Lavalette, executors of the estate of Rear-Admiral Elie A. F. Lavalette, deceased, praying compensation for the use of and

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damage to their property while occupied by United States military authorities at Memphis, Tennessee, during the late war; which was referred to the Committee on Claims.

Mr. BLAINE presented the petition of Messrs. Nasmyth & Sons, of New York City, and Abner Stetson, of Damariscotta, Maine, owners of the ship Alleghanian, captured and sunk in the Chesapeake Bay in 1862 by armed boats under the command of John Taylor Wood, an officer of the confederate navy, praying to be remunerated for the loss of their ship from the unappropriated moneys of the Geneva award; which was referred to the Committee on the Judiciary.

Mr. McPHERSON presented a resolution of the board of free-holders of Hudson County, New Jersey, in favor of making Jersey City, in that State, a port of entry; which was referred to the Committee on Commerce.

Mr. VOORHEES presented the petition of Edward Lowery and others, citizens of Iowa, praying for the recognition by Congress of the claims of many pensioners who are sufferers by an unwise limitation law; which was referred to the Committee on Pensions.

Mr. OGLESBY presented a petition of J. W. Hall and 210 others, citizens of Fairmount, Illinois, praying for the repeal of the resumption act; which was referred to the Committee on Finance.

Mr. McMILLAN presented resolutions of the Chamber of Commerce, of Saint Paul, Minnesota, in favor of the passage of the bill introduced in the Senate by Mr. COCKRELL for the improvement of the navigation of the Mississippi River, and suggesting an amendment to the same so that the contemplated improvement will include the entire river from Saint Paul to the Gulf; which were referred to the Committee on Commerce.

Mr. THURMAN presented resolutions of the Board of Trade of Cleveland, Ohio, remonstrating against the proposed transfer of the life-saving service from the Treasury to the Navy Department; which were ordered to lie on the table.

He also presented a resolution adopted by the Ohio State grange, Patrons of Husbandry, protesting against any reduction of duties on wool or woolen goods; which was referred to the Committee on Finance.

Mr. SARGENT. I ask leave of the Senate to present with a little care an important petition from certain of my constituents. I will not occupy its time long, but I should like to have the Senate understand the grounds of the relief for which the petitioners pray. Like many of the memorials from California it is addressed to the delegations in both Houses, and it commences:

The undersigned, your immediate constituents, would respectfully represent that we are residents of the town of Truckee and of other places near the summit of the Sierra Nevada Mountains, or are engaged in business at such places; that we are citizens of the United States; that we were formerly residents of Maine, New Hampshire, Wisconsin, and Michigan, and other timber States of this Union; that most of us were educated to the business of logging and of cutting up timber by saw-mills.

We would further represent that when the grant was made to the Central Pacific Railroad Company many of us were induced to take contracts for the supplying of ties, bridge-timber, and other timber and wood necessary in the construction of that road; that we were informed that the act making the grant to the railroad company gave the privilege to said company and employés to take timber, wood, stone, or other material for said construction from any of the public lands of the United States.

That was a provision of that legislation.

Under contracts with this company some of us erected saw-mills and supplied the timber necessary for the construction of said road; that there was required and used in such construction, and in the erection of about forty miles of snow-sheds, an amount of timber estimated at about three hundred millions of feet; that there has been required to keep said road in repair and to rebuild the snow-sheds an amount of timber annually of about twenty millions of feet; that all this timber has been supplied from the slopes of the said Sierra Nevada Mountains. Before the road was completed, the silver mines of Nevada were so far developed as to require for timbering seventy millions of feet of square timber annually.

The construction of the road through Nevada and Utah developed other mines, which required, in addition, six millions of feet annually. Besides this, Nevada not being a timber State, all the supplies of lumber for the construction of towns in that State also came from the Sierra Nevadas. When, by the completion of the railroad, the right to cut timber on public lands for the purpose of construction ceased, the undersigned, and others interested in the lumber trade, applied to our Representatives in Congress for the passage of some act under which we might obtain title and pay the Government for these timber lands, so as to obtain sufficient quantity to continue our business and supply the necessitous demands of this section of the country. We found that there was no way under the law to obtain title to timber lands except under the pre-emption and homestead laws, and these were understood as designed especially for settlers whose object is to cultivate the land. But the soil at this great elevation in the Sierra Nevadas is unfitted for agricultural purposes, and is covered each year for more than six months by snow. An attempt, therefore, to take such lands under the pre-emption or homestead law would be a delusion and a fraud, and a possible premium on perjury. We therefore petitioned our Representatives in Congress for the passage of some law by which title could be obtained legitimately to these lands, so that, as law-abiding and loyal citizens, we might pursue our occupations, build up our homes, establish churches and schools, and train our children in habits of industry, loyalty, and virtue.

All our efforts were in vain. No such law was passed.

I should like to say upon that matter that a bill answering the desire of these petitioners passed the House in the Forty-first Congress and again in the Forty-third Congress, and the identical bill passed the Senate in the Forty-fourth Congress; so that each House has once passed a bill for the relief of these parties and one House has passed it twice. A bill similar in its provisions, almost identical with it, I have introduced at the present session and sent to the Committee on Public Lands.

Still, being desirous of following our occupations, (the greater portion of the undersigned being unfitted for any other,) some of us purchased portions of the odd-numbered sections of timber land granted to the railroad company, and supplied the annual demand from this resource. When the act known as the "soldiers' additional homestead act" was passed many of us, in good faith, invested in the purchase of these claims a great portion of our means, and caused the same to be located on the lands contained in even-numbered sections, which, in many cases, were lands adjoining those we had purchased from the railroad company.

After some months, when the papers relating to these additional homesteads reached the General Land Office at Washington, the parties making the locations of these claims learned to their dismay that most of them were fraudulent, and that they had been swindled out of the money invested in them. Those of us who are lumbermen have also found that there has been a grievous misapprehension as to the rights of pre-emptors and homestead settlers in the matter of cutting and removing timber from the lands on which they have settled. It is charged that in some instances these settlers have cut and removed timber from these claims and sold the same to the proprietors of the saw-mills, and that these purchasers are responsible for the alleged violation of law on the part of the settler. The settler may have acted in good faith, supposing he had the right to the timber. We do not charge the fact to be otherwise; but we do say that those of us who bought the timber understood that the settler owned the land and timber, and had the right to sell the same. We certainly acted in good faith, and without any intention of violating any law of the United States. We find, however, that under a strict construction of the law, and without a full knowledge of all the facts, the grand jury of the United States, sitting at San Francisco, has indicted some of us for cutting, and causing to be cut, and removing, and causing to be removed, timber from these lands of the United States.

The indictments in these cases appear to be founded on section 2461 of the Revised Statutes of the United States, and under section 4751 of the same statutes the severe pecuniary penalties denounced by the former section are to be distributed, one-half to the informer and the other half to the Navy pension fund. This great inducement to the informer is believed to be at the bottom of this prosecution, and, if permitted to further direct the action of the Government in these and other cases, must necessarily ruin thousands of industrious, law-abiding people, for the benefit of a system of espionage foreign to the principles of our form of government.

Now, although we had no knowledge of any violation of law, and certainly no intention to deal with parties that had committed trespass or violated the law, we are nevertheless, under these indictments, liable to imprisonment and to pay fines aggregating a half million of dollars, and, in addition to this, subject to civil suits for the value of the timber cut. These indictments have paralyzed all business in the mountains. If pressed it will stop the business of mining in Nevada, stop the construction of dwellings, mills, and other structures in the State of Nevada and Utah, and involve all classes in a general ruin. If title to timber lands on the Sierras cannot be obtained except by pre-emption, and the seeming perjury necessary to take these as agricultural lands, this section of the Union must revert to its original state of barbarism.

If we are to be fined and imprisoned, our mills and logging teams confiscated, leaving our wives and children to starve in their cabins in the snow in the Sierras, because our Government will not provide the means by which a necessary, honest, and legitimate business may be pursued and the improvement and development of the country continued, we can only regret our fate, and hope that the next generation may be blessed with more enlightened legislation. With honest intentions, as law-abiding citizens, with wives and children looking to us for support and maintenance, cheerfully paying all taxes and assessments for the support of the Government of the United States, the State, and county, and readily contributing to the support of churches and schools for the advancement of morals and the upholding of civilization, in good faith believing we were complying with the law and acting legitimately, we have engaged in our various pursuits.

Some of us have invested our means in good faith and with a desire to acquire title to some of these timber lands, and what is the result? We have been defrauded out of most of the money so invested; we have been indicted for an alleged violation of law; ruin stares us in the face; the stigma of offenders against the laws of the United States threatens to attach to our names and to the names of our children. We do not know where to turn for relief from this great wrong but to you.

We therefore ask that you will cause a special act to be immediately passed for relief, not merely for us individually, but for this community and its important interests, providing, in substance, that the open timber lands on the Sierra Nevada Mountains be duly segregated, and that those of us who may desire be allowed to purchase the same at a reasonable price; that the parties indicted or subject to be indicted for trespass on said lands may, upon any trial for such offense, whether civil or criminal, be allowed to show that they have entered and paid for such lands, and that the receipt of the proper officer of the Government showing such payment shall be a bar to further proceedings, and such cases shall thereupon be dismissed.

We further ask that in all cases where other claims, under the present laws of the United States, have so far intervened as to vest title in others than those who have committed trespass, that the parties committing such trespass shall be allowed to settle all liabilities by the payment to the Government of a reasonable stumpage, not exceeding the acreage price of the land.

Mr. President, this is really a very hard case. It appeals to the justice and sympathies of Congress. These men have tried for years to buy this land. Under a mistaken policy, Congress supposing it could be taken up under the pre-emption and homestead laws, both Houses have neglected at the same time to pass a bill for their relief. We passed a bill authorizing an additional soldiers' homestead. They invested their money in those claims only to find they had been swindled out of it and that the claims were fraudulent. They tried to take them under the pre-emption and homestead laws and were refused in that. Their industry has supplied the timber necessary to carry on the great mines. The Bonanza mines would shut down to-morrow if it were not for this industry. The Bonanza mines, with their shafts and drifts two thousand feet deep, hold up with their solid timbering Mount Davidson as Atlas was fabled to hold up the earth. The timbers, as large and square as these desks, are put close together in the worked-out drifts, layer on layer, but so great is the pressure of the overhanging mountain that these solid layers of timber are ground to powder, and shafts are closed up unless constantly retimbered. The working of these great mines would have to be entirely abandoned if they could not obtain the timber from the Sierra Nevada Mountains. The only way they can obtain it is through this milling industry.

Furthermore, all the farming industry, all the residences throughout the mountains, and I might say those in San Francisco and throughout the State, are supplied by this industry. It is an actual necessity for the existence of the State and for the existence of the State of Nevada, at any rate as a mining community.

Now, they have exhausted every possible means in their power by

appealing to Congress for their relief. A bill answering their purposes, paying the Government the highest price it had ever charged for land, is now before the Committee on Public Lands of the Senate, and I do hope, I do plead, that the prayer of these men may be granted, and that they may be relieved upon the payment of the acreage price of the land from this prosecution which they could not avoid for pursuing an industry which they supposed they had a right to carry on. They are indicted under peculiar circumstances, relieving them certainly from the charge of being timber thieves or plunderers, because they supposed that where a man took up the land under pre-emption he had a right to clear it for the purpose of tillage, as the man also believed who took up the land under the pre-emption act. These men indicted are the ones who bought of the men who cut the timber under the pre-emption, and by a decision of the Department they had no right to cut the timber, so that thus without any intention on their part they find themselves by a construction of law, probably correct, entrapped and indicted. A large number of citizens of the State have united with them in these prayers. The petition presented in the other House was signed by the governor of the State and a large number of the State officers, the registers and receivers of the land office, &c., agreeing with this petition, and by many of our best and most careful citizens of the State. The petition which I hold in my hand contains this private indorsement in writing from a large number of citizens, some of whom are personally known to me as men of high character, as follows:

The undersigned, citizens of California, doing business in said State, and deeply interested in matters relating to its prosperity and the welfare of its people, and being intimately acquainted with the persons who have already been indicted, and whom we know to be loyal and good citizens, respectfully urge that such measures should be immediately adopted in accordance with the prayer of this petition as will secure the Government and at the same time protect the accused and our citizens from present and further prosecutions and litigations, criminal or civil.

I would even venture longer upon the patience of the Senate, which has been so kind in this instance to give me so much time, provided I could add anything to the eloquence of the petitioners and the facts which they present. I move that this petition be referred to the Committee on Public Lands, and I really hope that the committee will give us an early report.

The motion was agreed to.

Mr. SARGENT. I present the petition of a large number of citizens of Pennsylvania, praying Congress to take steps to amend the Federal Constitution by adding the following article:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

I move the reference of this petition to the Committee on Privileges and Elections.

The motion was agreed to.

EXECUTIVE COMMUNICATION.

The VICE-PRESIDENT laid before the Senate a letter from the Secretary of War, recommending the repeal of section 1233 of the Revised Statutes; which was referred to the Committee on Military Affairs, and ordered to be printed.

REPORTS OF COMMITTEES.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the bill (S. No. 281) for the relief of Captain Gaines Lawson, of the United States Army, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. PLUMB, from the Committee on Military Affairs, to whom was referred the bill (S. No. 644) for the relief of Dwight W. Hakes, reported it without amendment, and submitted a report thereon, which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 713) for the relief of Martin Clark, reported it with an amendment, and submitted a report thereon, which was ordered to be printed.

He also, from the Committee on Public Lands, to whom was referred the bill (S. No. 859) for the relief of Charles L. Davenport, reported it without amendment, and submitted a report thereon, which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 801) to amend section 2403 of the Revised Statutes of the United States, in relation to deposits for surveys, reported it with an amendment, and submitted a report thereon, which was ordered to be printed.

Mr. BURNSIDE, from the Committee on Military Affairs, to whom was referred the bill (S. No. 741) for the relief of Christopher H. McNally, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 260) for the relief of H. A. Myers, reported it with an amendment, and submitted a report thereon, which was ordered to he printed.

He also, from the same committee, to whom was referred the bill (S. No. 334) for the relief of William Bowlin, late of Company L, Second Arkansas Cavalry, reported it with an amendment, and submitted a report thereon, which was ordered to be printed.

Mr. BRUCE, from the Committee on Pensions, to whom was referred the bill (S. No. 454) granting a pension to Stephen C. Herndon, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. HAMLIN. The Committee on Foreign Relations, to whom were referred a memorial of merchants and others in the Chamber of Commerce in the city of New York; a memorial of the Boylston Insurance Company and others, merchants of Boston; and a memorial of Philip & Thomas Collins, merchants of Pennsylvania and others, and memorials of various other parties; and also a communication from the Secretary of State, recommending the re-establishment of our diplomatic relations with the State of Colombia, have directed me to report the same, and ask to be discharged from their consideration. The committee, however, are favorable to the restoration of diplomatic relations with that government, and had prepared an amendment to be offered to the diplomatic bill, but the Committee on Appropriations wisely, as the Committee on Foreign Relations believe, have anticipated our action and have prepared such an amendment to the bill. On behalf of the Committee on Foreign Relations, therefore, I move that they be discharged from the further consideration of these memorials.

The motion was agreed to.

Mr. WALLACE, from the Committee on Foreign Relations, to whom was referred the bill (H. R. No. 923) supplementary to the act entitled "An act to carry into effect the convention between the United States and China, concluded on the 8th day of November, 1858, at Shanghai," approved March 3, 1859, and to give the Court of Claims jurisdiction in certain cases, reported it with amendments, and submitted a report thereon; which was ordered to be printed.

He also, from the Committee on Finance, to whom was referred the bill (S. No. 55) for the relief of John W. Douglass, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. MAXEY, from the Committee on Military Affairs, to whom was referred the bill (S. No. 604) for the relief of John Bowles, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 161) for the relief of Charles W. Biese, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. CHRISTIANCY. I am instructed by the majority of the Committee on the Judiciary to report back the bill (S. No. 35) to repeal the bankrupt law, and I wish to say in behalf of some members of the committee who have united in the report that an honest effort has been made for some time past to see if some amendments could not be adopted which would render the act satisfactory to the public; but in that effort it has been found that the opinions are so opposed to each other that it has been impracticable to agree upon any system of amendments; and yet some members who unite in the report do not wish to have the report made with any recommendation. For one member of the committee, I will say that I have all along been in favor of the entire repeal, saving all rights in actions pending; but as other members of the committee do not now wish to commit themselves by a recommendation, I move that the bill be placed on the Calendar.

The VICE-PRESIDENT. The bill will be placed on the Calendar

BILLS INTRODUCED.

Mr. OGLESBY. By the request of a citizen of the District of Columbia, I ask leave to introduce a bill.

By unanimous consent, leave was granted to introduce a bill (S. No. 991) to legalize a suit now pending in the supreme court of the District of Columbia between the eastern and western Cherokee Indians, and for other purposes; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. MORGAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 992) for the relief of Columbus F. Perry and Elizabeth H. Gilmer, of Chambers County, Alabama; which was read twice by its title, and referred to the Committee on Finance.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 993) for the relief of Murphy Jones, Lizzie Massie, and Fanny Thames; which was read twice by its title, and referred to the Committee on Claims.

Mr. JOHNSTON (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 994) for the relief of Albert Ordway; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. BAILEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 995) for the relief of T. A. Kendig; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 996) granting a pension to Edmund Woog; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

ACCOUNTS OF INTERNAL-REVENUE COLLECTORS.

Mr. DAVIS, of West Virginia, submitted the following resolution; which was ordered to lie on the table and be printed:

Whereas on the 18th day of February, 1871, the Secretary of the Treasury, in obedience to a resolution of the House of Representatives, adopted December 13,

1870, made a statement (Executive Document 140, third session, Forty-first Congress) showing balances due from collectors of internal revenue who were out of office on the 30th day of June, 1870, from which it appears there was due on that day from collectors not in office the sum of $20,700,983.33: Therefore,

*Be it resolved*, That the Secretary of the Treasury be, and he is hereby, directed to report to the Senate what amount or portion of this sum has been since collected and paid into the Treasury; what amount, if any, has been settled by compromise, and the facts touching each compromise made, by whom recommended, and the amount realized; what amount or portion of said sum of $20,700,983.33 remains unpaid, and, if any balance is still due, what steps have been taken to enforce payment of the same. Also to report the amounts due by internal-revenue collectors on the 1st day of July, 1875, and how much, if any, of such amounts remain unpaid.

THE M'GARRAHAN CLAIM.

On motion of Mr. OGLESBY, it was

*Ordered*, That there be printed for the use of the Senate the testimony taken before the Committee on Public Lands, having under consideration the memorial of William McGarrahan for relief.

SENATOR FROM SOUTH CAROLINA.

Mr. CAMERON, of Wisconsin. Some time ago I presented the petition of Mr. D. T. Corbin, of South Carolina, touching the matter of his claim to a seat in this body. The petition at my request was laid on the table. I now move that the petition be taken from the table and referred to the Committee on Privileges and Elections.

The motion was agreed to.

THE FISHERIES COMMISSION.

Mr. BLAINE. I move, Mr. President, that the correspondence between the American and British Governments in regard to the appointment of Mr. Delfosse on the Halifax commission be taken from the table and referred to the Committee on Foreign Affairs. I beg at the same time to call the attention of the Senate to the fact that the correspondence more than justifies all I said in regard to the very extraordinary efforts of Lord Granville to force Mr. Delfosse upon our Government. I would particularly direct attention to the letter of Sir Edward Thornton, of August 19, 1873, and to Mr. Fish's reply on the 21st of the same month.

When the resolution calling for this correspondence was before the Senate, I agreed with my honorable colleague, the chairman of the Committee on Foreign Affairs, that the award would be paid, not because it was just or was founded upon any fact or evidence submitted to the Halifax commission, but simply because it was an award which for honor's sake we might pay though we got nothing for the large sum required. And if the payment of five and a half millions were the end of the matter I should be willing to vote it in silence and bury the whole matter out of sight. But the truth is that this award is only the beginning of trouble. The period for which it pays will be ended in five years and then our privilege for inshore fishing must be negotiated afresh. It was well known at Halifax during the session of the commission that the Canadian authorities were striving not simply for the large sum in hand but for the fixing of a rate by which to assess the price of the inshore fisheries in future. It is our duty to show that the rate fixed by the Halifax commission has no foundation whatever in truth or in fact and that no evidence was before the commission to justify the award. I hold in my hand some statistics of very great interest bearing on the question, from which it appears that the total value of the catch in the inshore fisheries by American fisherman during the four years the treaty has been in operation was only $435,170, on which the profit was probably $100,000. This covers the entire catch for which we obtained the right under the treaty. During the same four years the duties on Canadian fish and oil remitted by our Government amounted to a million and a half of dollars in gold, and now under this treaty we are compelled to pay half a million per annum in addition or two millions of dollars in gold coin for the four years. In other words, by remission of duties and the payment of cash from the Treasury our Government is called upon to pay three and a half millions of dollars in gold coin for the privilege of permitting our fishermen to make a profit of $100,000 on the inshore fisheries of Nova Scotia.

Considerable comment has been made in the country on the point suggested by me that the Washington treaty required the unanimous verdict of the Halifax commissioners before a legally valid award could be made. I quoted some eminent English authorities in support of this position. Since then a friend has shown me a copy of the London Times of July 6, 1877, containing an elaborate editorial article in regard to the fishery commission then about to assemble in Halifax. In discussing the powers of the commission, the Times said:

> On every point that comes before the fishery commission for decision the unanimous consent of all its members is, by the terms of the treaty, necessary before an authoritative verdict can be given.

And the Times then points out the difference between the Geneva tribunal and the Halifax commission, showing that a majority could decide at Geneva but affirming that the United States would have a perfect right to demand unanimity in the verdict at Halifax.

It is also well known that the Halifax commission was discussed by the Canadian ministry in 1875, after the negotiations for a reciprocity treaty had failed. On that occasion Mr. Blake, the minister of justice, remarked that the "amount of compensation we shall receive must be an amount unanimously agreed upon by the commissioners." I mention these facts to show that I spoke with full authority when I suggested that the verdict rendered at Halifax was not legally binding under the terms of the treaty. Its payment must be justified on other grounds, and I have already intimated more than once that considerations entirely outside of the legality or the justice of the award might constrain us to assent to its payment. But it should never be paid without such protest as will forever prevent its being quoted as a precedent or accepted as a standard to measure the value of the inshore fisheries in future negotiations.

The motion was agreed to.

ARMS TO THE MILITIA.

Mr. COKE. I ask that the bill (S. No. 104) amending section 1661, title 16, (The Militia,) of the Revised Statutes of the United States be made the special order for Monday next after the morning hour. The bill was reported from the Committee on Military Affairs by my colleague, [Mr. MAXEY.]

The VICE-PRESIDENT. Is there objection to the request of the Senator from Texas?

Mr. MORRILL. The reading of the title of the bill does not indicate what the subject is at all.

The VICE-PRESIDENT. The bill will be reported at length, or so much of it as may be necessary to give the information desired.

The bill was read.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Texas? The Chair hears none, and the order will be entered.

Mr. COKE. I ask permission to offer an amendment to the bill as it has been reported by the committee; and I move that the amendment be printed.

The amendment was received and ordered to be printed.

TAX ON DISTILLED SPIRITS.

Mr. BAYARD. I am instructed by the Committee on Finance, to whom was referred the joint resolution (H. R. No. 133) to prescribe the time for the payment of the tax on distilled spirits, and for other purposes, to report it back without amendment. I ask for its present consideration.

Mr. HARRIS. I inquire if the bill (S. No. 855) for the relief of Warren Mitchell, which was under consideration at the expiration of the morning hour yesterday, does not come up as the unfinished business?

The VICE-PRESIDENT. There is no unfinished business in the morning hour. The only unfinished business is that which was pending at the adjournment of the Senate. The Secretary will report at length the joint resolution reported by the Senator from Delaware.

The joint resolution was read.

The VICE-PRESIDENT. Is there objection to the present consideration of this resolution? The Chair hears none and it is before the Senate as in Committee of the Whole.

The joint resolution provides that the tax on all distilled spirits hereafter entered for deposit in distillery warehouses shall be due and payable before and at the time the same are withdrawn therefrom, and within three years from the date of the entry for deposit therein; and warehousing bonds hereafter taken under the provisions of section 3293 of the Revised Statutes of the United States shall be conditioned for the payment of the tax on the spirits as specified in the entry, and the interest on the tax, if any has accrued under the provisions of this resolution, before removal from the distillery warehouse, and within three years from the date of the bonds.

The time within which distilled spirits heretofore entered for deposit in distillery warehouses are required to be withdrawn therefrom pursuant to the conditions of any warehousing bond, taken within one year prior to the passage of this resolution, upon the entry of such spirits into warehouse under the provisions of section 3293 of the Revised Statutes, shall, on written request being made, be extended for a period not exceeding three years from the date of the entry of such spirits into the warehouse; but such extension shall not be made in any case unless there shall be indorsed upon, or appended to, the warehousing bond a written request therefor, and an acknowledgment of their liability, under the terms of the bond, for the period for which the extension is granted, together with interest on the tax, if any has accrued under the provisions of the resolution, as if the same were inserted in the body of the bond, to be duly executed by the principal and sureties in the bond, and acknowledged by each of them before a collector or deputy collector of internal revenue, or some other officer authorized by law to take the acknowledgment of deeds; and the sureties on the bond are to be, at the time of such request, satisfactory to the collector, and, if not satisfactory, or if the sureties shall refuse to make the request and acknowledgment required an additional or new warehousing bond, with sureties satisfactory to the collector, shall be given.

In case of the non-payment of the tax on any distilled spirits within one year from the date of the original warehousing bond for such spirits, interest shall accrue upon the tax at the rate of 5 per cent. per annum from and after the expiration of the year until the tax shall be paid.

The joint resolution was reported to the Senate without amendment.

Mr. CONKLING. Is this resolution reported by the Committee on Finance?

The VICE-PRESIDENT. The Chair so understands. It has been so stated by the Senator from Delaware.

Mr. BAYARD. Yes, sir.

The joint resolution was ordered to a third reading, and read the third time.

Mr. MORRILL. Mr. President, this resolution received the consideration of the Committee on Finance and it is reported favorably. At the same time I feel it my duty to say that I am somewhat doubtful whether the resolution will do more good than harm. It will delay the receipt of taxes to a considerable amount in the Treasury Department. At the same time there seems to be a very pressing demand for its immediate passage. There are, as it was stated by the Commissioner of Internal Revenue, some five or six million gallons of spirits that are now in bond that are likely to be seized for non-payment of duties by the United States and sold at an immense sacrifice. Under the circumstances I do not desire to interpose against the passage of the measure, while I am extremely doubtful whether it will prove beneficial or not.

The joint resolution was passed.

FORT FETTERMAN MILITARY RESERVATION.

Mr. PLUMB. I move to proceed to the consideration of Senate bill No. 901.

The motion was agreed to; and the bill (S. No. 901) to authorize the Secretary of War to relinquish certain portions of the United States military reservation of Fort Fetterman, Wyoming Territory, was considered as in Committee of the Whole. It authorizes the Secretary of War to relinquish and transfer to the custody and control of the Secretary of the Interior, for disposition under the existing laws of the United States relating to the public lands, such portions of the reservation at Fort Fetterman, in the Territory of Wyoming, as may no longer be required for military purposes, together with the whole of the old "wood and timber" reservation near that post, declared by executive order dated August 29, 1872.

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

JOSIAH H. PILLSBURY.

Mr. KIRKWOOD. I move to take up for present consideration Senate bill No. 659.

The motion was agreed to; and the bill (S. No. 659) for the relief of Josiah H. Pillsbury was considered as in Committee of the Whole. It provides for the payment to Josiah H. Pillsbury, postmaster at Manhattan, Kansas, of $476.96, of which he was robbed on the night of the 28th of June, 1877, and which he has accounted for to the Government, the robbery having occurred without neglect or other fault on his part.

The Committee on Post-Offices and Post-Roads reported the bill with an amendment in line 5, after the words "sum of," to strike out "$476.96 being the amount of post-office funds," and insert "$323.95."

Mr. KERNAN. Is there a written report?

The VICE-PRESIDENT. There is.

Mr. KERNAN. Let it be read.

The Chief Clerk read the following report, submitted by Mr. KIRKWOOD on the 4th instant:

The Committee on Post-Offices and Post-Roads, to which was referred the bill (S. No. 659) for the relief of Josiah H. Pillsbury, have considered the same, and report:

That said Pillsbury, on the 28th day of June, 1877, was, and yet is, postmaster at Manhattan, Riley County, Kansas; that on the night of that day the post-office at Manhattan was entered by burglars, the safe therein, in which were kept the moneys and stamps of the Post-Office Department, and registered letters, was broken open and robbed of money-order funds, postal funds, and registered letters, containing money to the amount of about $476.96, which amount the postmaster has since made good to the Department.

The special agent sent by the Post-Office Department to investigate the matter reports, among other things, as follows:

"The post-office is kept in a frame building in the principal business street, and was entered by the robbers through a side window near the back part of the room in which the office is kept. The safe used by the postmaster is one of Hall's patent combination four-tumbler locks, and weighs about seven hundred pounds, and was entered by means of a sledge-hammer weighing ten and three-quarter pounds. * * * Mr. Pillsbury, the postmaster, is considered by the citizens of Manhattan as a very worthy and careful postmaster, and I am satisfied that he took the same care of the Government property that he did of his own."

It also appears that the safe broken open and robbed was furnished by the postmaster at his own expense, and was such a one as the Government furnishes to second-class officers.

Mr. Pillsbury, immediately after the robbery, gave notice thereof to the proper officer of the Department, and promptly paid over the amount of money stolen.

The post-office at Mathattan is of the third class; the population of the town is about twelve hundred; and it contains two private banks, but no national bank.

In his report the special agent says:

"While Mr. Pillsbury took every precaution, under the circumstances, to secure the door and window of said post-office, yet I am of the opinion it was very unsafe to risk $500 in money and valuable letters, not knowing the value of contents, in a safe which was not burglar-proof, in a frame building which was not occupied by any one at night. Mr. Pillsbury being the custodian of public money and Government property, and being paid for the care of said money and property, did not show any desire to shirk the responsibility resting upon him, but paid the losses reported herein."

The same report shows that of the amount stolen $288.40 was money-order funds, $155 postal funds in money, and $35.55 contents of registered letters.

Your committee are of the opinion that, upon these facts, the postmaster should be reimbursed the amount of money-order funds and the amount contained in registered letters, and that he should not be reimbursed the amount of postal funds. They therefore propose to amend the bill by striking out, in lines 5, 6, and 7, the words "four hundred and seventy-six dollars and ninety-six cents, being the amount of post-office funds," and inserting in lieu thereof the words "three hundred and twenty-three dollars and ninety-five cents;" and recommend that the bill, so amended, be passed.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

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

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his Secretaries, announced that the President had on the 25th instant approved and signed the joint resolution (S. R. No. 21) filling an existing vacancy in the Board of Regents of the Smithsonian Institution.

The message also announced that the President had this day approved and signed the act (S. No. 611) to extend the charter of the Franklin Insurance Company of the City of Washington.

THE PACIFIC RAILROADS.

The VICE-PRESIDENT. The morning hour has expired, and the Senate now proceeds to the consideration of its unfinished business, being the bill (S. No. 15) 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, on which the Senator from North Carolina [Mr. MERRIMON] is entitled to the floor.

Mr. MERRIMON. Mr. President, I am without motive and I am not conscious of any desire to deprive the railroad companies mentioned in the pending bill of any measure of justice to which they may be fairly entitled, or to impose upon them any unreasonable burdens. I am willing that they shall have all which of right belongs to them. In my efforts to learn what their rights are in their relations to the Government, I wish to pay due regard to the rights and interests of the latter, and I will not allow my judgment and my action to be controlled by empty declamation, false notions of public generosity, and a misapprehension of facts and law. Nor will I consent to be driven into the support of one measure and from the support of another, by oft-repeated threats, whether made in or out of this Chamber, of long-protracted and expensive litigation. My fixed purpose is, to seek and find the pathway of truth, justice, and sound policy and to walk steadily in it, trusting confidently that fruitful and wholesome results will follow.

The corporations named, now as in the past, assert with defiant confidence and insolent self-sufficiency what they and their friends are pleased to call their rights and advantages as against the Government. It is pertinent and worth while to inquire with some particularity into the merits of the claims and pretensions of these corporations and the conduct and practices of those who control them and see whether or not these are really meritorious and well founded; or whether, on the contrary, the controlling corporators have been and are for the most part utterly without merit; have grossly and persistently perverted and prostituted their corporate powers and perpetrated stupendous frauds upon the Government, and thereby unjustly and greatly enriched themselves and others at the expense of the people of the Union. In my judgment, it is not only pertinent, but likewise very important to make these inquiries and learn the spirit and practices of these corporations from the beginning of their existence down to the present time, in order that we may learn and appreciate the absolute necessity for the adoption of the measure proposed by the Committee on the Judiciary, or one more stringent, if upon due inquiry the Constitution and the state of the law will allow of it. In view of the vast interests of the Government and the people, pecuniarily and otherwise, involved in the subject before the Senate, I must be pardoned for expressing my surprise that the committee in their report have failed to call attention specially to the practices of these corporations. I undertake to say and shall briefly endeavor to show, that these have been monstrous, without a parallel in this or any country, and shocking to the moral sense of the American people.

Mr. President, I do not question the usefulness, the public benefits derived from and the general importance of corporations. They serve great purposes in the economy of society, and have contributed largely, within the last century, to the advancement of civilization and the promotion of the prosperity and happiness of mankind. They are the chief means for organizing and making efficient co-operative effort in the employment of capital and labor. Through them capital is aggregated, organized, consolidated, and brought within the control of small numbers of intelligent and powerful, unhappily, sometimes, very corrupt men, and thus it is made effective for great good, too often for evil. But if they have vast capabilities for the advancement of the prosperity of great communities, they likewise afford opportunity to do, and often do them, great harm. Their history shows that, uniformly, when they are unregulated, unrestrained, and uncontrolled by the strong arm of Government they corrupt public men, foster and establish burdensome monopolies, and often become tremendous engines of illicit power and wide-spread oppression. Through such instrumentalities, the cupidity and avarice of designing men achieve their most signal triumphs.

In this country corporations have multiplied wonderfully within the last fifty years. They may be numbered by the thousand, and they embrace nearly every branch of industry and business, and embody the great mass of capital. Well authenticated statistics show

that there are now in the United States more than two thousand national banks, all corporations embodying and controlling nearly $2,000,000,000, more than forty-five hundred banks, most of them corporations other than national banks, aggregating $225,000,000 of capital stock, and deposits amounting to more than $1,350,000,000; that there are more than fifteen hundred railroad corporations embodying and controlling $5,000,000,000. There are several thousand other manufacturing and business corporations that control several hundreds of millions of dollars. That a large percentage of this vast number of corporations, embracing some of the largest and most influential, have not been wisely and sufficiently guarded and restrained by law; that they have in many instances prostituted their corporate powers for their own illicit gain, and to the grievous detriment of the Government, State and Federal, and the people generally; that they have unduly and arbitrarily combined and confederated to direct and control industries, trade, travel, and commerce; that they have virtually destroyed the trade of one town or locality in order to build up another to serve selfish purposes of gain; that they have in some instances combined to exact oppressive freights and fares from the producing classes of the country, and in others, in the absence of competition, have exacted them; that they have debauched and unlawfully controlled legislative bodies and hundreds of public men in and out of official stations; that these evils have been flagrant and prevailed to an alarming extent, that they now prevail to a greater or less degree, no intelligent observer can deny: their existence has been made manifest by legislative and judicial investigations, and the newspapers of the country daily teem with accounts of them.

The facts are patent. These vicious practices have not only affected injuriously the substantial interests of the Government and the people, they have likewise given rise to disgraceful public scandals that have brought open reproach upon the good name of this country at home and abroad. These things have not been done in a corner: they have prevailed in all sections and have afflicted the people in every quarter of the Union. It seems to be taken for granted that corporations are not only soulless but, as well, that they have no moral responsibility, and that no person is or can be morally responsible for the character of their acts. This latter view is certainly false and pernicious, but it shows the greater necessity for careful and stringent legislative control of such artificial bodies.

Mr. President, I do not hesitate to declare my conviction, that one of the great rising public dangers in this country now is the undue, ever-increasing power and influence of corporations over the material, moral, and social interests of the people.

This subject ought to attract a large share of public attention and engage the serious consideration of every legislative body. I do not underrate the advantages and benefits, public and private, of railroad corporations. I recognize them. I am not hostile to them. I would not, I will not hesitate to protect them in all their just rights, but I see and know and appreciate the high importance of keeping them well guarded by proper legislation and in subordination to government. They have great capacities for evil as well as good. They are close to the people and affect them materially in almost all the relations of life. Much the greater part of the evils to which I have made reference have been the fruits of the vicious practices of railroad corporations and their agents. Every intelligent observer knows that they have in large measure dominated the industries, the trade, the travel, the commerce, the legislation, the public men, and the press of this country. Not infrequently they have debauched members of Congress and members of State Legislatures, they have repeatedly subsidized numbers of powerful newspapers, they have set up and pulled down public men, they have walked boldly and insolently into the Halls of Congress and undertaken to dictate measures of legislation. Nay, sir, if one may trust what he reads almost daily in the newspapers and hears on every hand, their agents and lobbyists throng the corridors and lobbies, and have for months, of this Capitol, in reference to the very measures now under consideration.

Sir, are these things true? Are they substantially true? Alas, they are too true! The mind sickens with disgust at the thought of them! The recital of them must fill every honest man with indignation.

Mr. President, there could scarcely be a more striking illustration of the truth and force of all I have said than the history and practices of the two corporations involved in this discussion. I propose to make some reference to them in the course of my further remarks, for the purpose, specially, of showing the necessity for passing the measure before the Senate, and, generally, the importance of guarding here and elsewhere against the evils to which I have in a very general way directed attention.

Mr. President, the corporations whose nature, rights, and obligations are under discussion are not ordinary ones, nor do they in the eye of the law stand exactly on the same footing as do ordinary ones. They have been created by virtue and in pursuance of acts of Congress. Congress has no power to create corporations for ordinary purposes. It has, indeed, been questioned whether it has power to create them at all; but the courts have decided otherwise, and I think correctly. But it can only create them in aid of the execution of some power in or purpose incident to and necessarily connected with the Government. They can be created only for national purposes, purposes of the Government. The Government of the United States was instituted for certain general purposes common to all the States composing the Union, and these purposes and the powers in aid of them are plainly expressed in a written Constitution. We look in vain for any provision or power express or implied, authorizing Congress or any other authority in the Government to create a corporation in the ordinary sense or for ordinary purposes. The existence of such a power is unnecessary. In reason, it contravenes the genius, the spirit, the nature of our Federal system. All corporations created by Congress are therefore, without any express statutory provision, very like public corporations.

I will not now say—it is not necessary for my present purpose that I do so—that such corporations are absolutely public corporations and subject at all times to be abolished, changed, and modified by Congress, but in many respects they are so subject to the will of Congress. This much, however, is true beyond question, that Congress cannot divest itself of the power at all times to control and direct such corporations in all reasonable ways in aid of the purposes for which they were created; this power exists, and that too without any reservation of power in the act of incorporation; the power is absolutely and forever in Congress; it cannot part with it; Congress cannot abdicate a power of government. And whoever becomes a corporator in such a corporation does so agreeing by necessary legal implication that Congress may always exercise such power; that is, the power to change, modify, or abolish the corporation, having due, reasonable regard for the personal rights of the corporator. And so in the cases now before us, without any reservation of power in the acts creating and authorizing the corporations, Congress might change, add to, amend, modify, abolish the corporations in aid of the execution of the powers, the essential powers of government, which Congress cannot impair or barter or bargain away. If this were not so, Congress might impair, render nugatory, practically destroy an essential power of government by bargain—contract. This cannot be, in the very nature of things. The powers of this Government are essential powers to be employed in the execution of government, as contradistinguished from those powers of government employed in regulating the ordinary business transactions, rights, and relations of society.

The acts of Congress creating the corporations named in the bill rest upon and recognize the principles of the Constitution to which I have adverted.

Mr. SARGENT. Which corporation does the Senator refer to, those named in the bill?

Mr. MERRIMON. The Union Pacific Railroad Company and the Central Pacific Railroad Company.

Mr. SARGENT. Is not the Senator aware that the latter was not created by Congress?

Mr. MERRIMON. I am aware that originally the company was a corporation created under the laws of California.

Mr. SARGENT. It is, and operates under the laws of the State of California.

Mr. MERRIMON. But I take it the State of California has assented to the legislation of Congress, and at all events the acts of Congress, so far as they affect that corporation, are under the control of Congress. And besides, that corporation, I apprehend, derives much of its powers in the State of California and in the State of Nevada from the force and life-giving power of the two acts of Congress under discussion.

Mr. SARGENT. I only wanted to draw the Senator's attention to the fact that he apparently was confounding a corporation created under the laws of a State, having all its functions from that State, with another created under the laws of the United States.

Mr. MERRIMON. I was perfectly advertent to the fact, and I have considered it. If the State of California authorized the creation of a corporation and Congress co-operated with the State of California to create that corporation for the purposes of the Federal Government, and the State of California and the corporation accepted the legislation of Congress and agreed to act under it, then they are under the control of Congress, certainly to the extent of the legislation in that behalf.

Mr. SARGENT. I do not wish to disturb the Senator, but I hope he will allow me to make a remark.

Mr. MERRIMON. Certainly.

Mr. SARGENT. The corporation was born in the State of California, derives all its powers as a corporation, all its franchises from the State of California. It contracted with the Government of the United States under certain legislation passed by the Congress of the United States, and to that contract the State of California by subsequent legislation assented; but it is not true that the Central Pacific Railroad Company derives any of its corporate functions from the Congress of the United States; and if it does, I ask the Senator to refer to the clause of any statute of the United States which gives any additional corporate function to the Central Pacific.

Mr. SAULSBURY. The road was authorized by Congress to go through the Territory of Nevada.

Mr. SARGENT. It unquestionably owns a railroad which runs from San Francisco through to Ogden, and a large portion of it was built under this contract, projecting it into the Territories. Of course it was built under this contract, which was according to the laws of Congress.

Mr. BAILEY. I ask if the Central Pacific Railroad Company exercised any of its faculties or could have made any progress whatever

in respect to that portion of its road which lay without the State of California without the consent of the Congress of the United States; or in other words, whether in respect to that portion of its road lying east of the eastern boundary of the State of California it does not derive all its authority and all its franchises from the act of Congress?

Mr. SARGENT. No, sir; it does not derive any authority or any franchise from Congress, except the mere authority to build a railroad in the Territories, which was done, as I say, under a contract, they agreeing to do it within a certain time and in a certain manner, that it should be open to Government uses for certain purposes, and the Government contracted therefor to issue so many bonds. That was all. It was a matter of contract; but it was not a part of the functions of the corporation in any sense; it then was a complete corporation in every sense. It might as well be said that a company owning a line of steamers and receiving a subsidy to run from New York or somewhere else to Brazil derives its corporate powers from the fact of a subsidy being given by Congress. It is simply a contract.

Mr. BAILEY. The capacity to exist as a corporation unquestionably was derived from the State of California. The capacity to construct this road through the Territory or the present State of Nevada and into Utah certainly could not have been derived from the State of California.

Mr. SARGENT. I am not denying that there was a contract.

Mr. BAILEY. That franchise, that right, that power to extend its road and to collect tolls and transact business, could not be conferred there by the State of California; and this being a foreign corporation to the United States as to the Territories, I ask the Senator from California if the corporation did not derive its powers there from the United States.

Mr. SARGENT. The Senator simply uses the word "franchise" in a different sense from myself. I admit that a contract was made between this corporation and the Government of the United States, by which a railroad was built in the Territories under certain conditions. But the Senator from North Carolina in his argument spoke of these two corporations as creatures of Congress, and said that Congress could not divest itself of the right to strangle these, its children, at their birth or any subsequent time. I called his attention to the fact that one of them derived its powers from the State of California and that there was no right on the part of the General Government to strangle it.

Mr. MERRIMON. Mr. President, I was perfectly advertent to the fact that the Central Pacific Railroad Company was originally a corporation created by and under the laws of California; it was a State corporation, and by its corporate powers as a State corporation it had no authority to build a road across Nevada, then a Territory, or any part of the territory of the United States anywhere. The legislation of Congress supplemented the legislation of the State of California, and by virtue of the act of 1862 and the act of 1864 that corporation constructed its road in the State of California, as well as by virtue of the legislation of California, through the State of Nevada and other portions of the territory of the United States. It received large corporate powers—I know what that word means—it received large additions to its corporate powers from these two acts of Congress; it exercised them; it received large grants of public land; it received a large subsidy, as I shall have occasion to show, from the United States; and although Congress may not have power to abolish that corporation, yet there can be no question in law that Congress has control of its own legislation so far as it affects this corporation created by the State of California.

Mr. SARGENT. It has a right to take back all its gifts or executed contracts! That is the Senator's logic. Congress has power to break a contract!

Mr. MERRIMON. The grants conferred upon the Central Pacific Railroad were contained in the same acts which granted corporate powers to the Union Pacific road and a half dozen other railroad companies, exactly alike. The two acts authorized the existence of the Union Pacific Railroad Company: they likewise authorized the enlarged existence of the Central Pacific Railroad Company and a half dozen other corporations, and by the same law which conferred powers and benefits upon the Union Pacific Railroad Company and other railroad companies, benefits were conferred upon the Central Pacific Railroad Company.

Mr. SARGENT. Allow me to say a word. The legislation that the Senator refers to being put together would not change the relations of the various corporations. That legislation decided this—I think I remember it for I wrote it myself—that the Central Pacific Railroad Company of California, a corporation existing under the laws of said State, is hereby authorized to build a road—that was all—and then it went on and stated that which the Government would give it if it would build the road and that which it would require if the corporation did build the road. Now, says the Senator, because another corporation or several others were created in the same act, therefore the Government of the United States has a right to come in years after it is executed, years after the corporation has done everything that was required by the legislation except one point which is now in dispute in the courts, and say "why, here we subsidized you and we will take back our subsidy; we provided that you should pay in a certain way; we require you to pay three times as fast; we made certain conditions with you; we take them all back, and vary them, because we are powerful, because we are a sovereign and you are a subject." That is the doctrine of the Senator, and I say as between any ruler and any subject, that is the expression of tyranny.

Now the Senator will excuse me for saying further that my interest in this matter arises from the danger of an overtax of the Western States and the Pacific States by the burdens which you are endeavoring to put upon them, and furthermore the danger that by overcharging them you may have a dilapidated railroad instead of one to carry out the original objects.

Mr. MERRIMON. Mr. President, the Senator assigns me a position which I do not occupy, and he makes an argument and attributes it to me that I have not made in substance or spirit. Taking it that the Central Pacific Railroad Company is a corporation under the laws of California and that it accepted certain benefits and rights and obligations under the legislation of Congress, if the doctrine which I am now contending for exists, there can be no question that Congress has power to control whatever right, or obligation, or benefit it did confer, and to so control it would be no impairment of a contract, would be no exercise of a power of tyranny; and why? For the very reason that by force of the Constitution of the United States, if the doctrine I am contending for is correct, it was incorporated into the contract at the time it was made, in the same measure as if the words had been written in the grant, that Congress shall have the power at all times to change, modify, repeal, or abolish the legislation whereby these rights, obligations, and benefits were conferred. But, sir, in this case—and I will refer to that view of it now—not only by force of the Constitution is it so, but by the very terms of the grant it was provided, as I shall have occasion to show in the course of my argument, that Congress should have the right to change, modify, add to, or abolish the contract afterward, if, in its judgment, it should see fit. How, then, could there be any impairment of a contract or the obligation of a contract?

Mr. SARGENT. Now, if I am not troubling the Senator too much, if the Senator's argument had gone to the extent he now states and no further, as did that of the Senator from Michigan, [Mr. CHRISTIANCY,] I should not have interrupted him by asking a question. Of course I have my own judgment as to the force of that argument. But when he went outside and claimed jurisdiction over a corporation created by the State of California, upon the ground that it was created by our legislation, I desired to call his attention to the facts.

Mr MERRIMON. I do not care to go into the question as to how far Congress has control of the corporation absolutely. It is not material to my purpose. It is only material to me to show here that Congress has control of that corporation so far as powers, rights, obligations, and duties were conferred and imposed upon it by the legislation of Congress, and I understand that the Senator does not deny that as to that extent, *pro tanto*, that Congress has the power.

Mr. SARGENT. That is in violation of the contract.

Mr. MERRIMON. It is no violation of the contract. I cannot make myself understood by the Senator, it seems. I say it is not so, because it was a part of the agreement at the time it was made—an agreement made as much as if the corporator had written it down in writing, that Congress should have this power. It entered into the contract, made a part of it, it was the very life of it, that Congress should control the exercise of the powers granted, and the corporations took them subject to this right of Congress.

Mr. SARGENT. Does the Senator refer to the provision in the acts of 1862 and 1864 as to the power to repeal, or does he refer to some unwritten law?

Mr. MERRIMON. I am now on the first branch of the subject. I am making an argument to show that this power is inherent in Congress and that Congress cannot divest itself of it. I am coming to the other view of the case afterwhile.

Mr. SARGENT. I simply say I do not agree with the Senator at all.

Mr. MERRIMON. The Senator has only anticipated me a little. I say that, if there was no reservation in these acts at all, corporations created by Congress, if they are not absolutely so, are very like public corporations, always subject to the control and power of Congress. If it were not so, Congress might in creating a corporation abdicate the powers of government and destroy the Government. It is one of those essential powers which, whenever the contract is made operates, and if Congress were to stipulate expressly in the act that a subsequent Congress should not exercise this power the stipulation would be absolutely void. It is one of the absolute powers, absolute rights of the Government, that cannot be destroyed; it exists while the Government exists, and it is always ready to be exercised; and the citizen, when he becomes a corporator under a corporation created by Congress, becomes a corporator with the stipulation as expressly made as if it were written in words, "Congress shall from time to time see to the exercise of the power, modify, change, control it, as may suit the interests and convenience of the Government." I have no doubt that power does exist and in the way I have indicated.

Mr. HILL. Will the Senator yield to me for a moment that I may ask a question?

Mr. MERRIMON. I will.

Mr. HILL. If the power is claimed for the Government over the corporate franchise I can understand it. But do you hold that a con-

tract of loan by the Government to the companies is either a franchise in the companies or a corporate privilege granted by the Government?

Mr. MERRIMON. I say that the Government can grant a franchise for the purposes of corporations. It can grant a subsidy.

Mr. HILL. That is not the question.

Mr. MERRIMON. I see the point the Senator is making and I think I shall come to it in a moment. I do not mean to say that by virtue of the rights conferred on a corporation by the Government the Government can arbitrarily take property from the corporation. I do not mean to say that, because that would violate the spirit of the Constitution; it would violate the express letter of the Constitution in one respect. But what I mean to say is, that Congress has the power to direct the corporation in the exercise of all its rights and all its property, and it may abolish the franchise and may abolish all the powers conferred in the interest of the Government, and therefore I put in the words a moment ago "with due, reasonable regard to the rights of the corporators." It was a part of the agreement that Congress should have the power to control, direct, and regulate the exercise of the rights and powers and property of the corporation. The corporator agreed to that when he became a corporator. And if that is not true, then Congress can abdicate a sacred power of government by creating a corporation, which is plainly impossible consistently with reason. Congress cannot by any act, I do not care what device may be adopted, divest itself of the power to raise an army or to construct a post-road or a military road; it cannot divest itself of a power of government. It may employ these powers and may employ agents to execute these powers, but whoever engages as an agent or a corporation to execute these powers, engages that Congress may control his property in that behalf in order to accomplish the great purpose of the Government. But, sir, this will be made more manifest in the course of my argument. The question of the Senator from California has anticipated much of what I was going to say.

Before we go further let us get a correct notion of the motive and purposes of the acts under discussion.

Congress passed an act approved July 1, 1862, entitled as follows, to wit: "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean"—and what? The words I am about to read now are very material—"and to secure to the Government the use of the same for postal, military, and other purposes."

This title plainly indicates the purpose of Congress—a purpose of Government and in aid of the execution of a power, an essential power of the Government. It was to create a military and postal road. And not merely to authorize and construct such a road for the use of the Government, but to *secure*—that is the important word—the use of the same to the Government. The word *secure* is a material, significant, and important one; it means to give the Government the use of it; not at the will of the corporation, but at the will and pleasure of the Government, not for an occasion, for a day or a year, but perpetually; not affected by the whim or fortune of the corporation, but absolutely, and to *secure*, to establish, indefinitely, perpetually, such use of the road to the Government. How *secure* such use? Plainly by all such reasonable, apt, sufficient means as Congress may from time to time, according to circumstances, direct and provide. And this right and power and use is not in any way affected by the pecuniary rights of the Government, or the indebtedness of the corporations; when they shall pay all the debts due and to come due to the Government, the latter will still have the right, undiminished, to *secure* to itself the use of the road for all lawful Government purposes.

The wording, the phraseology, the reason, the spirit of the act and all acts amendatory of it, all alike indicate, establish the right of the Government to such use of the roads and the right to *secure* such use of them. It is provided that the Government shall have directors, who shall own no stock in the companies. The right of way and alternate sections of land are donated to the companies "for the construction of said railroad and telegraph line, * * * to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon." When forty miles of the road shall be completed, "the President shall appoint three commissioners to examine the same and report to him in relation thereto," &c. Again, it is provided "that, for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners," &c., the commissioners appointed by the President, issue bonds of the Government to the companies. It is further provided that, "on refusal or failure of the said company to pay said bonds, or any part of them," &c., the road, property, and unsold lands, &c., "may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States;" not to be sold and the Government to be reimbursed, but "for the use and benefit of the United States," the purpose being to *secure* the use of the road for the established and only for lawful purposes of the Government.

The grants of land, the "bond-subsidy," were all made on condition that the companies "shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof," &c. The companies are required to make reports to the Secretary of the Interior. For the purposes of the Government, the lines of railroad are to be continuous. If the companies should fail to complete these roads respectively, or to keep the same in repair, Congress may legislate to this end, "and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States," &c.

Congress passed an act amendatory of the act just commented upon, approved July 2, 1864, the title of which reads as follows:

> An act to amend an 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.

The same purpose is indicated in this title as in the first one, and all the provisions of the act steadily point to the exercise of all such power by the Government as may be deemed by Congress necessary and wise to secure the perpetual use of the roads for Government purposes.

These are some of the reasons that lead me to conclude that Congress has the power, without any express reservation providing for the same, to change, modify, amend, and abolish the rights, duties, and powers of the corporations named, having due, reasonable regard for the rights of the corporators.

It is said this would impair the obligation of a contract; that it would change, make anew a contract without the consent of one of the contracting parties. I do not stop to discuss the question whether Congress has the power to expressly impair the obligation of a contract. If it has such a power, I would not invoke it, and I trust Congress will never do so. But the objection is not well founded. The exercise of the power I have been discussing does not impair the obligation of a contract or force the corporator to accept a new contract, because at the time he became a corporator, he agreed, by necessary legal implication in law, that Congress should have the power to change the rights, duties, and obligations of the corporations to the Government in respect to the purposes of the corporations, at will, having reasonable regard to the rights of the corporator, be so agreed, just in the same measure as if he had so expressly stipulated in the charter of incorporation. The spirit, the principle of the Constitution permeated the charter just as much as if the same had been expressed in terms in it and the corporator must be bound by it.

I cannot doubt the substantial correctness of the views I have expressed. But it is not necessary in the case before us to invoke the power of the Constitution, to which I have referred. Putting these corporations upon the footing of ordinary ones, Congress has power to impose the reasonable obligations on them proposed by the bill reported by the Committee on the Judiciary. Section 18 of the act of 1862 among other things provides as follows:

> And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

Mr. MAXEY. I ask the Senator from North Carolina, supposing that Congress has the power to impair the obligation of a contract, now, is that the pivotal point of this case? Is it necessary to rest the Judiciary Committee's bill upon that ground?

Mr. MERRIMON. I have said expressly it is not. It is not material to the discussion of this question at all.

Mr. MAXEY. I wish to understand that.

Mr. MERRIMON. As I have just said, if Congress has power to impair the obligation of a contract, I, for one, would never invoke it and I trust Congress never will in any case.

Mr. MAXEY. I mention that for the reason that I propose to support the bill; but if it turned on that point I would not support it, because I do not believe that doctrine.

Mr. SARGENT. It would surprise me if it was not necessary to sustain the Judiciary bill by the declaration of a power to violate contracts and impair their obligations, so much time has been taken up by the friends of that bill in asserting that power. There certainly has been a great deal of time spent in that endeavor.

Mr. MERRIMON. I am not responsible in any sense for what other gentlemen have done; but I do not remember—and I have been paying pretty close attention to this discussion—that any one has wasted much time in discussing that view of the case. It is not material here at all. The bill proposed by the Committee on the Judiciary goes upon an entirely different ground, and rests upon an entirely different principle. But to get back, I was discussing the reservation clause in the act of 1862. Now the power reserved, treating the act as a contract between the United States and the corporators, is a material part of the contract—the corporators agree that the Congress may "add to, alter, amend, or repeal this act." These words—this provision—cannot be treated as nugatory and mere surplusage; they must be given some effect according to their intent and meaning.

What is that? It is that "Congress may add to, alter, amend, or repeal this act * * * the better to accomplish the object of this act." What is the object of this act? The great purpose, the leading object of it is to construct and establish on solid and enduring foundations in every respect, a great government military and postal road, and the power reserved may be exercised in any reason-

able way looking to that end. The clause reserving power, after stating the purpose in general terms, "the object of this act," then specifies some, not all, of the things that make up the object of this act. One of these things is, "to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order." It is said the companies have done this. But this implies more than keeping it in "working order" for this month or this year; it means keeping it so indefinitely, perpetually. Are the companies in condition to do this? Can they do it? Will they do it? Are their circumstances such as they will be able to do it? Can any one say so in view of their vast indebtedness? Even some of their officers have expressed great doubt as to their ability to pay their debts, as I will show presently. Then is it not plain that Congress may, ought to, exercise the power to "add to, alter, amend, or repeal this act," to compel these companies to provide prudently for the payment of these vast debts which constitute liens on their roads and all the property connected with them, to the end they may in all the future, be reasonably in condition to keep the roads in "working order?" Especially, when the companies have taken no steps to prepare to pay their debts!

Another of the things specified in the reservation of power to Congress and which goes to make up "the object of this act" is, "to secure to the Government at all times, (but particularly in time of war,) the use and benefits of the same for postal, military, and other purposes." The companies say they have done this. But do they say so truly? Granted that they have not made default. This is not all that is plainly implied and required. The companies must keep themselves in reasonable condition to *secure* to the Government for the future, indefinitely, the use of the roads and telegraph lines. The Government cannot reasonably allow these companies to let a burden of debt accumulate upon them which they cannot easily manage, so that after awhile the mortgages must be foreclosed and the roads embarrassed and allowed to go to ruin and decay in the hands of themselves by reason of their insolvency, or in the hands of irresponsible purchasers. We know it is not denied that the companies owe vast, embarrassing debts which they cannot pay at maturity unless they begin now to make reasonable preparations to do so. Then, it is plainly the duty of Congress to this end, for this manifest purpose, to exercise the power reserved to "add to, alter, amend, or repeal this act."

But there is another thing that goes to make up "the object of this act," that is, to provide for the payment to the Government of a sum of money equal to the principal and interest of the bonds of the Government issued to the companies, when they shall mature and be paid by the Government. It is expressly provided that such sum of money shall be paid to the Government and it has a second mortgage to secure such payment. The general terms, "the object of this act," embraces this by all rules of construction; and to secure the payment of that debt Congress may in a reasonable way "add to, alter, amend, or repeal this act."

The words in the clause reserving power to Congress, "having due regard for the rights of said companies named herein," imply that Congress shall not take the property of the companies for nothing or deprive them of their rights, but Congress may direct and control them in the use and exercise of the same, because the corporators agreed that Congress might do so. The words "add to, alter, amend, or repeal this act" must mean something; they must have some effect. What other can they have than that I have assigned them? I cannot see.

The act of 1864 is by its terms amendatory of the act of 1862, and the two must be construed together as one act. This is the plain legal effect, and the Supreme Court so decided in Kansas Pacific Company *vs.* Prescott, 16 Wall., 603. It is provided by the twenty-second section of the act of 1864 "that Congress may at any time alter, amend, or repeal this act." This reservation of power is as broad as language can make it. The two acts being in effect one and construed together, this reservation of power must apply to both acts—this is the legal effect and the manifest intention of Congress. Can any one suppose that it was intended to reserve power to repeal the act of 1864 alone? To repeal the act of 1864 would leave the act of 1862 in many respects inoperative. Then this clause applies to both acts, reserves to Congress the fullest power to "at any time alter, amend, or repeal this [both] act." It is not proposed to take from the companies any property or money; it is only proposed to direct and control them in the exercise of their rights. This they have agreed that Congress may do, and there cannot therefore be any impairment of right.

It seems to me that these views are reasonable and just, that I have stated the law as it arises upon the two acts under discussion. I beg now to cite some authorities in support of the views I have submitted, and especially to show to what extent the power reserved to the Legislature in the charters of corporations may be exercised.

I cite first, Pierce on the Law of Railways. At page 36 he says:

> The power to amend, alter, or repeal the charter may be reserved by the Legislature by a provision to that effect inserted therein, or in a general law declared applicable to all acts of incorporation afterward passed; and the right of the Legislature to alter or repeal the charter is thus made a part of the contract. The charter of the company is, by such a reservation, subject to any reasonable amendment or alteration which the Legislature may make, and any reasonable additional obligations may be imposed on the company. Thus, it may be required by virtue of such reservation to abandon the use of steam-power in propelling its cars through cities, or to raise or lower highways where its track crosses them when directed by the municipal authorities. The Legislature under this power may increase the liability of the stockholders, who will not thereby be exonerated from liability on their subscriptions for stock. The subscriber has been held not to be released, where the Legislature, in pursuance of such a reservation, granted to the company the power to change its route. There being a general statute of Missouri reserving the power to alter or amend acts of incorporation, an act of its Legislature making companies previously incorporated liable to laborers employed by contractors for the work done by them on their roads has been held constitutional.

That is the general law as laid down by an elementary writer in this country on this subject. In the case of The Northern Railroad Company *vs.* Miller, 10 Barbour, 282, the court say:

> It was competent for the State, having the power to grant or to withhold the charter, to annex such condition to the grant, or to make such reservation as it pleased. The directors, trustees, or other managing agents, by whatever name they are called, by accepting the charter became bound by this condition or reservation; and every individual who subscribes to the stock of the company thereby makes himself a party to the contract, subject to to the conditions and reservations of the charter. In effect he stipulates, at the time he subscribes, that the Legislature may alter or repeal the law, and thus change the obligation of his subscription or defeat it altogether. It cannot therefore with truth be said that the amendatory act, which is complained of in this case, was an alteration of the defendant's contract *without his assent*. It was merely such alteration as he himself, by becoming a party to the contract, had agreed that the Legislature might make. He is as much bound by it as if he had signed a petition to the Legislature requesting the passage of the act in question. Whatever modification is thus effected in the obligation created by his subscription is made by his own agreement, entered into at the moment he became a party to the contract, and is as binding upon him as if it had been accomplished by his own solicitation and procurement. It surely cannot be necessary to cite authorities to prove that what a man authorizes another to do is as obligatory upon him, when done, as if it had been performed by himself.

In Tomlinson *vs.* Jessup, 15 Wallace, 454, the court say:

> The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligations.

In Miller *vs.* The State, 15 Wallace, 498, the court state in broad and strong terms the extent of the power. They say:

> The reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.

That is the language of our own Supreme Court, and it is as broad and comprehensive and efficient as language can make it. But cases might be cited indefinitely, all going the full length of the proposed exercise of power as now proposed.

It has been said that the Supreme Court, in the case of the United States *vs.* Union Pacific Railroad Company, (1 Otto, 72,) have held that Congress could not exercise the power reserved as now proposed. This is a grave misapprehension of the ruling of the court. The court said plainly that Congress in the respect then under consideration had not undertaken to exercise the power, but suggest strongly by implication that it might do it. I read a material extract from the opinion of the court. I shall now read what the court say bearing upon this subject, and I read it because it has been cited over and over again, as conclusive to the point that Congress cannot exercise this power. The court decided to the contrary, as I think; they suggest by implication very strongly that Congress can do it; and this paragraph is material to show that I am correct. The court say:

> Another act was subsequently passed by virtue of which this suit was instituted by the appellee. [Act of March 3, 1873, 17 Statutes, page 508, section 2.] It is contended that this act repeals that portion of the charter of the company which contains the provisions we have discussed. But manifestly its purpose was very different. Although it directs the Secretary of the Treasury to withhold all payments to the companies on account of freights and transportation, it at the same time authorizes any company thus affected to bring suit in the Court of Claims for "such freight and transportation;" and in such suit "the right of such company to recover the same upon the law and the facts shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them." This means nothing more or less than the remission to the judicial tribunals of the question whether this company and others similarly situated have the right to recover from the Government one-half of what they earned by transportation; and this question is to be determined upon its merits.
>
> The merits of such a question are determined when the effect of the charter is ascertained and declared. It is hardly necessary to say that it would have been idle to authorize a suit, had Congress intended to repeal the provision on which alone it could be maintained.

Is it not plain to the simplest mind that what the court said was, that Congress had not in that case undertaken to exercise the power, and that they suggest strongly by implication that Congress may exercise it? So it appears conclusively that Congress has lawful power to pass the bill proposed by the Committee on the Judiciary, and one more stringent if deemed necessary.

Then ought Congress to exercise this power and in the way proposed? If we consider the relations of these corporations to the Government, their history, their vast debts, their circumstances, their earnings, and the disposition of them, their practices and manifest, studied purpose not to make any reasonable provision for paying the debt due the Government, it seems to me that there can be only an affirmative answer to the question just propounded.

I propose now to bring to the attention of the Senate some considerations that, in my judgment, point strongly to the necessity for prompt and vigorous action on the part of Congress toward these corporations. By virtue of the acts of Congress just referred to the Union Pacific Railroad Company was authorized to construct and maintain a railroad and telegraph line from a point on the one hundredth meridian of longitude west from Greenwich in the Territory

(now State) of Nebraska to the western boundary of the Territory (now State) of Nevada. This line of road is 1,085.88 miles in length.

By virtue of the same acts the Central Pacific Railroad Company—a corporation created and existing under the laws of the State of California—was authorized to construct a road and telegraph line from San Francisco to the eastern boundary of California, there to connect with the railroad and telegraph line of the Union Pacific Railroad Company, the two to make one continuous line of road, which continuous line is 1,776.18 miles in length.

In aid of the purposes provided for in said acts other companies of less magnitude and importance were authorized by them, to wit: the Kansas Pacific, the Central Branch Union Pacific, the Western Pacific, and the Sioux City and Pacific.

The Government granted the right of way through the public lands "to said company [naming the Union Pacific Railroad Company and the others as well] for the construction of said railroad and telegraph line;" "the right, power, and authority" was given "said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine-shops, switches, side-tracks turn-tables, and water-stations."

The Government likewise granted, gave, donated "for the purpose of aiding in the construction of said railroad and telegraph line, and to *secure* the safe and speedy transportation of the mails, troops, munitions of war and public stores thereon, every alternate section of public lands, designated by odd numbers, to the amount of five [increased to ten] alternate sections per mile on each side of said railroad, on the line thereof and within the limits of ten miles on each side of said road," &c. All *mineral lands* were excepted, except that timber on the same and coal and iron in them were granted and not excepted. This grant of lands to the several companies mentioned embraced about thirty millions of acres. In a letter dated March 8, 1876, the Commissioner of the General Land Office says:

1. The amount of land to which each company is supposed to be entitled under acts of July 1, 1862, and July 2, 1864, is as follows:

| | *Acres.* |
|---|---|
| Union Pacific | 12,000,000 |
| Central Pacific, including late Western Pacific, now consolidated | 9,100,000 |
| Kansas Pacific | 6,000,000 |
| Denver Pacific | 1,100,000 |
| Central Branch Union Pacific | 245,166 |
| Burlington and Missouri River, in Nebraska | 2,441,600 |
| Sioux City and Pacific | 45,000 |

These figures are from approximate estimates merely, the adjustment of the grants not having been so nearly completed as to justify an attempt to state accurately the amount of lands inuring to each.

By virtue of the acts mentioned "for the purposes" in them mentioned and specified, bonds of the United State were issued to the railroad companies named respectively as follows, to wit:

| Name of railway. | Authorizing acts. | Rate of interest. | When payable. | Interest payable. | Principal outstanding. |
|---|---|---|---|---|---|
| Central Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | $25,885,120,00 |
| Kansas Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 6,303,000 00 |
| Union Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 27,236,512 00 |
| Central Branch, Union Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1,600,000 00 |
| Western Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1,970,560 00 |
| Sioux City and Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1,628,320 00 |
| Total | | | | | 64,623,512 00 |

The aggregate of the bonds so issued as appears, is $64,623,512. These bonds were not a gift to the companies; it is expressly provided in the act that, "to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States," that the United States should have a first mortgage on all the property of all kinds of the companies. This mortgage was afterward by the act of 1864 changed to a second mortgage.

It was provided that—

All compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof.

This provision was modified by the act of 1864, as follows:

And that 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.

By the act of 1864 the companies named are authorized respectively to "issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively."

The first-mortgage-bond debt created by the companies in pursuance of the last-mentioned provision of the act of 1864, is about the same in amount as the amount of the Government bonds issued, and they are a *first lien* on all the property of the companies.

Under a decision of the Supreme Court United States *vs.* Union Pacific Railroad Company, 1 Otto, 72, these several companies are not bound to pay the interest which the Government has paid and may pay, until the bonds issued by the Government to the companies shall mature. These bonds will mature about the year 1900.

At the expense of being a little tedious, I deem it important now to read some interesting extracts from a report made to the House of Representatives April 25, 1876, by the Judiciary Committee on the subject of a *sinking fund* for the railroad companies, to which I have made reference. The committee say:

The railroad companies now claim that they are not bound or liable to pay any of the interest advanced or to be advanced by the Government until the maturity of the "subsidy bonds," thirty years from their date, except as the application of (1) one-half of the charges for transportation and other services may be so applied, with also (2) the application of 5 per cent. annual net earnings of the roads. But these will fall far short of paying the interest.

There is no law which in such cases gives to the United States interest on advances made in paying the interest on the "subsidy bonds," nor, indeed, on any liability of any company to the Government. The effect, therefore, will be, if the claim of the railroad companies prevails, and even if they should at the maturity of the subsidy bonds, about twenty years from this time, then repay any balance of advances, the Government would be without compensation for the use of the money advanced and not so reimbursed. This loss to the Government would in value and amount reach many millions. The Government pays currency interest at 6 per cent. per annum, payable half yearly. Assuming this rate which the Government actually pays as the value, the actual cost to the Treasury of the advances made and to be made, compounding the interest thereon to the maturity of the "subsidy bonds," would be $316,112,571.79, as follows:

Here is an interesting table. This report seems to have been gotten up with great consideration, and I take it it is very accurate. It is a report on the subject of a sinking fund for the several Pacific Railroad Companies made to the House of Representatives during the Forty-fourth Congress by Mr. Lawrence, of Ohio, and it is report No. 440, Forty-fourth Congress, first session. I present the following table which I find in it:

*Statement of the amount of bonds issued to the Pacific Railroad Companies, with interest computed thereon half-yearly at 6 per cent. per annum.*

The interest in this statement is compounded.

| | | |
|---|---|---|
| Union Pacific Railroad Company: | | |
| Amount of bonds issued | $27,236,512 00 | |
| Interest due at maturity, September 3, 1897 | 133,230,206 60 | |
| | | $160,466,718 60 |
| Central Pacific Railroad Company: | | |
| Amount of bonds issued | 25,885,120 00 | |
| Interest due at maturity, November 18, 1897 | 126,619,733 30 | |
| | | 152,504,853 30 |
| Kansas Pacific Railroad Company: | | |
| Amount of bonds issued | 6,303,000 00 | |
| Interest due at maturity, November 17, 1896 | 30,831,774 36 | |
| | | 37,134,774 36 |
| Western Pacific Railroad Company: | | |
| Amount of bonds issued | 1,970,560 00 | |
| Interest due at maturity, September 5, 1898 | 9,639,197 41 | |
| | | 11,609,757 41 |
| Sioux City and Pacific Railroad Company: | | |
| Amount of bonds issued | 1,628,320 00 | |
| Interest due at maturity, January 1, 1898 | 7,965,095 16 | |
| | | 9,593,415 16 |
| Central Branch Union Pacific Railroad Company: | | |
| Amount of bonds issued | 1,600,000 00 | |
| Interest due at maturity, October 20, 1896 | 7,826,564 96 | |
| | | 9,426,564 96 |
| Total principal | | $64,623,512 00 |
| Total interest | | 316,112,571 79 |
| Grand total | | 380,736,083 79 |

The principal of the "subsidy bonds" is, as already stated, $64,623,512, with an annual interest of $3,877,410.72, which, for the thirty years the bonds are to run from their date, will aggregate $116,322,321.16.

If no part of the interest should be reimbursed by the companies to the Government until the maturity of the subsidy bonds, the actual loss to the public Treasury would be $199,790,250.63, being the difference between the face of the advances, $116,322,321.16, and their amount, with interest thereon compounded, $316,112,571.79.

Let it be remembered that the Government is not only not to be reimbursed until its bonds issued to the companies mature, but not then, until the first-mortgage bonds of the companies are discharged, because they are a *first lien*. There is no provision made by the companies to pay the vast debt of the Government against them when it shall mature. They have not created any sinking fund or set apart any fund or means whatever with which to do so. They manifest no purpose to do so; and, judging the future by the past, they never will

voluntarily make any such provision. In 1865, the president of the Union Pacific Railroad Company broadly intimated that the Government might lose its debt. It now looks as if their purpose was to continue to make large dividends until the Government debt shall mature, and then let their first-mortgage creditors take the roads, or leave the Government to pay the first-mortgage debt and take the roads, the stockholders in the mean time having realized enormous profits in the shape of dividends on stock that cost most of them almost a nominal sum, as will appear presently.

The following extract from the report read from a moment ago will give some notion of what may be expected from the companies if Congress shall not take action. I read from page 19 of the report:

It has already been shown that the Government has been reimbursed from earnings only $5,455,169.53 in a period of nine years, and that the same source will probably not average over half a million of dollars a year.

From what has been said it will be seen that, according to the claim of the companies, the Government cannot expect to realize more than about $800,000 per annum from the 5 per cent. of net earnings.

The total of these two sources, then, on this basis, would be about $1,300,000 per year. But it is not probable the services will continue so large as heretofore.

The total sum realized by the Government to the maturity of the "subsidy bonds," including the amount heretofore received, would reach probably about $36,000,000.

| | |
|---|---|
| The principal of the subsidy bonds is | $64,623,512 |
| Interest to maturity without compounding or counting any interest on advances of interest | 116,322,321 |
| Total claim of Government | 180,945,833 |
| The amount provided to meet this, as above stated | 36,000,000 |
| Deficiency | 144,945,833 |

And as the law now stands, the Government, unable to collect interest on its dues, and the companies steadily refusing to pay what they concede to be legally and justly payable, with a probability that they will continue to pursue the same course, the real deficiency to meet the acknowledged indebtedness, with interest thereon, would be many millions more, but the exact amount of course cannot be accurately stated.

And if the companies are permitted to go on refusing, as they do, to pay their acknowledged indebtedness, all this will increase the loss to the Government.

There is an imperative necessity for prompt and decisive action to secure the just demands of the Government and to save it from loss.

The president of the Union Pacific Company, in a letter to the Secretary of the Treasury dated February 9, 1875, says:

"The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.

"The bonds are accumulating an interest account, also uncollectible until the principal is due. The principal and interest when due will amount to the very large aggregate of over seventy-seven millions of dollars, though the actual amount advanced by the Government was only $27,236,512.

"For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate, without any provision being made to meet it, the company will probably be utterly unable to pay it.

"At the same time, it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge prior mortgages, and run the road on Government account—a policy which wise statesmanship could not advise.

"By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting further and further from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both."

The committee in their report say further:

This statement is fully justified by the existing indebtedness of the company. The bonded indebtedness of the Union Pacific Company is $79,457,912, of which there is owing to the United States for "subsidy bonds" $27,236,512. Of the residue, $52,221,400, about $27,236,512 are first-mortgage bonds, and the residue are income, sinking-fund, and land-grant bonds, the latter secured by mortgage on the land grant of the company. It is quite apparent that the road is in a condition in which it never can and never will pay its liabilities to the United States if they are permitted to accumulate until the maturity of the "subsidy bonds." This is the fact, whatever may be its cause.

I read again from page 21:

The lands will doubtless be sold out under the land-grant mortgage. If the stockholders should lose their stock and all bonds be paid but the first-mortgage bonds, this company would, at the maturity of the subsidy bonds, owe as follows:

| | |
|---|---|
| First-mortgage bonds | $27,236,512 |
| Subsidy bonds due the Government | 27,236,512 |
| Interest on subsidy bonds | 32,683,814 |
| Total | 87,156,838 |

This is equal to $80,254 per mile. To pay this, the Government may find only a worn-out road, which, put up at auction, would not pay the first-mortgage bonds. And if these should happen to be in the hands of those who now control the road, they would doubtless become the purchasers and sole owners, for the objection to a Government purchase would be so great it would never be made, and there could be no other competitor who would be formidable as a purchaser. If there could be danger of this, the managers of the road could permit the interest to accumulate on the first-mortgage bonds to any amount requisite to secure their purpose to become owners of the road without paying any of its debt to the Government. The necessity for prompt measures to secure the Government cannot be doubted.

I read again from page 29 of the report:

That it is the duty of the companies to provide a sinking fund to meet the payment of the subsidy bonds at maturity, and that there is an urgent necessity for it must be manifest.

The president of the Union Pacific Company, in a letter to the Secretary of the Treasury dated February 9, 1875, says:

"The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.

"The bonds are accumulating an interest-account, also uncollectible until the principal is due. The principal and interest when due will amount to the very large aggregate of over $77,000,000, though the actual amount advanced by the Government was only $27,236,512.

"For this very large amount the Government has only a second mortgage, and it it be allowed to accumulate without any provision being made to meet it, the company will probably be utterly unable to pay it.

"At the same time it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge the prior mortgages and run the road on Government account; a policy which wise statesmanship could not advise.

"By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting further and further from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both."

The committee proceed and say:

The duty to provide the means of paying these bonds is an obligation prior to any claim of stockholders for dividends, yet the two principal companies are making large dividends and providing no sinking fund.

I now wish to direct attention to what was done with the vast sums of money which these companies got possession of under the legislation to which reference has been made.

The law required that the capital stock of the several companies should be paid for in money at par. In fact, it was paid for at not exceeding thirty cents in the dollar in work on the road. It is said that no cash was paid for the stock of the Union Pacific Railroad Company capital stock, except about $400,000, and it seems it is not certain that sum was paid.

I read from the report of the House Judiciary Committee, at page 18:

Union Pacific Railroad Company.—Stock subscribed, $36,783,000: paid in, $36,762,300. The bonded indebtedness, $79,457,912, of which $27,236,512 is due to the United States.

Central Pacific Railroad Company.—Stock subscribed, $62,608,600; paid in, $54,275,500. Indebtedness, $86,168,688.11, of which $27,855,680 is due to the United States. This company now comprises, by consolidation, the Western Pacific, the California and Oregon, the San Francisco, Oakland and Alameda, and the San Joaquin Valley Companies, in addition to the original Central Pacific Company.

Central Branch, Union Pacific Company.—Stock subscribed, $1,000,000; paid in, $980,600. Indebtedness, besides $1,600,000 to the United States, is $303,902.63.

Kansas Pacific Company.—Stock subscribed, $9,992,500; paid in, $9,689,950. Total indebtedness, $30,965,975.41, of which $6,303,000 is due the United States.

Sioux City and Pacific Company.—Stock subscribed, $4,478,500; paid in, $1,791,400. Bonded indebtedness, $3,256,320, of which $1,628,320 is due the United States. The floating debt is $60,571.67.

The stock was not in fact paid for as reported. I read from the same report, at page 20, a striking statement, which must strike with great force the mind of every one who wants to do his duty upon this measure:

In a report made to the House on the 20th February, 1873, (House Report No. 78,) by a committee thereof, it was said of the Union Pacific Company:

"That the moneys borrowed by the corporation, under a power given them only to meet the necessities of the construction and endowment of the road, have been distributed in dividends among the corporators; that the stock was issued not to men who paid for it at par in money, but who paid for it at not more than thirty cents on the dollar in road-making; that of the Government directors, some of them have neglected their duties, and others have been interested in the transactions by which the provisions of the organic law have been evaded; that at least one of the commissioners appointed by the President has been directly bribed to betray his trust by the gift of $23,000; that the chief engineer of the road was largely interested in the contracts for its construction; and that there has been an attempt to prevent the exercise of the reserved power in Congress by inducing influential members of Congress to become interested in the profits of the transaction. So that of the safeguards above enumerated none seems to be left but the sense of public duty of the corporators."

The report shows that in fact the men engaged in this enterprise never risked a dollar of their own capital by the possibility of loss, and that they not only constructed the road from the resources which came from the Government, but that they made enormous profits from these, thereby leaving the United States with no adequate security for the reimbursement of the subsidy bonds.

I read further from the same report, beginning at page 14:

From this it will be seen these companies, on their own showing, are making large profits, and are abundantly able to pay and indemnify the Government against future loss, and pay liberal dividends besides on the par value of stock which, as has been shown by a committee of the House as to the Union Pacific Company, cost its original holders "not more than thirty cents on the dollar in road-making, which road-making itself paid enormous profits—profits realized through the notorious Credit Mobilier of America. These net earnings, as reported by the companies, are over 16 per cent. on the nominal capital stock of the Union Pacific Company, or, in fact, about 50 per cent. for the year 1875 on the real cost of the stock; while as to the Central Pacific Company, the net earnings are nearly 15 per cent. on the nominal capital stock, and how much on the real cost of the stock is not disclosed.

I wish now to read a striking extract or two from a report made to the House of Representatives by a select committee on the 20th of February, 1873. This is a report made by Mr. Wilson. It is report No. 78, Forty-second Congress, third session. The committee say:

The Government never consented to trust its property to men who had not put their own money into the enterprise. It never consented to take security for its reimbursement at the end of thirty years, solely on the property it had advanced. It never expected to rely for the performance of these great public duties upon a company whose debts equaled its whole property. The law-making power, if its mandates are to be obeyed or respected hereafter, cannot accept as an excuse for disobedience to its express directions, by the corporation it has created, that the members of that corporation have decided that those directions were unreasonable and unnecessary.

And this is the important point in the extract I am now reading:

In this case the provision of the charter requiring the stock to be paid for in money has been grossly violated; because, as is apparent, nearly the whole of the stock that has been issued represents no value to the railroad company; or, to state it differently, was issued without any consideration whatsoever.

I read further from page 21 of the same report:

The result of these proceedings was this:

1. While the charter of the Credit Mobilier required its affairs to be managed by a board of directors and its principal business office to be in Philadelphia, the actual conduct of its affairs was wholly by the men acting as a board of trustees and in the city of New York, so that this unlawful arrangement attempted to disguise, and did in effect disguise, these persons by means of a fictitious and pretended and not a real use of the corporate powers of the Credit Mobilier.

2. While the charter of the Union Pacific Railroad Company required its corporate powers to be wielded by a board of fifteen directors, ten of whom should be *bona fide* holders of stock and should be elected by stockholders representing capital which had been actually paid in full and in money, this contrivance virtually placed all the power and control of said railroad corporation, its property and franchises, in the hands of the same persons, and beyond the management provided by law, thereby disguising and intending to disguise an unlawful seizure of the powers of the company, an unlawful use of its name in the issue of stock, bonds, and scrip, and an unlawful distribution of its property among the parties.

3. While the United States subordinated its own lien to secure reimbursement of the loan of its bonds to a mortgage to secure the bonds of the company for a like amount for the purpose of constructing the road, moneys have been in fact borrowed under the privilege so conferred and distributed as dividends.

4. The statute requiring the capital stock to be paid for in money at par, it has in fact been paid at not exceeding thirty cents on the dollar in road building, excepting, perhaps, the sum of about $400,000.

5. Instead of securing a solvent, powerful, well-endowed company, able to perform its important public functions without interruption in times of commercial disaster and in times of war, and able to maintain its impartiality and neutrality in dealing with all connecting lines, it is now weak and poor, kept from bankruptcy only by the voluntary aid of a few capitalists who are interested to maintain it, and liable to fall into the control of shrewd and adroit managers, and to become an appendage to some one of the railroad lines of the East.

To give some notion of the cost of building the Union Pacific Railroad and how the Government was robbed, I read the following further extract from the same report on page 17:

In this connection the committee calls attention to the following facts:

| | |
|---|---|
| First-mortgage bonds issued | $27,213,000 00 |
| Sold at a discount of | 3,494,991 23 |
| Net proceeds | 23,718,008 77 |
| Government bonds issued | $27,236,512 00 |
| Sold at a discount of | 91,348 72 |
| | 27,145,163 38 |
| Aggregate net proceeds of both classes | $50,863,172 05 |
| Cost of whole road to the contractors | 50,720,958 94 |
| | 142,213 11 |

And attention is also called to the time of the receipt of Government bonds, as shown by schedule thereof set forth in the evidence.

It appears, then, speaking in round numbers, that the cost of the road was $50,000,000 which cost was wholly reimbursed from the proceeds of the Government bonds and first-mortgage bonds; and that from the stock, the income bonds, and land-grant bonds, the builders received in cash value at least $23,000,000 as profit, being a percentage of about 48 per cent. on the entire cost.

I read further from pages 4, 7, and 8, showing the spirit of what was called the Hoxie contract:

The first contract for the construction of the road was made with one H. M. Hoxie, who seems to have been a person of little pecuniary responsibility. His proposal to build and equip one hundred miles of the railroad and telegraph is dated New York, August 8, 1864, signed H. M. Hoxie, by H. C. Crane, attorney. It was accepted by the company September 23, 1864. On the 30th of September, 1864, Hoxie agreed to assign this contract to Thomas C. Durant, who was then vice-president and director of the Union Pacific Railroad Company, or such parties as he might designate. On the 4th of October, 1864, this contract was extended to the one hundredth meridian, an additional one hundred and forty-six and forty-five hundredths miles, the agreement for extension being signed by Crane as attorney of Hoxie. Hoxie was an employé of the company at the time, and Mr. Crane, who signed as Hoxie's attorney, was Durant's "confidential man," as Durant himself expresses it.

By this contract and its extension, Hoxie agreed to build two hundred and forty-six and forty-five hundredths miles of road, to furnish money on the securities of the company, to subscribe $1,000,000 to the capital stock, and he was to receive $50,000 per mile for the work.

On the 11th day of October, 1864, an agreement was entered into by Durant, Bushnell, Lambard, McComb, all directors of the Union Pacific Railroad Company, and Gray, a stockholder, to take from Hoxie the assignment of his contract, (which assignment he had previously bound himself to make to such persons as Durant should designate,) and to contribute $1,600,000 for the purpose of carrying the contract out.

This Hoxie contract and its assignment were a device by which the persons who were the active managers and controllers of the Union Pacific Railroad Company caused said corporation to make a contract with themselves for the construction of a portion of its road, by which also they got possession of all the resources which it would be entitled to by the completion of said portion, and by which they evaded, or sought to evade, the requirement that the capital stock should be fully paid in in money, by substituting for such payment a fictitious or nominal payment in road building and equipment, each share being treated as being worth much less than its par value. That this was the substance of the transaction will more fully appear when we come to speak of a subsequent arrangement of the same nature, but on a larger scale.

* * * * * * *

On the 26th day of March, 1864, by an act of the Legislature of the State of Pennsylvania, the name was changed to "The Credit Mobilier of America."

By the terms of purchase of the charter, an agency was to be established in the city of New York, and when the subscription was made it was upon the condition that the full powers of the board of directors should be delegated to the New York agency, and that a railway bureau should be established at said agency, of five managers, three to be directors of the company, (afterward changed to seven managers,) who should have the management of railway contracts, subject to the approval of the president. By these means this Pennsylvania corporation, so far as the management of its affairs was concerned, substantially expatriated itself, and, clothed with the extraordinary powers acquired from the State of Pennsylvania, it proceeded to take upon itself the control of the Union Pacific Railroad Company in the manner following:

It purchased the outstanding stock of that corporation, amounting to about $2,180,000, on which about $218,000 had been paid to the railroad company, the Credit Mobilier paying for this stock the amount already paid. At the time of this purchase the shares of Union Pacific stock were $1,000 each. After the act of 1864 was passed these shares were canceled, and a reissue was made in shares of $100 each. The reissue was made to the stockholders of the Credit Mobilier, and by this process the stockholders of the two corporations were made identical. By this means the persons who under the guise of a corporation that was to take the contract to build the road held complete control of the corporation for which the road was to be built.

These things accomplished, they took charge of construction under the Hoxie contract, and the portion of the road lying between Omaha and the one hundredth meridian was constructed under it.

| | |
|---|---|
| This contract cost the Union Pacific Railroad Company | $12,974,416 24 |
| It cost the Credit Mobilier | 7,806,183 33 |
| Profit | 5,168,233 91 |

This profit is a profit in stock and bonds estimated at par. Their actual value will appear hereafter.

The next event in this history is as follows, and it is stated here to show the animus of those who were managing this great trust:

The Hoxie contract had been completed, finishing the road to the one hundredth meridian, a distance of two hundred and forty-six and forty-five hundredths miles. An agreement was then made, (November 10, 1866,) by Thomas C. Durant, vice-president of the Union Pacific Railroad Company, with a Mr. Boomer for the construction of one hundred and fifty-three and thirty-five hundredths miles west from the one hundredth meridian. By the terms of this agreement Boomer was to be paid $19,500 per mile for that portion between the one hundredth meridian and the east bank of the North Platte, and for that portion lying west of the North Platte within the limits of the agreement $20,000 per mile, the bridge over the North Platte, and station-buildings equipment, &c., to be an additional charge.

This contract was never ratified by the company, but under it the work progressed, and fifty-eight miles of road had been completed and accepted by the Government. The books of the company fail to show what this fifty-eight miles had cost the company; but from the best evidence that could be procured your committee believe that the cost had not been to exceed $27,500 per mile for construction and equipment, the excess over the contract price being for station-houses, equipment, &c. Inasmuch as the charter required that the station-houses, equipment, &c., should be built and furnished before acceptance by the Government, and inasmuch as the records of the Department show that the fifty-eight miles had been accepted, your committee feel warranted in finding that this had been done and that the cost of the whole was not to exceed $27,500 per mile. But notwithstanding this, on the 5th day of January, 1867, the board of directors by a resolution extended the Hoxie contract over this fifty-eight miles of then completed road, thereby proposing to pay to the Credit Mobilier the sum of $22,500 per mile for this fifty-eight miles, amounting to the sum of $1,345,000, without any consideration whatever.

The following is the resolution of date January 5, 1867:

"*Resolved*, That the Union Pacific Railroad Company will, and do hereby, consider the Hoxie contract extended to the point already completed, namely, three hundred and five miles west from Omaha, and that the officers of this company are hereby authorized to settle with the Credit Mobilier at $50,000 per mile for the additional fifty-eight miles."

That it was proposed to give the Credit Mobilier this profit, if that is the proper word to be used in such a connection, is verified by the fact that subsequently the sum of $1,104,000 was paid to the Credit Mobilier on account of this fifty-eight miles, for the construction of which it never had even the semblance of a contract. Of this $1,104,000 further mention will be made hereafter.

I read further from page 13, of same report, to show the like spirit of the "Oakes Ames contract:"

This contract extended over one hundred and thirty-eight miles of road completed and accepted. No work was done under it until after its assignment. That portion already completed had cost not to exceed $27,500 per mile, and by embracing this one hundred and thirty-eight miles in it these trustees derived a "profit," if such a term is admissible in such a connection, which enabled them to make a dividend among the stockholders in less than sixty days after the assignment, namely, on the 12th of December, 1867, as follows: 60 per cent. in first-mortgage bonds of the Union Pacific Railroad Company, $2,244,000; 60 per cent. in stock of the Union Pacific Railroad Company, $2,244,000.

This was mainly, if not entirely, derived from the excess of the contract price over what the one hundred and thirty-eight miles had cost.

The trustees proceeded to construct the road under this contract, and from a balance-sheet taken from the books it appears that the cost to the

| | |
|---|---|
| Railroad company was | $57,140,102 74 |
| And the cost to the contractors was | 27,285,141 99 |
| Profit | 29,854,141 99 |

The nature of this profit, as in case of that on the Hoxie contract, will appear hereafter.

Again I read a further extract from pages 13 and 14 in further illustration of the spirit of the corporators:

DAVIS CONTRACT.

This was a contract made with J. W. Davis, a man of but little, if any, pecuniary ability, (and not expected to perform the contract,) for the construction of that part of the road beginning at the western terminus of the "Ames contract," and extending to the western terminus of the road, a distance of one hundred and twenty-five and twenty-three hundredths miles. It was upon the same terms as the Ames contract, and was assigned to the same board of trustees. Under it the residue of the road was constructed, and, from a balance-sheet taken from the books of the railroad company, it appears that it—

| | |
|---|---|
| Cost the railroad company | $23,431,768 10 |
| And, from a balance-sheet taken from the books of the trustees, that it cost the contractors | 15,629,933 62 |
| Profit | 7,802,084 48 |

Your committee present the following summary of cost of this road to the railroad company and to the contractors, as appears by the books:

*Cost to railroad company.*

| | |
|---|---|
| Hoxie contract | $12,974,416 24 |
| Ames contract | 57,140,102 94 |
| Davis contract | 23,431,768 10 |
| Total | 93,546,287 28 |

Now see the other side of the books:

*Cost to contractors.*

| | |
|---|---|
| Hoxie contract | $7,806,183 33 |
| Ames contract | 27,285,141 99 |
| Davis contract | 15,629,633 62 |
| | 50,720,958 94 |
| | 42,825,328 34 |
| To this should be added amount paid Credit Mobilier on account of fifty-eight miles | 1,104,000 00 |
| Total profit on construction | 43,925,328 34 |

I might spend the day in reading extracts from these reports, all going to show the enormity of the frauds practiced upon the Government. Surely what I have read will serve to show that Congress ought to hasten to do now what ought to have been done long since—to protect the Government against a corporation that has thus robbed it.

The testimony against the Central Pacific Railroad Company is not so complete, but the practices of that company have been far from what was just and fair toward the Government. I read an extract from a speech made by Hon. William A. Piper, of California, in the House of Representatives, April 8, 1876. Among other things he says:

The Central Pacific Railroad of California in 1870 became consolidated with the Western Pacific, the San Joaquin Valley, and the San Francisco, Oakland and Alameda Railroad Companies, under the name of the Central Pacific Railroad.

With a desire to own every pass and natural avenue to the Pacific, the directors, by well-known means, also secured control of the Southern Pacific Railroad Company, a corporation formed October 11, 1870, by the consolidation of the San Francisco and San José, the Southern Pacific of California, the Santa Clara and Pajaró Valley, and the California Railroad Companies. The Southern Pacific Railroad of California should not be confounded with the Southern Pacific Railroad of Texas.

The schemes of these men to secure immense profits in the construction of roads to the Pacific were similar to those of the Credit Mobilier of America.

He then refers to a suit in California relating to the Central Pacific, and says:

Under these circumstances, the account given by Samuel Brannan, the plaintiff in this suit, may be considered as substantially true. He asserts that C. P. Huntington, Leland Stanford, Mark Hopkins, Charles Crocker, E. B. Crocker, and others, being a majority of the directors of the Central Pacific, formed themselves into a company styled the Contract and Finance Company, for the purpose of taking contracts for the construction of the road at rates largely in excess of the sum at which the work could have been let out to responsible parties. The said directors then entered into a contract with themselves, as member of this fictitious corporation, for the construction of the Central Pacific, and transferred to the Contract and Finance Company the entire subsidies of land, money, and bonds granted by the United States, the States of California and Nevada, and various municipal corporations of California in aid of the enterprise. They also granted to Wells, Fargo & Co. the exclusive right of running express trains for the transportation of freight, packages, and bullion over the Central Pacific, and received as pay for the concession stock in that company. They also bought up the stock of competing railroads, and, receiving the subsidy bonds from the United States, appropriated to themselves the profits of said roads. They so managed their operations, principally through the Contract and Finance Company, as to earn immense profits, recklessly increasing the cost of building the Central Pacific to double or treble the amount necessary.

In order to obtain these immense grants of land and money, and to procure the reorganization of the competing railroads purchased by them, and to secure their re-election as officers thereof, they expended vast sums of money in lobbying; and in carrying out their schemes generally they rode rough-shod over the people of the Pacific coast, using every conceivable mode of oppression. These grave charges are substantially confirmed by the reluctant testimony of Richard Franchot and C. P. Huntington, given in the early part of 1873 before the special committee of this House appointed to investigate the operations of the Central Pacific.

These companies now have the ability to make reasonable provision to pay the debt of the Government. Their earnings are immense. They make larger dividends than any railroad companies in this country. If the bill before the Senate should become a law, they can, as appears by the report of the committee, pay to the stockholders from 4½ to 6 per cent. dividends on the nominal value of the capital stock. And when we consider the market value of the stock, and then further what it really cost most of the stockholders, such dividends would be enormous.

The bill of the Committee on the Judiciary is compulsory in its provisions. This we have seen is absolutely essential. It makes adequate—not more—provision for paying the debt of the Government, principal and interest, when it shall mature, leaving the stockholders reasonable, under the circumstances extravagant dividends. And in case the earnings of the company shall not in any year be adequate for the purposes of the bill, ample provision is made for giving relief. The bill requires no duty, imposes no obligation impossible of performance; it is reasonable and practicable in all its provisions.

With all due respect to the Committee on Railroads, I must say that the bill reported by them, by its terms and according to their own showing, is inadequate to the due protection of the rights of the Government. It does not provide for the payment of the debt of the Government at maturity, it is not compulsory, and in view of what we have seen of the practices and spirit of these corporations, it is practically an indefinite postponement of the rights of the Government and the people. It is wholly unacceptable, if it is seriously the purpose of Congress to afford substantial protection for the Government.

Mr. President, the great importance of the subject under consideration must be my apology for detaining the Senate so long. Congress has certainly been remiss in reference to it in the past; I trust it will be so no longer. Justice, right, prudence, the country, alike demand our prompt and efficient action.

Mr. THURMAN. The Senator from Minnesota, [Mr. WINDOM,] the chairman of the Committee on Appropriations, desires that this bill be laid aside informally, not to lose its order, that the Senate may take up the consular and diplomatic appropriation bill.

Mr HILL. I should like to get the floor for to-morrow on the pending bill.

Mr. THURMAN. Take it now.

Mr. HILL. Very well.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) The Senator from Georgia will be recognized as entitled to the floor to-morrow when the consideration of this bill shall be resumed.

Mr. THURMAN. I consent that the bill be laid aside informally in order that the appropriation bill may be taken up.

The PRESIDING OFFICER. The Chair hears no objection, and that will be the understanding.

Mr. THURMAN. I wish to say, however, that I hope it will be the pleasure of the Senate to proceed with the funding bill with somewhat more of industry than it has heretofore. I have no complaints to make; but I hope that we may be able to get to a vote on the bill by the last of this week or very early next week, and therefore that those who desire to speak upon it will be content that there may be two or even three speeches made in a day hereafter. I only express this as my wish; of course, it will be for the Senate to say. My friend from Connecticut [Mr. EATON] says it ought not to be hurried, as it is an important measure; but if it is to pass at this session of Congress we ought not to spend too much time on it. I shall not make any unreasonable pressure, and every Senator will have an opportunity to speak on it who desires. I do not propose to take the time now, but will only say that I will request the Senate to come to a vote on this bill, if not at the end of this week, then by the middle of next week at the farthest.

Mr. MATTHEWS. When I addressed the Senate on the subject of the funding bill I announced my intention on taking my seat to move that the bill reported by the Railroad Committee should be substituted for the bill reported by the Committee on the Judiciary.

Mr. THURMAN. I thought my colleague had made that motion.

Mr. MATTHEWS. But the motion was not formally entered, and I desire to have it so entered in order that that may be the pending question.

Mr. THURMAN. Let that be moved now.

The PRESIDING OFFICER. By unanimous consent, the amendment reported from the Committee on Railroads will be considered as the pending question.

The amendment of Mr. MATTHEWS is to strike out all after the enacting clause of the bill and insert:

That in order to establish a sinking fund for the purpose of liquidating the claims of the Government on account of the bonds advanced under said act of July 1, 1862, and the acts amending the same or supplemental thereto, to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, the Secretary of the Treasury of the United States is hereby authorized to carry to the credit of a sinking fund for the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, the successor by consolidation of the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and to the credit of a sinking fund for the Union Pacific Railroad Company, the amount due, or which may be due, the said companies respectively, for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the Government, under the acts aforesaid, up to and including the 31st day of March, 1878, which, if not amounting at said date to the sum of $1,000,000, shall be made up by the respective companies to that sum each.

SEC. 2. That the said Central Pacific Railroad Company and the Union Pacific Railroad Company shall each pay into the Treasury of the United States, to the credit of said sinking fund, either in lawful money or in any bonds or securities of the United States Government, at par, annually, the sum of $1,000,000, in equal semi-annual installments, on the 1st day of April and October in each year, commencing on the 1st day of October, 1878, and continuing such payments until the 1st day of October, in the year 1900. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually, at the rate of 6 per cent. per annum. Any balance remaining due from either of said companies at the date last aforesaid, after deducting the amount standing to the credit of said sinking fund from the amount of said bonds, together with all interest thereon which shall have been paid by the United States, and interest on the principal of said bonds from the maturity thereof, respectively, to the 1st day of October, A. D. 1900, shall be then divided into fifty equal semi-annual installments, to be paid by said companies respectively, one of which shall be paid on the 1st day of April, and one on the 1st day of October in each year, with all accrued interest from October 1, A. D. 1900, on said balance remaining unpaid at the date of maturity of each installment at the same rate per annum paid by the United States on the larger part of its public debt, on the 1st day of January preceding the date of payment of the several installments: *Provided, however*, That on the failure or refusal of said companies, or either of them, to make any payment in accordance with the provisions of this act for the period of six months, then the provisions hereof in regard to the liquidation of said bonds and interest shall thenceforth, at the option of the United States, become inoperative as to such defaulting company; and the rights and powers of the United States in relation thereto, under the acts to which this is amendatory, shall be in full force and effect as if this act had not been passed, except as hereinafter provided. Or the United States may, in case of default aforesaid, retain as payment on account thereof to the credit of said sinking fund any sum or sums that may accrue to said company so in default on account of the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores until said default is removed.

SEC. 3. That the payments so to be made by said companies shall be in lieu of all payments required from said companies under said act and the amendments thereto in relation to the reimbursement to the Government of the bonds so issued to said corporations: *Provided, however*, That said companies shall not in any manner be released from their present liabilities to keep the said railroads and telegraph lines constructed under the acts of Congress aforesaid in repair and use, and to transmit dispatches over said telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the Government, whenever required to do so by any Department thereof, at fair and reasonable rates of compensation, (said rates not to exceed the amounts paid by private parties for the same kind of service,) the whole amount of which shall be paid by the Government to said companies on the adjustment of the accounts therefor, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid.

SEC. 4. That the mortgage of the Government created by the fifth section of the act of July 1, 1862, amended by the act of July 2, 1864, shall not be in any way impaired or released by the operations of this act until the whole amount of the principal of said bonds, with the interest thereon paid by the United States as aforesaid, shall be fully paid; but said mortgage shall remain in full force and virtue, and, upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage may also be enforced against such defaulting company for any such default; the Government, however, duly credit-

ing and allowing to the company upon said mortgage all payments which may have been made in part execution of this act, and interest thereon to be credited and added thereto semi-annually as hereinbefore provided.

SEC. 5. That this act shall take effect upon its acceptance by said railroad companies, or, if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders; and if said companies shall make punctual payment of the sums herein provided for and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the Government and the company or companies so performing the same, in reference to all matters relating to a reimbursement to the Government by said companies; but in case of failure so to do, Congress may at any time alter, amend, or repeal this act as to such company so making default.

SEC. 6. That all acts and parts of acts inconsistent with this act are hereby repealed.

ORDER OF BUSINESS.

Mr. WINDOM. I am prepared to take up the consular and diplomatic bill so far as the Committee on Appropriations is concerned, but the Senator from Maine, [Mr. HAMLIN,] the chairman of the Committee on Foreign Relations, requested this morning that the bill should go over until to-morrow. He wishes to make some suggestions with reference to it, and as the request came from the chairman of that committee whose duties are peculiarly related to the consular and diplomatic bill, I consented that it might go over until to-morrow.

Mr. THURMAN. Then the Senator from Minnesota will not call up the consular and diplomatic bill until after the Senator from Georgia [Mr. HILL] has been heard on the funding bill.

Mr. WINDOM. We will pursue the usual course in reference to it. I ask that it may be taken up by consent after the Senator from Georgia shall have concluded.

The PRESIDING OFFICER. That will be the understanding.

Mr. THURMAN. That will be the understanding, and then the funding bill will be passed over informally.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the Speaker of the House had signed the following enrolled bill and joint resolution; and they were thereupon signed by the Vice-President:

A bill (S. No. 528) to authorize the Worthington and Sioux Falls Railroad Company to extend its road into the Territory of Dakota, to the village of Sioux Falls; and

A joint resolution (H. R. No. 133) to prescribe the time for the payment of the tax on distilled spirits, and for other purposes.

EXECUTIVE SESSION.

Mr. BAYARD. Understanding that the Senator from Minnesota will call up his bill to-morrow, I move now that the Senate proceed to the consideration of executive business.

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

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## HOUSE OF REPRESENTATIVES.

### TUESDAY, *March* 26, 1878.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. W. P. HARRISON.

The Journal of yesterday was read and approved.

PERSONAL EXPLANATION.

Mr. FINLEY. I rise to a personal explanation. On yesterday when the votes were taken on the motions of the gentleman from Virginia [Mr. GOODE] and the gentleman from Kentucky [Mr. DURHAM] to suspend the rules I announced a pair of the gentleman from Indiana [Mr. CALKINS] with the gentleman from New Jersey, [Mr. ROSS.] I did so at the request of the gentleman from Indiana. He said to me he was going away, and that he and Mr. ROSS were paired and that he desired I should make the announcement. I notice by this morning's RECORD that Mr. ROSS voted on each of those occasions. He desires me to say the pair he had with the gentleman from Indiana, as he understood it, was on political questions, and that the questions on which the votes were taken yesterday were not political questions, and were not questions on which he was paired. I desire to state this in justice to the gentleman from New Jersey. I simply did what I was requested to do by the gentleman from Indiana.

The SPEAKER. Does the gentleman desire that the name of the gentleman from New Jersey [Mr. ROSS] shall continue in the record of yeas and nays?

Mr. CALKINS. I do. I desire to say, Mr. Speaker, that I did ask the gentleman from Ohio [Mr. FINLEY] to announce the pair between myself and the gentleman from New Jersey, [Mr. ROSS.] I did understand that the pair extended to these questions. Mr. ROSS did not so understand; and I now relieve him from any embarrassment he may feel on that question, and ask that his name may stand as recorded.

W. F. AND G. E. WILLARD.

Mr. ALDRICH, by unanimous consent, introduced a bill (H. R. No. 4099) for the relief of William F. Willard and George E. Willard, of Ferrysburg, Michigan; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

L. L. RICE.

Mr. MONROE, by unanimous consent, introduced a bill (H. R. No. 4100) authorizing L. L. Rice to locate land warrant No. 79099, issued under act of March 3, 1855, in his own name, or to sell and assign the same; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

SALE OF TIMBER LANDS.

Mr. PAGE, by unanimous consent, introduced a bill (H. R. No. 4101) for the sale of timber lands in the States of California and Oregon and in Washington Territory; which was read a first and second time, referred to the Committee on Public Lands, and ordered to be printed.

UNITED STATES BARGE OFFICE, NEW YORK.

Mr. MULLER, by unanimous consent, submitted resolutions and accompanying documents relative to the construction of a United States barge office on the battery extension in the city of New York; which were referred to the Committee on Public Buildings and Grounds.

PROTECTION AGAINST UTE INDIANS.

Mr. PATTERSON, of Colorado. I ask unanimous consent to submit for present consideration the resolution which I send to the desk.

The Clerk read as follows:

*Resolved*, That the Secretary of War is hereby requested to communicate to this House what steps, if any, have been taken to protect residents of the western part of Colorado from any threatened outbreak on the part of the Ute Indians; and also whether or not the present military post known as Fort Garland is located so as to afford the best protection from such Indians; and if not, at what point such a post should be established to afford such protection; also, whether or not with the establishment of a new post for protection against the Utes the maintenance of Fort Garland would be longer necessary, with such other information possessed by the Department as is pertinent to the subject.

Mr. HALE. I object if this is to occupy any time.

Mr. PATTERSON, of Colorado. It will not take any time.

Mr. HALE. If the gentleman can put it right through without taking up time, I will not object.

The SPEAKER. The resolution will be again read.

The resolution was again read.

There being no objection, the resolution was adopted.

Mr. PATTERSON, of Colorado, 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.

JOSEPH E. WILSON.

Mr. GIDDINGS, by unanimous consent, from the Committee on War Claims, reported back the bill (H. R. No. 670) for the relief of Joseph E. Wilson, and moved that the committee be discharged from the further consideration of the same, and that it be referred to the Committee of Claims.

The motion was agreed to.

SUFFERERS BY GRASSHOPPERS.

Mr. FINLEY, by unanimous consent, from the Committee on Agriculture, reported, as a substitute for House bill No. 1468, to provide for the relief of persons suffering from the ravages of grasshoppers, and House bill No. 1739, for distribution of seeds for sufferers by grasshoppers, a bill (H. R. No. 4102) for the relief of persons in the county of Taos, New Mexico; which was read a first and second time, referred to the Committee of the Whole on the Private Calendar, and ordered to be printed.

HENRY W. MARTIN.

Mr. CALDWELL, of Tennessee, by unanimous consent, introduced a bill (H. R. No. 4103) to correct the military record of Henry W. Martin; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed without amendment the joint resolution (H. R. No. 133) to prescribe the time for the payment of the tax on distilled spirits, and for other purposes.

The message further announced that the Senate had passed bills of the following titles; in which the concurrence of the House was requested:

A bill (S. No. 659) for the relief of Josiah H. Pillsbury; and

A bill (S. No. 901) to authorize the Secretary of War to relinquish certain por ions of the United States military reservation of Fort Fetterman, Wyoming Territory.

INFECTIOUS DISEASES.

Mr. HARTRIDGE. On Friday last the House gave unanimous consent that on the next day, Saturday, after the morning hour, the Committee on Commerce should be authorized to report back the bill to prevent the introduction of infectious diseases into the United States, and that one hour should be devoted to the debate and consideration

of the bill. The House adjourned over Saturday, so that that order could not be executed. I now ask unanimous consent that the Committee on Commerce be allowed one hour for the same purpose and under the same restrictions to-morrow after the morning hour.

Mr. HALE. The gentleman had better say after the reading of the Journal, for there may be no morning hour.

Mr. HARTRIDGE. Very well; I will do so.

The SPEAKER. Is there objection to the proposition of the gentleman from Georgia, [Mr. HARTRIDGE.]

Mr. JONES, of Alabama. I have no objection, if there can be some understanding as to the time.

The SPEAKER. The time proposed is one hour, and the Chair presumes that that hour will be divided equally between the friends and the opponents of the bill.

There being no objection, it was so ordered.

LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. ATKINS, from the Committee on Appropriations, reported a bill (H. R. No. 4104) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1879, and for other purposes; which was read a first and second time.

Mr. EDEN. I desire to reserve all points of order on the bill.

The SPEAKER. They will be reserved.

Mr. ATKINS. I do not think the gentleman will find anything in the bill subject to points of order. I move that the bill be printed, and referred to the Committee of the Whole; and I give notice that on Tuesday next I will ask for its consideration, and from day to day until disposed of, if the House will so consent.

The motion of Mr. ATKINS was agreed to.

ORDER OF BUSINESS.

Mr. EDEN. I now call for the regular order.

The SPEAKER. The regular order being called for, the morning hour will begin at——

Mr. RIDDLE. I ask the gentleman to allow me to make a report from the Committee on Invalid Pensions, to which I think there will be no objection. If there is, I will ask that it be referred to the Committee of the Whole.

Mr. EDEN. I will not object to that.

PENSIONS.

Mr. RIDDLE, from the Committee on Invalid Pensions, reported as a substitute for House bills No. 1990 and No. 2043 a bill (H. R. No. 4105) to amend an act entitled "An act to increase pensions in certain cases," approved June 18, 1874; which was read a first and second time.

The substitute provides for amending the act of June 18, 1874, so as to extend its provisions to all persons who are now or were at the time of the passage of said act entitled to pensions under existing laws, and who have lost an arm below the elbow or so near the elbow, or a leg below the knee or so near the knee, as to destroy the use of the elbow or knee joint, and such persons shall be rated in the second class and shall receive a pension of $24 per month.

Mr. RIDDLE. I ask that that bill be now considered.

Mr. EDEN. I do not object to the report being made at this time; but I understood that it was for reference to the Committee of the Whole.

Mr. RIDDLE. Then I will ask that the substitute be printed and referred to the Committee of the Whole on the public Calendar.

The motion was agreed to.

ORDER OF BUSINESS.

Mr. EDEN. I now insist upon the regular order.

The SPEAKER. The regular order being called for, the morning hour will begin at twenty-three minutes before one o'clock.

Mr. SINGLETON. I have a report from the Committee on Printing, which I think is privileged at any time.

Mr. BANKS. That is privileged, and therefore should not come in during the morning hour.

The SPEAKER. It will be received as a privileged report prior to the beginning of the morning hour.

AGRICULTURAL REPORT FOR 1877.

Mr. SINGLETON, from the Committee on Printing, reported back, with an amendment, the following resolution:

*Resolved by the House of Representatives, (the Senate concurring,)* That there be printed 300,000 copies of the report of the Commissioner of Agriculture for 1877; 224,000 copies for the use of the House of Representatives, 56,000 copies for the use of the Senate, and 20,000 copies for the use of the Department of Agriculture.

The amendment was to add to the resolution the following:

*Provided, however,* That the number of pages of said report shall not exceed five hundred.

Mr. SINGLETON. I call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the amendment was agreed to, and the resolution, as amended, was adopted.

Mr. SINGLETON 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.

REPORT ON FORESTRY.

Mr. SINGLETON. I am further directed by the Committee on Printing to report back the resolution which I send to the Clerk's desk, with an amendment.

The resolution was read, as follows:

*Resolved by the House of Representatives, (the Senate concurring,)* That there be printed 5,000 copies of the report upon forestry transmitted by the President to Congress from the Commissioner of Agriculture on the 13th day of December last, 3,000 copies thereof for the use of the House of Representatives, 1,500 for the use of the Senate, and 500 copies for the Commissioner of Agriculture.

The amendment was to add to the resolution the following:

*Provided, however,* That the total number of pages of said report shall not exceed 650.

Mr. AIKEN. Is not the resolution open to amendment?

The SPEAKER. It is.

Mr. AIKEN. I move, then, to amend it by striking out "five thousand" and inserting in lieu thereof "twenty-five thousand," and upon that amendment I propose to say a few words.

Mr. HARRIS, of Virginia. I would ask whether debate is in order upon this question during the morning hour? If this resolution is likely to lead to debate I must insist upon the morning hour.

The SPEAKER. The gentleman from Virginia is not entitled to the floor; the gentleman from South Carolina is on the floor.

Mr. EDEN. I call for the reading of the amendment.

The SPEAKER. The amendment is to strike out "five thousand" and insert in lieu thereof "twenty-five thousand."

Mr. GARFIELD. I understood that the regular order had been called for.

Mr. AIKEN. A resolution of this kind cannot pass without a word of explanation and protest.

The SPEAKER. The Chair will give the gentleman all his rights under the rule.

Mr. GARFIELD. Certainly, the Speaker had already announced that the morning hour had begun.

The SPEAKER. But the gentleman from Mississippi [Mr. SINGLETON] antagonized that announcement.

Mr. AIKEN. Mr. Speaker, some explanation is necessary to acquaint the House with the subject before them that they may vote understandingly upon the report of the Committee on Printing.

In the spring of 1874, a memorial was presented to Congress from the "American Association for the Advancement of Science," asking for such legislation as would tend to encourage the cultivation of timber and the preservation of forests. That memorial was referred to the Committee on Public Lands, who, after maturely considering its merits, reported favorably and presented a bill authorizing the appointment by the President of the United States of a Commissioner of Forestry, who should make investigations upon this and all kindred subjects. This commissioner was subsequently appointed, and he is the agent of the Government who now presents to this body the result of his investigations in the shape of a Report upon Forestry, and of which report I ask the publication of 25,000 copies, instead of 5,000 as proposed by the Committee on Printing.

I am not here, sir, to defend this agent, for I never knew him until I met him before the Committee on Agriculture; but he is a man of national reputation and I presume has his reputation somewhat at stake in submitting this report. He has labored assiduously for two years to fulfill the order of Congress in making these investigations upon the subject of forestry, forest culture, and all other questions incidental thereto.

The printing of this report was maturely considered by the Committee on Agriculture, consisting of eleven members. The manuscript is sufficient to fill two volumes, one a volume of closely printed matter of perhaps six hundred and fifty pages, the other a volume of statistical matter, comprising about three hundred and fifty or four hundred pages. Your Committee on Agriculture believe it would be prudent, wise, and proper to publish the entire report, making perhaps a thousand or eleven hundred pages. But by a peculiar rule of this House, to which I am not now offering an objection, after the consideration of the subject by the committee of eleven members, we have the matter again submitted for the consideration of the Printing Committee, which is composed of but three members, who in their wisdom decide that the Committee on Agriculture were 95 per cent. wrong. To my mind, sir, this is a most remarkable conclusion.

Now, Mr. Speaker, I ask the chairman of the Committee on Printing if he has delved into this mass of manuscript matter? Has he a conception of the magnitude of this work, and of its importance to the people of this country? If he has I would ask why is it that his committee have suggested the printing of only 5,000 copies? Is it because printing a large number would not be "in the line of economy?" If this is the purport of his report, and it should be approved by this House, I shall on a proper occasion introduce a resolution, to be referred to an appropriate committee, asking for a definition of that oft-repeated cry, harped upon this floor so constantly, "it is not in the line of economy."

It will require but $5,000 to print 5,000 copies of this report, and instead of spending a larger amount for the benefit of the great agricultural interests of our country the Committee on Printing favor that economy which would almost smother the report and prevent a single copy from falling into the hands of the farmers. Sir, compare

this species of economy with that which appropriates for a defunct Navy or for an inefficient Army more millions of the public money than we are asking for thousands. Yes, sir, we give more as an annual salary to a single commodore or general than is asked for to spread information among the people.

This is the first time during this session that the agricultural interests have asked that some benefit shall accrue to them from the appropriations made to develop the resources of the country.

Mr. FINLEY. Will the gentleman from South Carolina allow me to make a suggestion in the way of an inquiry?

Mr. AIKEN. Certainly.

Mr. FINLEY. The gentleman stated that it would cost $5,000 to print 5,000 copies of this report. Now, is it not true that it would only cost $15,000 to print 25,000 copies?

Mr. AIKEN. I can print 25,000 copies for $11,000.

Mr. Speaker, I undertook to rummage through this mass of manuscript to satisfy myself about its contents; and having learned its supposed contents by an examination of the captions to the various chapters, I ask the privilege of stating them to the House.

The first chapter contains an account of the distribution of forests throughout the United States, and their extent in the respective States and Territories.

The second chapter is captioned "The methods of preserving and increasing these forests;" the third speaks of the method of planting out forests, and describes the trees best adapted to different localities. Fourth, "Wood as a material for paper-making." Fifth, "The manufacture of charcoal and its uses, with wood-gas for illumination and other purposes." Sixth, "The consumption of wood by railroads, the respective consumption for fuel and for cross-ties." Seventh, "The comparative value of different kinds of wood for heating purposes." Eighth, "The resinous products of our forest, and the European method of preserving resinous trees."

Now, Mr. Speaker, it is a well-known fact that the resinous industries of the Southern States, in which so much money is annually invested, are being seriously injured by the suicidal policy adopted in this country of extracting as much turpentine from the trees as possible in the shortest practicable time. This gradual but certain destruction of this immense industry should be averted, and it can only be done by furnishing our citizens with the information contained in this chapter. If investigation has proven to the people of Europe how this industry can be continued for generations, and yet not exhaust the means of supply, it will be worth more than the cost of publishing this report to our citizens, if we by this means inform them of this method. And, sir, unless something be done to check the present system, this great industry, which at present seems exhaustless, must in a few years be confined to a very contracted area.

The next chapter treats of the tanning materials to be found in this country. Can anything be more important, Mr. Speaker? I imagine not. This industry, by the importation of raw hides without duty, has enabled the United States to export annually eight million dollars' worth of leather, and if it were known whence we could obtain the material to enable us to tan leather at a still less cost, our exports might be increased twofold to the advantage of that portion of our laboring population.

"The results of forest fires and their occurrence and prevention" is the caption of another chapter, and I would only ask, if there are not towns and villages in our Northwestern States that would have paid the cost of printing this report could they have been allowed within the past four years to circulate this chapter among their neighbors?

The next chapter speaks of the "insect ravages of forests, diseases, and other destroying agencies." What can be of more immediate interest to the agricultural communities of our country? Entire forest belts are sometimes swept out of existence by insects, and if in this chapter we are to be advised of a remedy, that alone will be worth the cost of publication.

Next comes the question of the "importance of forests to agriculture." A vital question; none more so. To-day the thoughtless farmer fells his forests with the hope and prospect of immediate gain, never for one moment believing that the great cause of agriculture is injured just to the extent that he assists in denuding the earth of the covering nature gave it. If, by reading this chapter, he can be restrained and induced to preserve and indeed increase his forest area, will we not be amply repaid for the appropriation? From almost every section of our country comes the wail that the climate has changed or some other cause exists that prevents our lands producing as they did years ago. Who can say that the destruction of our forests is not the cause of this mysterious change? Perhaps there are data enough in this chapter to satisfy the thoughtful agriculturist.

This is followed by a chapter or dissertation upon the manner in which the forests of Europe are managed. Are we too old to learn from these experienced scientists? Years ago the farmers of Europe were as reckless and thoughtless as are the farmers of America, and to-day they realize the folly of their recklessness. The annual freshets of the Po and other European rivers are national calamities. Their cause is directly described to the destruction of the forests upon the adjacent hillsides. No one can tell how many millions of acres of fertile low lands have in this country been rendered hopelessly barren from the same cause. Torrents of rain-fall are annually washing from our denuded hillsides gulches of barren sand upon our irrevocably ruined bottom lands, while the soluble fertility is swept by the river's current into the ocean. Let us learn from those more experienced a lesson as to how to arrest this accelerated progress to destruction. If Europe has discovered that a preservation of her forests is a preservation of her soil let us become adepts in this school of learning. If the luxuriant leaves of our forest trees check the fall, and the myriad rootlets retard the flow of rain-water that frequently pours from our summers' clouds at the rate of an inch in depth to a minute of time, then let us cherish the trunks that bear those leaves and encourage the growth of those miniature rootlets.

Europe has her schools of forestry, and the next chapter in this report treats of that subject. Are we too learned to receive instruction from this source also? If this report tells us what Europe is doing, let us know the fact, and let our farmers learn what older nations are doing upon a subject of such vital importance to their vocation.

But the last chapter is perhaps the most important, and that treats of the influence of forests on climate. Mr. Speaker, who can tell us to-day what effect this denudation of our country has upon our climate? Why the sudden and unprecedented changes in our climate in almost every section of this broad land? Whence the cause of the periodic droughts annually experienced nowadays throughout our cotton belt? No one can say that denudation and consequent rapid evaporation is not the cause.

Mr. Speaker, these are the various topics treated of in the first volume of this report. The second volume is one of statistics, which we do not ask to have published, but which, I believe, should appear with the other as information for the people.

I have made a calculation of the cost of publishing 25,000 copies of this report provided it covers no more than 650 pages. It will not exceed $11,200.

Mr. SINGLETON. Did you get that from the Public Printer?

Mr. AIKEN. Yes; and I can state another fact for the benefit of this House, and I beg the members to hear and remember it. While 25,000 copies of this report, if published by the Government printing establishment here in Washington, where house rent, fuel, and gas are supplied at the expense of the Government, will cost $11,200, I can take the very same job to Philadelphia and have it done by private parties for $9,000. Fifty thousand copies of this work will cost but $21,000, and 100,000 copies would not cost as much as you pay to three or four officials of this Government in the shape of annual salaries, and it was for the printing of this last number that the Committee on Agriculture asked in their report. I submit, Mr. Speaker, that the report of the Committee on Printing, proposing to publish only 5,000 copies of this volume, which contains so much invaluable information upon the agricultural and manufacturing industries of our country is unreasonably economical, and I trust the House will adopt my amendment proposing to publish 25,000 copies.

Mr. SINGLETON. The Committee on Printing have no feeling about this matter. I desire to lay before the House what the Committee on Agriculture did. The gentleman has told but a part; I wish to tell the balance. The committee recommended to the House the publication of 100,000 copies of this report, embracing eleven hundred and fifty pages, three hundred and fifty pages of which the Committee on Printing propose to strike out because the gentleman who prepared the work states that it is not necessary they should be published, as they contain mostly matters which are embraced in other reports accessible to everybody. Now, it seems to me that to publish 100,000 copies of this work at the enormous expense of $100,000 would be in the present state of our finances an extravagant expenditure of money, and unless the House shall take the responsibility of publishing that number, or even 25,000, as proposed by the amendment of the gentleman from South Carolina, [Mr. AIKEN,] it will not be done.

What did your Committee on Printing do? When the matter came before us we considered it in all kindness toward the gentleman who made the report from the Committee on Agriculture. We had Professor Hough, who prepared the work, before us, and, after a thorough examination, came to the conclusion that we ought to publish about 5,000 volumes and have the work stereotyped. If, after examination, the House should find it really so valuable, it will be a very easy matter to strike off any number that we may think the value of the work will justify. That is exactly what the Committee on Printing have done. We did not follow the recommendation of the Committee on Agriculture for the publication of 100,000 volumes, containing eleven hundred and fifty pages each, of which three hundred and fifty pages contain nothing but statistics as to the amount of lumber shipped from one country to another, &c. If the House thinks proper to print 25,000 copies of this work, it will be the act of the House, and not of the committee. We have just agreed to print 300,000 of the Agricultural Report, showing our interest in agriculture.

I now call the previous question.

The previous question was seconded and the main question ordered; which was upon the amendment of Mr. AIKEN to strike out "5" and insert "25," so as to provide for printing 25,000 copies.

The amendment was agreed to, there being ayes 130, noes not counted.

Mr AIKEN. I ask, by unanimous consent, that the resolution be further amended so as to harmonize with the amendment just adopted,

and in accordance with the proportion of the resolution reported by the Committee on Printing I move to amend so it will provide 15,000 for the use of the House, 7,500 for the use of the Senate, and 2,500 for the use of the Agricultural Department.

There was no objection, and the amendment was agreed to.

The concurrent resolution, as amended, was then adopted.

Mr. SINGLETON 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.

### MESSAGE FROM THE PRESIDENT.

A message from the President, by Mr. PRUDEN, one of his secretaries, announced that the President had approved and signed bills of the following titles:

A bill (H. R. No. 305) granting a pension to Mrs. Rebecca C. Maxwell, widow of the late Colonel O. C. Maxwell, One hundred and ninety-fourth Ohio Volunteer Infantry;

A bill (H. R. No. 2584) granting a pension to Margaret R. Coloney, widow of the late Major Josiah B. Coloney, First Maryland Infantry Volunteers;

A bill (H. R. No. 2686) making appropriations for fortifications and for other works of defense, and for the armament thereof, for the fiscal year ending June 30, 1879, and for other purposes;

A bill (H. R. No. 2887) to authorize the granting of an American register to a foreign-built ship for the purposes of the Woodruff scientific expedition around the world;

A bill (H. R. No. 3104) granting a pension to Kate Louise Roy, widow of J. P. Roy, late lieutenant-colonel United States Army; and

A bill (H. R. No. 3721) to remove the political disabilities of Robert H. Chilton.

### MORNING HOUR.

The SPEAKER. The morning hour begins at one o'clock, and the call of committees for reports rests with the Committee on the Library.

### LIBRARY OF CONGRESS.

Mr. COX, of New York, from the Committee on the Library, reported back a bill (S. No. 648) to constitute a commission to consider and report a plan for providing enlarged accommodations for the Library of Congress, with the recommendation that it do pass.

The bill was read.

The first section provides that the two chairmen of the Joint Committee on the Library of Congress on the part of the Senate and House, the chairman of the Senate Committee on Public Buildings and Grounds, the chairman of the House Committee on Public Buildings and Grounds, and the Librarian of Congress shall constitute a commission to consider the whole subject of providing enlarged accommodations for the Library of Congress, and to report a plan for such accommodations, together with an estimate of the cost.

The second section appropriates $2,500, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for procuring such plans as the commission may prescribe in furtherance of the provisions of the act.

Mr. FORT. Mr. Speaker, does not that bill under the rule go to the Committee of the Whole on the state of the Union?

Mr. COX, of New York. I trust the gentleman from New York will let me make a short statement in reference to this matter before he insists on his point of order.

Mr. FORT. I withdraw the point of order temporarily so the gentleman from New York may be heard.

Mr. COX, of New York. I simply desire to state to this House, Mr. Speaker, that six times the Librarian of Congress has recommended some provision for the protection and preservation of our books. We ought either to abolish the Library or provide greater accommodation. The Library is growing, both as to books and readers. It has already 331,118 books, or had January 1, 1878; 110,000 pamphlets; making 441,118. Of these over 39,000 are law-books, not to mention maps, &c. There is shelf-room in the Library for only 260,000 volumes. Seventy thousand volumes have no place; they are choking up the Library, rendering it a place of destruction, not of preservation. The Library is suffocated. Something ought to be done in order to save the books already there.

There has been an increase the past year of 20,021 volumes and of maps, &c., 2,622:

| Derived from these sources: | Books. | Pamphlets. |
|---|---|---|
| By purchase | 7,682 | 849 |
| By copyright | 8,952 | 5,340 |
| By deposit of the Smithsonian Institution | 2,231 | 2,184 |
| By donation, (including State documents) | 1,030 | 320 |
| By exchange | 126 | 655 |
| Total | 20,021 | 9,348 |

Besides room is desired for the purposes referred to the Library by Congress, as to indexing of debates, documents, &c.

I hope the gentleman from Illinois, since our committees cannot agree on any plan or appropriate place for the building, will at least allow this simple appropriation to go through for the purpose of ascertaining what can be done to relieve the Library.

I could show to the House if I had the time just exactly what this Library has to do. We have given them a great deal to do. We add eight thousand volumes yearly by reason of our copyright law. We ought to provide for the annual increase of twenty thousand volumes or repeal the copyright law and stop buying books. We would have a large increase even if we should fail to appropriate money to buy new volumes. The Librarian has often asked for some enlarged accommodation for these books which are being ruined.

The Committee on the Library on June 8, 1876, through Mr. Senator HOWE, reported to the Senate a bill and a report, (No. 387, Forty-fourth Congress, first session.) From that report reasons may be gathered against any grudging upon so interesting a subject as this Congressional Library. I quote:

> But in a strictly economic sense the necessity of larger accommodations for our Library is urged upon us. The Library already holds fifty thousand volumes (1876) which are stacked up upon its floors simply because they cannot be placed upon its shelves.
>
> They do not serve the purpose for which they were designed, simply because they are inaccessible. They are scarcely more available stacked up within the Library room than if they were still in the book-stalls from which they were gathered. The evil is not limited merely to closing the books which are excluded from the shelves. They block the way to books which are upon the shelves. The whole work of the Library is embarrassed. The Library is being suffocated. The evil is constantly growing with every year's accumulations. That growth cannot be prevented even if we refuse further appropriations for the purchase of books. The copyright laws of themselves bring to the Library annually about eight thousand books, seven thousand periodicals, together with musical and dramatic compositions, photographs, engravings, chromos, maps, charts, drawings, and prints, which number in the aggregate about twenty-seven thousand. The accessions from the Smithsonian Institution add largely to this number every year. It is incredible that Congress should exclude from its use these rich accessions by refusing to provide space for their accommodation.
>
> But these accumulations must be excluded or additional room must be supplied.

The Senate has never passed on the measure then reported. Heretofore they have asked for an appropriation of $150,000. We propose no such an amount, and just now no amount at all; all we ask is that a commission shall be raised and plans sent in, in addition to other plans which have accumulated in the room of the Library Committee, for the purpose of seeing how this plethora of books can be accommodated. I trust the gentleman from Illinois will withdraw his point of order so the measure may be considered.

Mr. HALE. I understand the bill in no way commits the House to either of the plans or either of the places proposed, but leaves it all open, so that on the final report of this commission the two Houses may decide. Let me ask the gentleman whether it does commit the two Houses either to any plan or any place.

Mr. COX, of New York. It does not. The Joint Committee on the Library are committed to no particular plan and no particular place. All they ask is examination may be made by this commission composed of gentlemen who are responsible to their respective committees.

I will say to the gentleman from Illinois that I do not believe his point of order is well taken in reference to this bill. This is a Senate bill, and although the decision does not meet with my concurrence, nevertheless it has been held in this House that a point of order like that made by the gentleman from Illinois does not lie to a Senate appropriation bill.

Mr. FORT. I have no objection to the bill proposed by the gentleman from New York. I merely called attention to the point of order, because I believe all bills making appropriations of money should be sent to have their first consideration in Committee of the Whole. Out of consideration, however, for the gentleman from New York I will withdraw the point of order.

Mr. COX, of New York. I thank the gentleman. Before calling the previous question I will, with the permission of the House, insert the recommendation of the Librarian of Congress, so that when members read the RECORD in the morning they may be satisfied they have done exactly right in passing this bill. From the Librarian's report for 1867 I extract the following:

> The Librarian renews, for the sixth time, his earnest appeal through this committee to the judgment and patriotism of Congress that this body will no longer permit the great collection of literature and art confided to its care to suffer injury and loss in its present narrow and inconvenient quarters. The space, which five years ago was too small for this Library, is now, through the accumulation of nearly one hundred thousand additional volumes, utterly inadequate, not only to store the books, pamphlets, maps, charts, engravings, and oth r works of art, but it is at times uncomfortably crowded by those persons laudably seeking to make the best use of its rich and overflowing stores. A new library building has become a positive and immediate necessity to furnish room for the readers, to say nothing whatever of room for the books, nearly seventy thousand volumes of which are now piled upon the floors in all directions. It is within the knowledge of the Librarian and has formed a frequent subject of painful regret that students, and especially ladies, are deterred from frequenting the Library of Congress, because of the difficulty of procuring seats therein, while some schools of the city, whose pupils once resorted to its halls to examine the sources of English literature in volumes not elsewhere to be found, can no longer enjoy the possibility of such improvement. It is, moreover, well known to all who come to the Library that its own rules, adopted by the committee for the protection of students, are subject to compulsory violation, and that the measure of silence which should be enforced for the protection of readers is rendered impossible for want of space in which members of Congress or other investigators can be isolated from the crowd of sight-seers which sometimes throng every public place within the Capitol. "The still air of quiet and delightful studies" which should mark the halls of every library becomes further and further removed from those of the Library of Congress with each advancing year. While it may be said in extenuation that it is no function of the Library of Congress to supply the public, whether residents of Washington or the scholars of the country, with facilities for information, it cannot be forgotten that Congress

has itself invited such frequentation by the liberal policy of accumulating a great library at the seat of Government and throwing open its doors to all. It has also taken in charge the rich scientific library of the Smithsonian Institution as a probably permanent deposit, with the contingent responsibility of making its stores contribute to the diffusion of knowledge among men. And it would little comport with the theory or the practice of our popular institutions and form of government that any new bars should be placed in the path of the widest diffusion of intelligence. When it is considered that, from the nature of the case, the embarrassment of producing books and information from these accumulated heaps is constantly growing; that Congress, by the act of 1870 requiring two copies of every publication protected by copyright to be deposited in the Library of the Government, settled the question of its possible permanent shelter in the Capitol in the negative; that this building, overcrowded in all its departments, so that several committees have to occupy the same room, is crowded worst of all in the Library department, to which no possible outlet or addition of room can be procured; that the mere arithmetical computation of the growth of the country's literature proves that space must be provided for a building at least two-thirds the size of the Capitol within the century; that there is no large capital in Europe in which the library of the government can be or is provided for under the same roof with its legislature; that in our case, and in ours alone, there is added to the great Government Library the extensive and growing bureau of cop rights and copyright business for the whole country; that the attempt to get along with this double difficulty has already produced great injury to the books, with partial exclusion from their benefits, and must ultimately curtail the usefulness of the Library to an incalculable degree; that even if the remedy authorizing new space to be provided were immediately applied, some years must elapse before the requisite building accommodations could be completed: the case becomes one of such pressing emergency, not to say distress, that argument upon it should be unnecessary. Suffice it to say that it scarcely becomes a Government representing a nation of such wealth, intelligence, and power to treat the assembled stores of literature and art of the country, which its own laws have caused to be gathered at the capital and thrown open to the people, with such indignity as to subject them to injury and destruction or to equally reprehensible exclusion from their benefits. Of the mode and manner of providing for the care and permanent preservation of this treasury of knowledge Congress is properly the sole judge; but should another session of that body be suffered to pass without proper provision being in some way made for its protection, Congress will hardly be held to have discharged the trust reposed in it as the custodian of what President Jefferson called with prophetic wisdom the Library of the United States.

From all which, Mr. Speaker, it will appear that either our books have to go to waste or we must repeal the copyright and other laws devolving duties on the Library; or else that the very object of the Library must fail. It is with no pleasure that any one having pride in thought, or love for books, can see this splendid library go to ruin. It is not economy thus to allow our books to perish. A book has been called a reasonable creature. It bears "a life—a life beyond life—an immortality rather than a life." Let these precious lives be preserved!

I now call the previous question.

Mr. YOUNG. I desire to say a word, if the gentleman from New York will yield to me.

Mr. COX, of New York. I yield to the gentleman.

Mr. YOUNG. I agree entirely with the gentleman from New York about the importance of this building and I am prepared to give my cordial sanction and indorsement to the bill, with this exception: we have a Supervising Architect of the Treasury and a whole corps of architects already in the Government service at a very considerable expense, and I suggest to the gentleman if it is necessary for an appropriation of $2,500 to be made simply to pay for plans that might be prepared by architects already in the service; it occurs to me that that item of expenditure might very properly be saved.

Mr. COX, of New York. In reply to the gentleman I will say that if it is found not necessary to expend that sum the gentlemen of the commission will not do it. I think they may well enough be trusted with the expenditure of $2,500.

Mr. YOUNG. I do not dispute that; but I do not see the necessity of this expenditure on public buildings when we have already a corps of architects in the public service drawing stated salaries who can do the work.

Mr. COX, of New York. The committee is already crowded with plans, and it has been thought that the best method of determining as to the plan is that proposed in the bill. I ask for the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

Mr. COX, of New York, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

### DUTIES ON IMPORTS.

Mr. WOOD, from the Committee of Ways and Means, reported a bill (H. R. No. 4106) to impose duties upon foreign imports, to promote trade and commerce, to reduce taxation, and for other purposes; which was read a first and second time.

Mr. WOOD. I presume that under the rules this bill will necessarily go to the Committee of the Whole.

The SPEAKER. The rules so require.

The bill was referred to the Committee of the Whole on the state of the Union, and ordered to be printed.

Mr. CONGER. I desire to reserve all points of order on the bill.

Mr. WOOD. I am directed by the committee to report the resolution which I send to the desk and on it I demand the previous question. It is the unanimous report of the committee.

The Clerk read as follows:

*Resolved*, That the bill reported from the Committee of Ways and Means entitled "An act to impose duties upon foreign imports, to promote trade and commerce, to reduce taxation, and for other purposes" be made the special order for Thursday, April 4, after the morning hour, and to continue from day to day until disposed of.

Mr. O'NEILL. I move that the bill be laid on the table.

The SPEAKER. The bill is not before the House. It is in Committee of the Whole on the state of the Union.

Mr. CONGER. I make the point of order that the resolution which has just been read is not in order as a report from the Committee of Ways and Means.

The SPEAKER. Why not?

Mr. CONGER. Because it is not a report of the committee on any business to be acted on by this House. It is not a report which can be made in the morning hour.

The SPEAKER. Reports from committees are undoubtedly in order.

Mr. CONGER. But this relates to the order of business in the House.

The SPEAKER. The Chair thinks it is a report nevertheless. It is for the House to determine.

Mr. CONGER. Is that report subject to amendment?

The SPEAKER. It is if the demand for the previous question is not sustained.

Mr. WOOD. I will state to the gentleman from Michigan there were no differences of opinion in committee on this question. I assume that it is the desire of this House to dispose of this bill by passing it as speedily as possible. Therefore we have desired to fix as early a day as practicable for its consideration, so as to give ample opportunity for discussion and that we may come to a final vote on the bill itself.

Mr. CONGER. I venture to say to that gentleman that I believe it is the opinion of the majority of the House that that bill should not even be considered.

Mr. WOOD. I am quite willing to test the sense of the House upon that question. Therefore I have demanded the previous question upon the adoption of the resolution.

Mr. CONGER. And I hope it will be voted down.

The SPEAKER. The Chair, in corroboration of his position, directs the reading of Rule 151.

The Clerk read as follows:

It shall be the duty of the Committee of Ways and Means to take into consideration all reports of the Treasury Department and such other propositions relative to raising revenue and providing ways and means for the support of the Government as shall be presented or shall come in question and be referred to them by the House, and to report their opinion thereon by bill or otherwise——

The SPEAKER. That is enough. The language of the rule is, "by bill or otherwise."

Mr. CONGER. Then I hope the previous question will be voted down. I still submit this changes the rules of the House, and therefore this is not a report which the committee is authorized to make. If the Chair considers it is, I will not press the point further.

The SPEAKER. The Committee of Ways and Means, under the rule just read, have a right to report by bill or otherwise. The Chair has never known it to be successfully questioned as to bills of this character. In fact in 1872 the then occupant of this chair [Mr. BLAINE] decided that the committee had that right even though the bill came in for committal only under another rule.

Mr. CONGER. Suppose the committee reported a motion to suspend the rules. Does the Chair hold that they would have the right to do that?

The SPEAKER. This is not a proposition to suspend any rule.

Mr. CONGER. But it changes the order of business.

The SPEAKER. It is the constant practice of the House to limit debate and to instruct the Committee of the Whole as to what shall be done with a bill in Committee of the Whole.

Mr. BUTLER. Will the Chair allow me to make a single suggestion?

The SPEAKER. Certainly.

Mr. BUTLER. The Committee of Ways and Means have a right to report their opinions on matters of revenue by bill or otherwise; but they have not a right to report their opinions, I submit, on questions of order or on questions of how the business of the House shall be conducted, by bill or otherwise. The rule provides that they may report their opinions upon financial and revenue measures.

The SPEAKER. There is nothing in the rules that prohibits it, and the practice has been to allow it as to this class of legislation. In 1872, when Mr. DAWES was chairman of the Committee of Ways and Means, a tariff bill was reported from that committee, not as now under the regular call of the committees in the morning hour, but outside of the morning hour, under the provisions of the rule that allowed them to report at any time for committal, and was made a special order in Committee of the Whole on the state of the Union.

Mr. SAMPSON. Does this resolution propose to make the bill a special order?

Mr. WOOD. It proposes to make it a special order.

The SPEAKER. The resolution will again be read.

The resolution was again read.

Mr. CONGER. That is a motion.

The SPEAKER. Well, if it be a motion it is in order; but it is a report from a committee, which gives it more force.

Mr. CONGER. Then I hope the previous question will be voted down.

Mr. JONES, of Ohio. Would an amendment in the nature of a substitute be now in order?

The SPEAKER. Not unless the previous question be voted down.

Mr. BURCHARD. This resolution simply fixes a time for the consideration of the bill, and if it is not passed the bill will stand upon the Calendar, and when the House goes into Committee of the Whole on the state of the Union it cannot be reached until all the bills preceding it upon the Calendar have been disposed of or laid aside.

Mr. CONGER. We all understand that.

Mr. BURCHARD. This is a resolution fixing a time for the special consideration of the bill, so that we may have an early opportunity to consider it in committee, and then any member may move to strike out the enacting clause and bring the House to a vote upon it.

Mr. O'NEILL. But suppose members do not want to waste the time of the House by considering it at all?

Mr. BURCHARD. The bill will stand upon the Calendar of the Committee of the Whole, even though this resolution be not adopted.

[Loud cries of "Vote!" "Vote!"]

The question was put upon seconding the call for the previous question; and on a division there were—ayes 126, noes 99.

Mr. CONGER. I call for tellers.

Tellers were ordered; and Mr. CONGER and Mr. WOOD were appointed.

The House again divided; and the tellers reported—ayes 123, noes 107.

So the previous question was seconded.

The main question was then ordered, being upon the adoption of the resolution.

Mr. CONGER. I call for the yeas and nays upon the adoption of the resolution.

The yeas and nays were ordered.

Mr. BUTLER. I rise to make a parliamentary inquiry. Will the effect of this order be to exclude all other business, including the appropriation bills?

Mr. WOOD. I will state to the gentleman from Massachusetts that there is no antagonism between the two committees as to this measure.

Mr. CONGER. I object to debate.

The SPEAKER. The gentleman from Massachusetts asked a question, and the Chair permitted the gentleman from New York to answer it.

Mr. CONGER. I believe the previous question is prevailing?

The SPEAKER. It is.

Mr. CONGER. Then I object to any debate.

The question was taken; and there were—yeas 137, nays 114, not voting 40; as follows:

YEAS—137.

| | | | |
|---|---|---|---|
| Acklen, | Crittenden, | House, | Roberts, |
| Aiken, | Culberson, | Hunton, | Robertson, |
| Atkins, | Davidson, | Jones, Frank | Sayler, |
| Bacon, | Davis, Joseph J. | Jones, James T. | Scales, |
| Bagley, | Dibrell, | Kenna, | Shelley, |
| Banning, | Dickey, | Ketcham, | Singleton, |
| Bell, | Douglas, | Kimmel, | Slemons, |
| Benedict, | Durham, | Knott, | Smalls, |
| Bicknell, | Eden, | Landers, | Smith, William E. |
| Blackburn, | Eickhoff, | Ligon, | Southard, |
| Bliss, | Ellis, | Lockwood, | Springer, |
| Blount, | Felton, | Luttrell, | Starin, |
| Boone, | Finley, | Lynde, | Steele, |
| Bouck, | Forney, | Manning, | Stephens, |
| Bright, | Fort, | Martin, | Swann, |
| Brogden, | Garth, | Mayham, | Throckmorton, |
| Buckner, | Gause, | McCook, | Townshend, R. W. |
| Burchard, | Gibson, | McMahon, | Tucker, |
| Cabell, | Giddings, | Mills, | Turner, |
| Cain, | Gunter, | Money, | Vance, |
| Caldwell, John W. | Hamilton, | Morgan, | Veeder, |
| Caldwell, W. P. | Hardenbergh, | Morrison, | Waddell, |
| Cannon, | Harris, Henry R. | Morse, | Warner, |
| Carlisle, | Harris, John T. | Muldrow, | Whitthorne, |
| Chalmers, | Harrison, | Muller, | Wigginton, |
| Chittenden, | Hart, | Phelps, | Williams, A. S. |
| Clark, Alvah A. | Hartridge, | Phillips, | Williams, James |
| Clarke of Kentucky, | Hartzell, | Potter, | Williams, Jere N. |
| Clark of Missouri, | Henkle, | Quinn, | Willis, Albert S. |
| Cobb, | Henry, | Rainey, | Willis, Benjamin A. |
| Cook, | Herbert, | Rea, | Wood, |
| Covert, | Hewitt, Abram S. | Reagan, | Young. |
| Cox, Jacob D. | Hewitt, G. W. | Rice, Americus V. | |
| Cox, Samuel S. | Hiscock, | Riddle, | |
| Cravens, | Hooker, | Robbins, | |

NAYS—114.

| | | | |
|---|---|---|---|
| Aldrich, | Cole, | Hale, | Lathrop, |
| Baker, William H. | Collins, | Hanna, | Lindsey, |
| Ballou, | Conger, | Harmer, | Loring, |
| Bayne, | Crapo, | Harris, Benj. W. | Mackey, |
| Blair, | Cummings, | Haskell, | Marsh, |
| Brentano, | Cutler, | Hayes, | McGowan, |
| Brewer, | Danford, | Hazelton, | McKinley, |
| Bridges, | Davis, Horace | Hendee, | Metcalfe, |
| Briggs, | Deering, | Henderson, | Mitchell, |
| Browne, | Denison, | Hunter, | Monroe, |
| Bundy, | Dunnell, | Humphrey, | Neal, |
| Burdick, | Eames, | Ittner, | Norcross, |
| Butler, | Ellsworth, | James, | Oliver, |
| Calkins, | Evans, I. Newton | Jones, John S. | O'Neill, |
| Camp, | Evans, James L. | Jorgensen, | Overton, |
| Campbell, | Field, | Joyce, | Patterson, G. W. |
| Claflin, | Foster, | Keifer, | Peddie, |
| Clark, Rush | Frye, | Keightley, | Pollard, |
| Clymer, | Gardner, | Killinger, | Pound, |
| Powers, | Sapp, | Thornburgh, | White, Harry |
| Price, | Shallenberger, | Tipton, | White, Michael D. |
| Pugh, | Sinnickson, | Townsend, Amos | Williams, Andrew |
| Randolph, | Smith, A. Herr | Townsend, M. I. | Williams, C. G. |
| Reed, | Stenger, | Turney, | Williams, Richard |
| Reilly, | Stewart, | Wait, | Willits, |
| Rice, William W. | Stone, Joseph C. | Walsh, | Wren, |
| Robinson, Milton S. | Stone, John W. | Ward, | Wright. |
| Ryan, | Strait, | Watson, | |
| Sampson, | Thompson, | Welch, | |

NOT VOTING—40.

| | | | |
|---|---|---|---|
| Baker, John H. | Elam, | Hatcher, | Pridemore, |
| Banks, | Errett, | Hubbell, | Robinson, George D. |
| Beebe, | Evins, John H. | Hungerford, | Ross, |
| Bisbee, | Ewing, | Kelley, | Schleicher, |
| Bland, | Franklin, | Knapp, | Sexton, |
| Boyd, | Freeman, | Lapham, | Sparks, |
| Bragg, | Fuller, | Maish, | Van Vorhes, |
| Candler, | Garfield, | McKenzie, | Walker, |
| Caswell, | Glover, | Page, | Wilson, |
| Dwight, | Goode, | Patterson, T. M. | Yeates. |

During the roll-call the following announcements were made:

Mr. MAISH. I am paired with Mr. MCKENZIE, of Kentucky, who has been called home by sickness in his family. If he were present, he would vote "ay" and I would vote "no."

Mr. SOUTHARD. My colleague, Mr. VAN VORHES, is paired with Mr. WILSON, of West Virginia.

Mr. BEEBE. I am paired generally with my colleague, Judge LAPHAM. I do not know how he would vote if he were here; but I do not feel at liberty to vote in his absence.

Mr. FULLER. I am paired with my colleague, Mr. SEXTON. If present, he would vote "no" and I would vote "ay."

Mr. AIKEN. My colleague, Mr. EVINS, is absent. If present, he would vote "ay."

Mr. BAKER, of Indiana. On political questions I am paired with Mr. SPARKS, of Illinois. As this seems to be treated as a political question I desire to withdraw my vote. I will state that if Mr. SPARKS were present I presume he would vote "ay;" I would vote "no."

Mr. O'NEILL. My colleague, Mr. FREEMAN, is paired with Mr. YEATES, of North Carolina. If they were present, Mr. FREEMAN would vote "no" and Mr. YEATES would vote "ay."

Mr. BOYD. On all political questions I am paired with my colleague, Mr. KNAPP. This seems to be viewed as a political question, and I desire therefore to withdraw my vote. If Mr. KNAPP were present, he would vote "ay" and I would vote "no."

Mr. PATTERSON, of Colorado. I am paired on this question with Mr. ERRETT, of Pennsylvania. If present, he would vote "no" and I would vote "ay."

Mr. FRANKLIN. On this question I am paired with the gentleman from New York, Mr. DWIGHT. If present, Mr. DWIGHT would vote "no" and I would vote "ay."

Mr. CONGER. Before the Chair announces the result of the vote, I desire to raise a point of order upon it.

The SPEAKER. The Chair should announce the result before any point of order can well be taken upon it.

The result of the vote was then announced as above stated, and that the resolution was adopted.

Mr. CONGER. I now desire to raise this point of order: that the resolution just voted upon proposes to make a special order of the business of the House, and therefore it requires a two-thirds vote for its adoption. I would call the attention of the Chair to page 315 of the Manual, which says:

Special orders are made under a suspension of the rules.—Journal, 1, 31, p. 1176. [And, of course, (unless unanimous consent is given for the purpose—Journal, 1, 30, p. 580,) can only be made, except in the case of appropriation bills, when a motion to suspend the rules is in order. Most of the "special orders" of late years have been made by unanimous consent, and it is of rare occurrence that a special order is made by a suspension of the rules requiring a two-third vote.]

The House may at any time, by a vote of a majority of the members present, make any of the general appropriation bill a special order—Rule 119, p. 129; but in all other cases it requires a two-third vote to make a special order, it being a change of the established order of business.

Mr. WOOD. That point of order was made before the resolution was voted upon, and the Chair decided it.

The SPEAKER. The Chair desires to hear the point of order.

Mr. CONGER. This point of order has not been made before.

The SPEAKER. The gentleman from Michigan, [Mr. CONGER,] the Chair thinks, is mixing the rule with a decision of a former occupant of the Chair. The Chair would suggest that if the gentleman would read Rule 119 he will find that it does not contain the words he has quoted; yet from his reading of them the House might gather the impression that they constituted a part of the rule.

Mr. SPRINGER. Has the morning hour expired?

Mr. WOOD. I desire to have referred to the Committee on Printing a resolution to print extra copies of the tariff bill.

Mr. CONGER. Rule 119——

Mr. WOOD. If the gentleman——

Mr. CONGER. If the gentleman from New York [Mr. WOOD] will insist upon interrupting, I will call for the regular order, as the morning hour has expired.

The SPEAKER. The previous question is still operating.

Mr. CONGER. So I supposed. Rule 119 says:

General appropriation bills shall be in order in preference to any other bills of a public nature unless otherwise ordered by a majority of the House.

And the House may, at any time, by a vote of a majority of the members present, make any of the general appropriation bills a special order.

Now, I suppose that it is not claimed that this bill reported from the Committee of Ways and Means is a "general" appropriation bill. I will now read what I proposed to read from the rule.

The SPEAKER. The gentleman appears to be coupling a decision with the rule.

Mr. CONGER. I have read the rule, which I suppose does not apply to the case of a report from the Committee of Ways and Means, but only to appropriation bills and those "general appropriation bills." The decision which I have read, and which I suppose is at least good by way of argument, is:

The House may at any time, by a vote of a majority of the members present, make any of the appropriation bills a special order; but in all other cases it requires a two-third vote to make a special order, it being a change of the established order of business.

I made that point of order, the Chair will remember, when the resolution was reported. I now make the point of order, the resolution having been voted upon, that it requires a two-third vote to adopt it. I read further from the Manual:

The usual form of resolution for making a special order is, "that the (here describe the bill or whatever else it may be) be made the special order for the — day of ——, and from day to day until the same is disposed of."

I cannot find in the decisions of the Chair (I presume the Chair has the journal to which reference is made) anything which indicates that a report from the Committee of Ways and Means of a bill which is not in any sense of the term an appropriation bill, and especially is not a "general appropriation bill," may be made a special order by a majority vote. I therefore make the point of order which I have indicated.

The SPEAKER. The point of order raised by the gentleman from Michigan, [Mr. CONGER,] as the Chair understands it, is that it requires a two-third vote to pass the resolution which has just been reported from committee and adopted. That is the common-sense mode of approaching the question.

Mr. CONGER. Yes, sir.

The SPEAKER. The very rule to which the gentleman refers does not contain any directory words in the direction he desires, and the gentleman relies upon a decision which was made by Speaker Stevenson, in the first session of the Twenty-third Congress, upon the motion to make the bill (H. R. No. 443) regulating the deposit of the money of the United States in certain local banks a special order in the House at a certain hour, and which, as will be seen, applied to a direction in the House as to what should be done by the House. This resolution, in addition to being a report from a committee and subject to the action of a majority of the House in this respect, is in the nature of an instruction to the Committee of the Whole how to proceed; and clearly a majority of the House has that matter within its control. The Chair will cause to be read his own decision on this point when heretofore raised.

The Clerk read as follows:

Mr. BANKS made the point of order that the last clause of the resolution, namely, "to send for persons and papers," changed the rules of the House, and was not now in order.

The Speaker overruled the point of order on the ground that on the motion to commit or refer it was in the power of the House to commit or refer with instructions, and that conferring that power upon a committee was merely directing its mode of procedure.—*House Journal*, second session Forty-fourth Congress, page 297.

The SPEAKER. This decision was appealed from; and the House sustained the decision—yeas 146, nays 78. The Chair desires further to read from the Manual:

A motion to commit may be amended by the addition of instructions. (Page 186.)

But the Chair would refer to a case precisely in point, when a similar bill to this, a tariff bill, was submitted under report for committal in 1872. The Chair will cause to be read the proceedings which then occurred and the decision of the then Speaker thereon.

The Clerk read as follows:

Mr. DAWES, from the Committee of Ways and Means, reported a bill (H. R. No. 2322) to reduce duties on imports and internal taxes, and for other purposes; which was read a first and second time.

Mr. DAWES. I move, Mr. Speaker, that this bill be printed, and that it be committed to the Committee of the Whole, and made a special order for Tuesday next after the morning hour, and from day to day thereafter until disposed of, to the exclusion of all other business.

The SPEAKER. There can be no conflict with the Committee on Appropriations. A special order in Committee of the Whole does of itself take precedence of all subsequent orders. The Chair is under the impression, although he has not consulted the Calendar, that only two special orders in Committee of the Whole are now pending, the West Point appropriation bill and the fortification appropriation bill, which will probably take a very short time. These will necessarily take precedence, and then the bill reported by the chairman of the Committee of Ways and Means will be considered, to the exclusion of other business.

* * * * * * *

This is an assignment which the rules entitle the Committee of Ways and Means to have. It is merely having a bill reported from that committee referred to the Committee of the Whole on the state of the Union; and it may by a majority vote be made a special order.

Mr. WOOD. There was a minority report in that case from the same committee.

The SPEAKER. This ruling of the Chair was not appealed from; it was accepted as a correct construction of the rule. The present ruling of the Chair is in accord with the decision in that case, and it seems to be also in accord with the plain, practical, common-sense principle that the House, having referred a bill to the Committee of the Whole, has the right to instruct that committee as to its procedure.

Mr. BANKS. Mr. Speaker, I desire to say a word on this question of order. I did not vote upon the question before the House because elsewhere I did not dissent from the resolution, although I am not altogether in favor of it. But inasmuch as the ruling upon this question is likely to be a precedent in this House hereafter, I desire to say that the resolution reported from the Committee of Ways and Means changes the order of business to such an important extent that if closely adhered to it would exclude every appropriation bill from consideration until this bill shall be disposed of. The order of business in this House cannot be changed except by a suspension of the rules, which requires a two-third vote in every case except one; that is, any of the general appropriation bills may at any time be made a special order by a majority vote.

Mr. GARFIELD. The gentleman will, of course, remember one other exception—that we can, by a majority vote, suspend the rules to go to business on the Speaker's table.

The SPEAKER. In answer to the gentleman from Massachusetts [Mr. BANKS] the Chair will say——

Mr. BANKS. I had not finished.

Mr. SAYLER. Will the gentleman allow me to ask him one question?

Mr. BANKS. In one moment. The proceedings read (from the GLOBE, I presume) do not meet this case at all. There is no decision of the Speaker there; he makes an argument that the pending proposition would not interfere seriously with the business of the House. But my point is that the order of business in this House can only be changed by a two-third vote, except in those cases where the power to suspend the rules is expressly given to a majority; and there is no such power given as to reports from the Committee of Ways and Means.

The SPEAKER. If the language of the Speaker in 1872 is not a ruling, the Chair is at a loss to understand the meaning of language. The Speaker said then:

This is an assignment which the rules entitle the Committee of Ways and Means to have. It is merely having a bill reported from that committee referred to the Committee of the Whole on the state of the Union, and it may by a majority vote be made a special order. But of course the special order does not supervene unless the House goes into committee.

The gentleman from Massachusetts [Mr. BANKS] himself took part in that discussion; and no point of order was raised by any one in the House upon that affirmation of the Speaker. It is clearly correct that the House has the right by a majority to refuse to go into Committee of the Whole, or, having gone into committee, may refuse to proceed to the consideration of a particular bill and take up matters as the committee may see fit, by passing over the bills in regular order on the Calendar.

Mr. WOOD moved to reconsider the vote by which the resolution reported from the Committee of Ways and Means was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. WOOD moved that 5,000 extra copies of the bill just reported be printed; which motion was referred, under the law, to the Committee on Printing.

### ORDER OF BUSINESS.

Mr. SPRINGER. I rise to call up a question of privilege—the report of the Committee of Elections in the case of Dean *vs.* Field, from the third congressional district of Massachusetts.

Mr. CONGER. Mr. Speaker, I understand that the friends of the contestee in this case are not prepared to go on to-day, or at least would prefer to have the case postponed until to-morrow. I ask the gentleman from Illinois [Mr. SPRINGER] to let the District of Columbia bill, which is a special order, be considered to-day, this case going over till another day.

The SPEAKER. The gentleman from Michigan, [Mr. CONGER,] the Chair presumes, raises the question of consideration. The Chair is bound to recognize the gentleman from Illinois to call up this case, as it is the highest question of privilege known to the rules after the election of a Speaker.

Mr. SPRINGER. I dislike to discommode any gentleman, but this case has been postponed some two weeks or ten days for the purpose of accommodating members on both sides of the House, and I cannot yield to further requests.

Mr. HENDEE. I raise the question of consideration on the ground that the House having assigned an early day for the consideration of the tariff bill, the probability is the District of Columbia bill may not be passed unless it is pressed at every possible moment, and I raise the question of consideration so the House may determine as between the election case and the consideration of the District of Columbia bill.

Mr. SPRINGER. So far as the question of consideration is concerned, as I understand the rules, the question of consideration cannot be raised on a matter of this kind, this being of the highest privilege. It is in order unless the House postpones it or lays it aside for the present.

The SPEAKER. The question of consideration can be raised. The Chair is bound to recognize the gentleman from Illinois, because he rises to move to proceed to the consideration of business of the high-

est privilege, but the majority of the House may lay it aside, preferring that the unfinished business proceed first.

Mr. SPRINGER. Of course the House may vote not to take it up.

The SPEAKER. The vote may as well be taken on the motion of the gentleman from Illinois as in any other way. Those who do not desire to proceed with the consideration of the contested-election case can vote against the motion to take it up for present consideration.

Mr. CONGER. It has been so often agreed to on the one and the other side of the House to postpone a case of this sort in order to suit the convenience of the opposite side that it seems to me a suggestion merely on the part of the sitting member's friends that they were not prepared to go on with the case to-day would be sufficient to postpone its consideration.

Mr. SPRINGER. I have yielded so often to the postponement of this case that I am obliged to insist on my motion to proceed with its consideration at the present time.

The House divided; and there were—ayes 110, noes 105.

Mr. CALKINS demanded tellers.

Tellers were not ordered.

So the House determined to proceed with the further consideration of the contested-election case.

### MASSACHUSETTS CONTESTED-ELECTION CASE.

The SPEAKER. The House now resumes the consideration of the following resolutions reported from the Committee of Elections.

The Clerk read as follows:

*Resolved*, That Walbridge A. Field is not entitled to a seat in this House as the Representative from the third congressional district of the State of Massachusetts.

*Resolved*, That Benjamin Dean is entitled to a seat in this House as the Representative from the third congressional district of the State of Massachusetts.

Mr. LUTTRELL. I hope the gentleman from Illinois will state at what time he proposes to call for a vote on this question.

Mr. SPRINGER. I cannot answer at this time, but at the earliest practical moment I shall demand the previous question, and hope it will be this afternoon some time.

Mr. LUTTRELL. Does the gentleman propose to take a vote to-day?

Mr. SPRINGER. I do, if it is possible; but the previous question will be called to-day at least.

Mr. GARFIELD. I wish the gentleman from Illinois would state what is the prospect of a vote being had to-day.

Mr. SPRINGER. It will not be earlier than five o'clock the previous question will be called.

Mr. GARFIELD. I suppose the Chair has a list of those who desire to speak on the question, and from that it can be judged whether we will reach a vote to-day or not.

The SPEAKER. The Chair has not been furnished with the list, or it is mislaid.

Mr. SPRINGER. The previous question will not be moved earlier than five o'clock.

Mr. GARFIELD. I hope it will be agreed the previous question will be considered as pending at the end of the day's session and that the vote shall not be taken to-day, but some time to-morrow. If we are going to wait until five o'clock before calling the previous question, we cannot get a vote to-day.

Mr. SPRINGER. I accept the proposition of the gentleman from Ohio, that the previous question will be called immediately after the reading of the Journal to-morrow.

Mr. FRYE. I hope that will not be done.

Mr. SPRINGER. I will say, then, after the morning hour.

Mr. KILLINGER. That time has already been set for the consideration of another bill.

Mr. SPRINGER. Then let it be understood that immediately after the morning hour to-morrow the previous question will be moved.

The SPEAKER. The House has given unanimous consent for the consideration to-morrow, after the reading of the Journal, of the bill to be reported from the Committee on Commerce in reference to contagious diseases. If the previous question is demanded and sustained to-night this will go over and come up immediately after the reading of the Journal to-morrow as the unfinished business, under operation of the previous question.

Mr. FRYE. I hope the gentleman will not insist on the previous question being demanded to-day. There is a gentleman relied on to make a speech who is now absent on account of sickness and will be absent throughout the day.

Mr. SPRINGER. I desire to accommodate any gentleman in that condition, and therefore give notice I will not call the previous question until to-morrow.

Mr. CONGER. After the morning hour?

Mr. SPRINGER. No, sir; but we begin to-morrow after the reading of the Journal with this as the unfinished business.

Mr. KILLINGER. That time has already been fixed for another question.

Mr. SPRINGER. In order that there may be no misunderstanding, I will state it is not the intention to call for a vote on this question to-day, but that to-morrow it will be called up immediately after the reading of the Journal as the unfinished business.

Mr. CONGER. After the morning hour?

Mr. SPRINGER. No, sir; after the reading of the Journal. There will be at least an hour's discussion to-morrow owing to the fact there will be an hour after the main question is ordered, and members will have ample time to reach the House before the vote is taken.

The SPEAKER. There has been, by unanimous consent of the House, authority given to the Committee on Commerce to report to-morrow morning a bill relating to the introduction of contagious diseases.

Mr. SPRINGER. Immediately after the morning hour.

The SPEAKER. Immediately after the reading of the Journal.

Mr. SPRINGER. I did not so understand. I will ask the Clerk to refer to the Journal to see if the order is not immediately after the morning hour.

The SPEAKER. The Chair recollects it quite distinctly that the order was immediately after the reading of the Journal.

Mr. SPRINGER. That will only take one hour. I will then call up the election case immediately afterward.

Mr. CONGER. I suggest that the gentleman call it up after the morning hour. Let us have a morning hour.

Mr. SPRINGER. There will be a morning hour after the election case is disposed of.

Mr. MILLS. There are two claimants for the seat of Representative from the third congressional district of Massachusetts. Each of them claims the seat by virtue of the judgment of a tribunal created by law. This is all the testimony we have to determine our judgment. There is no question about fraud. There is no question about ineligibility of electors; and the right to the seat must be determined alone by the consideration that we may give to the judgment of one or the other of these two tribunals. One of them is created by State authority alone. The other one is created by the joint action of the Federal and State governments. These two tribunals cannot both be supreme. One must speak by authority and the other without authority. Their judgments must carry weight or not in proportion as they speak by the authority of law.

Now, it is a familiar principle with all lawyers that a court having jurisdiction of a subject and the jurisdiction having attached, its judgment imports absolute verity, it speaks by inspiration, it cannot be called in question. It is another principle that where a court is without jurisdiction or its jurisdiction has not attached, its record imports absolute nullity. Now, if one of the courts speaks by authority of law and the other without, we must look to that tribunal that speaks with authority of law and whose judgment carries with it unquestioned verity.

As this is a Federal office we must look to that law that proclaims itself to be the supreme law of the land, "anything in the constitution or law of any State to the contrary notwithstanding." The Constitution of the United States is the highest law. What has it to say upon the subject of this election? Let us see. It says that the States may prescribe the times, manner, and places of holding elections for Representatives; but that Congress shall have the right by law to make or alter such regulations. The State has a primary right to regulate the elections of these Federal officers; but the Congress of the United States have the supreme supervising power over that. What for? For the preservation of the Federal House of Representatives. The States may be allowed, if their conduct be not inimical to the Federal Government, to go on with these regulations; but the Federal Government may at any time it pleases encroach upon the State regulations and make its own prescriptions either by abolishing the whole State regulations or by altering so much of it as it pleases.

Accordingly we see from the commencement of our Government that the Federal authority has encroached upon the State authority in various ways. Formerly some of the States elected by general ticket, others elected by districts; and that was a State regulation prescribed by the State authority. But how is it now? The Congress of the United States have prescribed that all the States shall elect by district. There is an interference with the "manner." Just in proportion as the Congress have advanced upon the State authority the State authority is superseded. Formerly it was the case that some of the States voted *viva voce*, others by ballot. But how is it now? The Congress of the United States, in obedience to that provision of the Constitution, requires that every State shall vote by printed or written ballot. What is the result? The State authority to that extent is superseded. And I might go on and enumerate other provisions of the State regulations that have been superseded by the Federal Government. In these cases will any one say that an election held by general ticket was legal? Will any one say that an election held *viva voce* is legal when the law of Congress, the paramount law, has "altered" the State regulation? Formerly the States prescribed *different times*, but now Congress prescribes a uniform time of holding elections. Will any one say that an election held under State law at a time different from that fixed by Congress is legal?

And now the Federal Government has prescribed, as a supervisory power over the State government, that a Federal representative shall be present at each polling-precinct to take care of the election, to guard the ballot-box, to superintend and supervise the count. For what? A Federal law of Congress says "to the end that each candidate for Congress shall receive every vote that has been cast for him." And the Federal Government says that he shall remain until the votes are deposited, watch the ballot-box, remain with it, demand the right to be present with it, by the authority of the Federal Government, until every vote is counted and the canvass is "wholly completed." Congress requires the circuit court of the United States

to open before the election and remain open till after the election, that its jurisdiction may be exerted to guard the election of a Federal Representative. It requires the judge to appoint two supervisors for each voting-precinct, to be of different parties, if applied for. It authorizes and requires the supervisors to attend at all times and places fixed for registration, to challenge persons offering to register, to make return to the chief supervisor of the list of registered voters, to "inspect and scrutinize" the registry, to "detect and expose" the improper removal or addition of a name; to attend at all "times and places" fixed for holding elections and for counting the votes; to remain where the ballot-boxes are kept at all times. At the closing of the polls they are required to place themselves in such position as to enable them to engage in the work of canvassing the ballots, and remain "till every duty in respect to the canvass, certificates, returns, and statements have been '*wholly completed;*'" they are to remain in the presence of the officers holding the election and "to witness *all their proceedings including the counting of the votes and the making of a return thereof.*" For what purpose are these regulations prescribed, *altering* as they do the former "manner" of conducting elections? Congress answers the question, "to the end that each candidate for Congress shall have every vote cast for him." Are these regulations necessary to secure that result?

Congress thought so. Congress prescribed them to guard the election of Representatives, because it was thought the State authority was either not able or not willing to protect the elective franchise and see a full and fair election.

What do all these carefully prescribed regulations mean? They mean something or nothing. If the State authority of Massachusetts can nullify them they mean nothing. But if they have any meaning at all it is that this power is exerted for the purpose of protecting the ballot and determining a fair and free election. It says so in terms. It commences back with the registration. It requires the supervisor to be present at the registration to challenge illegal names, to see that no legal names are stricken from the list. It authorizes and requires them to be present at the election.

For what purpose? What does the law say? To detect and expose, to guard and supervise. That is the language of the law. And it keeps them in the presence of the ballot-box till the election is closed, the result declared, and the whole canvass "wholly completed." It is the judgment, therefore, of a court created partly by State law and partly by Federal law. The State law appoints certain officers in the several wards: clerks, judges, and others. If afterward the State authority of Massachusetts can intervene, can nullify the whole Federal authority, can trample it under foot, it can render nugatory all these regulations made by Congress to secure a free and fair election. If the State can do this Congress is manifestly, without the power to make these regulations and without the power to preserve itself. If the State can disregard its supervisors it can disregard the day of election fixed by Congress, it can disregard the manner of voting by ballot as fixed by Congress, and the power so carefully retained in the Federal Constitution to supervise the State regulations for the protection and preservation of the House of Representatives is utterly nugatory and idle.

This is no new doctrine; this is the doctrine of Judge Story in his Commentaries on the Constitution. In commenting upon this article of the Constitution he says:

> A discretionary power over elections must be vested somewhere. There seemed but three ways in which it would be reasonably organized. It might be lodged either wholly in the National Legislature, or wholly in the State Legislatures, or primarily in the latter and ultimately in the former. The last was the mode adopted by the convention.

Not only to invest the State governments primarily with the guarding of elections of members of Congress, but ultimately to place the power in Congress whenever it sees proper to take charge of elections of Federal Representatives; just to that extent the Federal Government intervenes and encroaches upon the State authority, inhibits the State authorities, and for the manifest reason, as Judge Story says, for the protection and preservation of itself.

Gentlemen have asked during this debate this question: suppose the supervisors do not attend; suppose they are appointed, and an election is held without their aid, as is the case in many districts throughout the country, does that necessarily nullify the election and render it void? Most unquestionably not. Certainly not. It is a privilege, and a privilege may be waived by the parties for whose benefit it is created; but when the privilege is asserted, and you deny to these parties who assert it their rights, every act is null and void. Take the elective franchise; every man is a unit in the sovereignty of the country and has a right to express his views at the ballot-box. But suppose two-thirds of the electors of a district remain away from the polls of their own volition, is the election void? Unquestionably not, because they did not see proper to exercise that privilege.

But suppose that all the electors come to the polls and two-thirds of them are forbidden to cast their ballots. Will you say that the election was legal? Unquestionably not? The privilege is conferred upon the citizen to vote, and it rests with him to assert that privilege or not to assert it. But when he claims it and is not allowed to exercise it, then the election is illegal. This principle of guarding great privileges runs all through the Constitution and our system of government. A man has a privilege accorded him to protect him against being tried twice for the same offense. That is a privilege. Suppose he is indicted the second time for an offense for which he has already been tried and he does not come into court and plead his former acquittal and protect himself by producing the record of that acquittal: will any one say that the judgment of the court condemning him a second time is illegal? Unquestionably not. But if he does come and present the record of his former trial and acquittal and presents the record of the court that tried him, and the court still proceeds to try him and convicts him, will any one say that the judgment of that court is not without authority?

Take another case. A citizen of New York is sued by a citizen of Pennsylvania in a State court. Suppose he comes into court and does not plead to the jurisdiction, will anybody say that the judgment of the court is void? Unquestionably not. But suppose he does come into court and plead to the jurisdiction and demand that the case be carried to a Federal court, and is overruled and judgment pronounced, who will say that the judgment of the court is according to law? These are privileges, and privileges conferred on the citizen when asserted in the manner provided by law; but if not recognized and judgment is rendered against them, to that extent the privileges are denied and the judgment is absolutely null and void.

Such are the facts in the case now before us. The Federal law provides by statute, in the language of Judge Story, for the appointment of Federal supervisors. Judge Story says there is a supervising authority in Congress, and the Congress of the United States in passing this law called them supervisors. Both seem to have understood the authority of Congress alike. Then to the extent the Federal authority advances upon the State authority it obliterates the State authority and the Federal Government may, as Judge Story says, take jurisdiction of the whole matter and regulate the election in every district as to time, place, and manner of holding elections.

It may take from the States the whole control of the elections of Representatives in Congress. So far Congress has gone as far as to appoint supervisors to assert the presence and supremacy of the Federal Government at the polls in the election of Federal Representatives.

Now it is the determination of that tribunal, partly State and partly Federal, which determines the question with authority of law and whose record imports absolute verity, that the judgment of the State tribunal which attempts to nullify the Federal authority and take from it the power to regulate the time, place, and manner of holding elections for Representatives is without authority of law and null and void, and its judgment imports absolute nullity. By the determination of the State tribunal Mr. Field is elected by 5 votes, but its judgment being without authority of law and in violation of the paramount law, its judgment is meaningless and constitutes no evidence of claim whatever.

By the determination of the joint tribunal, Mr. Dean is elected by 7 votes. This being the tribunal created by paramount law, and having proceeded in obedience to law, its judgment is the highest evidence of title. To seat Mr. Dean is to declare that Congress has the right to prescribe such regulations as its wisdom may suggest to protect the election of its Representatives, and that such regulations must be respected and obeyed, "anything in the constitution or laws of any State to the contrary notwithstanding." To seat Mr. Field is to declare that the regulations of the elections of Representatives by Congress is inferior and subordinate to the regulations of the State, and the States have the rightful power to nullify the Federal regulations and wholly disregard them. I am a State-rights democrat, but not of the nullification school.

Mr. EDEN. Mr. Speaker, Mr. Dean, the contestant in this case, claims the seat by virtue of the returns of the ward officers holding the election in the several wards composing the congressional district, the correctness of which returns is also shown by the certificates of the United States supervisors of election. These returns give Mr. Dean a majority over all of 4 votes. Mr. Field, the sitting member, claims the seat by virtue of a recount of the ballots made by three aldermen, acting as a committee for the board of aldermen for the city of Boston. The recount gives Field a plurality of 5 over Dean, but, counting the scattering votes, he has 4 votes less than a majority of the whole vote cast.

These ward officers are, for each ward, three inspectors of election, appointed by the mayor with the approval of the board of aldermen, and one warden, one clerk, and three inspectors of election, chosen by the qualified voters of the several wards, and whose duty it is to hold the elections, canvass the votes, and certify the returns to the city clerk. It is made the duty of the mayor and aldermen and city clerk—

> To examine the returns made by the returning officers of each ward in the city, and if any error appears they shall forthwith notify said ward officers thereof and require of them new and additional returns, which, together with the original returns, shall be included in their return of the result of the election.

It will be observed that the mayor and aldermen have nothing to do with counting the ballots. In fact the ballots are not before them. If upon examination they find an error in the returns, they are not to correct it, but must summon the ward officers to make the correction. Their sole duty is to examine the returns, if any error is discovered to cause it to be corrected, and to certify to the secretary of state a copy of the record of the returns attested by the clerk of the city. The returns of the ward officers, so corrected and certified to

the secretary of state, are the only evidence upon which the governor and council can act in giving the certificate of election.

Now, sir, I will state a remarkable fact in this case. The election was held by the proper officers and every requirement of the law was observed; the ballots were not only counted by the proper ward officers, but by the supervisors of election appointed by the United States circuit court, and the returns were certified in accordance with all the forms of law. Mr. Dean had a clear majority of 4 votes over all. No one has ever alleged that the officers of the election were guilty of any fraud. No one has ever pointed out an error in their returns. There has been no attempt to show that a single ballot was put in any box with the name of Mr. Field on it that was not counted and credited to him. It has not been charged that the officers of election counted a vote for Mr. Dean that was not given him by a legal voter.

It is a conceded fact that the returns made by the ward officers to the city clerk give truly the result of their count of the votes.

In order to retain his seat, Mr. Field must set aside the result of the election, legally held and legally declared by the proper ward officers, without even a charge of fraud or misconduct on their part and without specifying any error committed by them. He attempts to do this by substituting for the lawful returns a recount made by a committee of the board of aldermen of the city of Boston and a return made by the board on that recount of the ballots. Upon the theory of the sitting member, to entitle him to his seat, he must show that the recount and the return thereon were made in compliance with the law. He does not go outside of the record and attempt to prove his case. He relies upon a purely technical title. He sets up no equity in his own behalf and charges no wrong on the part of his adversary.

Judged by the record, whose title is best? The law says that—

The votes in elections for national, State, county, and district officers shall be received, sorted, and counted by the selectmen and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received by each person and the title of the office for which he is proposed shall be entered in words at length by the town and ward clerks in their records.

The ward clerks shall forthwith deliver to the city clerk certified copies of such records, who shall forthwith enter the same in the city records.

The third congressional district of Massachusetts is wholly within the city of Boston. There is no question that the returns made by the ward officers, certified copies of which were forwarded by the ward clerks to the city clerk, give to Mr. Dean a majority of the votes of the district. The mayor and aldermen and the city clerk are required to examine the returns; if any errors appear the ward officers are to be notified and required to make new and additional returns in conformity to truth. The original and additional returns, if any, are to be examined by the mayor and aldermen and made part of the returns. The ward officers were never notified of any error in their returns, nor were they called on to make any corrections. Unless superseded or set aside by subsequent proceedings these returns must stand. Contestant claims that they have been invalidated by a recount made by a committee of the board of aldermen. The statute under which the recount and new returns was made is as follows:

If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election. The board of aldermen or their committee shall thereupon * * * open the envelope and examine the ballots thrown in said ward and determine the questions raised; * * * and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen, shall alter and amend such ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

In each one of the ten wards included in the congressional district a statement was filed with the city clerk reciting by ten or more voters of the ward that they have reason to believe that the returns of the ward officers of said ward for member of Congress in said congressional district at the election of November 7, 1876, are erroneous, in that all the ballots cast for Walbridge A. Field as member of Congress were not counted and credited to him, and that more ballots were credited to Benjamin Dean as member of Congress than were cast for him. Thereupon a recount of the ballots in all the wards of said district was made by a committee of aldermen, and the result reported to the board. Upon that report the board passed an order directing "that in the certificate to be sent to the secretary of the Commonwealth the number of ballots for Mr. Field be returned as follows," &c., giving the number. The return made by the board of aldermen increased Dean's vote 7, and Field's 14. That return is the only evidence of title upon which the sitting member occupies a seat on this floor.

Mr. Speaker, I take the position that neither the board of aldermen nor their committee have the right to make the returns of the election upon which the certificate of election is to be issued. The ward clerks are required forthwith to deliver to the city clerk certified copies of the returns of the ward officers, and the city clerk is required forthwith to enter the same in the city records.

When upon examination by the board of aldermen, or their committee, upon charges by ten or more voters that errors in the returns were made by the ward officers, any such errors are discovered, the city clerk, upon the certificate of the aldermen, is required "to alter and amend such ward returns as have been proven to be erroneous, and such amended returns shall stand as the true returns of the ward."

The aldermen have no right to manufacture returns. They may direct the city clerk to "alter and amend such ward returns as have been proven to be erroneous." Under the authority to "alter and amend," the board of aldermen took the report of their committee in lieu of the returns of the ward officers, and amended that report by directing the city clerk to certify to the number of ballots received by Mr. Field, not in accordance with the report of their own committee, and entirely ignoring the returns of the ward officers. The clerk complied with the illegal order of the board of aldermen and forwarded to the secretary of state the illegal returns made by the aldermen. Upon that return the certificate of election was issued to the sitting member, and this is the purely technical title set up here in bar of the right of Mr. Dean, who brings before us the returns of the officers holding the election and making the returns, against whose conduct there is not a suspicion of fraud nor a specific charge of error.

It is claimed that the aldermanic count and return are valid under the fourth and fifth sections of chapter 188 of the laws of Massachusetts, passed in 1876, heretofore referred to. The statement made by the voters of the several wards under which the recount was made charges but two errors: First, that all the ballots cast for Field were not counted and credited to him; second, that more ballots were credited to Dean than were cast for him. These two questions could alone be determined by the aldermanic committee upon an examination of the ballots, for no other questions were "raised" by the voters making the statement on which the action was founded. The jurisdiction of the aldermen is limited by law to the questions "raised." As the "statement in writing" of the voters does not specify in what manner the error in counting by the ward officers occurred, nor specify the number of ballots or the particular ballots they failed to count and credit to Field, or how they happened to credit Dean with ballots he never received, it is difficult to perceive how the aldermen by examining the ballots could determine the questions raised. The committee of aldermen seem to have fully appreciated this difficulty, for they made no attempt to point out any errors by the ward officers. They reported none to the board of aldermen, and neither the committee nor the board made any attempt to correct any error in the returns of the ward officers.

The aldermanic committee, seeing that no error in the returns of the ward officers had been specified which upon examination of the ballots they could determine one way or the other, concluded that they would usurp the functions of the ward officers and count the ballots. This they did without any authority of law. But they found no ballots that had been legally cast for Mr. Field and not counted and credited to him, neither did they find that Dean had been credited with any ballots not cast for him. They did not point out in their report to the board of aldermen wherein the ward officers had committed any error. They simply counted over the ballots in the boxes, came to a different result from that found by the ward officers, reported to the board of aldermen the result of their count. The board substituted that unlawful count for the legal returns of the ward officers; changed the report so as to suit their own views and insure the certificate to Mr. Field. And this is claimed as a purely technical title, bare of every element of equity, to be used to overthrow the election of Mr. Dean as shown by the lawful and unimpeached returns of the officers whose sworn duty it was under the law to hold the election and count the ballots.

Mr. BUCKNER. Mr. Speaker, there are several questions of law as well as of fact involved in the correct decision of this case. I do not propose to look at all into the questions of fact; I leave them for others. I propose merely to examine into the authority under the law of Massachusetts by which this case, in my judgment, must be decided. We are here, as my friend from Georgia [Mr. CANDLER] said—and unfortunately he is absent to-day—we are here not as voters but as judges to decide the rights of these parties according to the law of Massachusetts.

Now, if the gentleman can show any decision of the judicial tribunals of Massachusetts construing the law which is here relied upon by either party, I would bow in humble acquiescence in that judgment. But as long as it is a question for the judgment of members of this House, as lawyers and as judges, I must be permitted to have my opinion as to what are the legal rights of these parties growing out of the laws of the State of Massachusetts.

I shall not go into a discussion of the question as to what are the powers of the supervisors appointed under United States law; I pass that by. According to my view those supervisors are not judicial officers empowered to determine the rights of these parties; nor do they get their power under the fourth section of the first article of the Constitution in reference to elections of members of this House. They derive their powers purely and simply from that provision of the Constitution which gives Congress the power to enforce by appropriate legislation the provisions of the fifteenth amendment of the Constitution.

Passing that by, leaving that for others, with merely this expression of my opinion, I say that there are in this case two counts, one of which is right and the other is wrong. It is claimed for Mr. Dean that he is entitled to the seat upon this floor on the ground that the ward officers, the proper officers, by their count gave him a majority

of the votes. On the other hand it is claimed that Mr. Field is entitled to the seat here because of the action of the supervisory or revisory or appellate tribunal.

Now, there is no doubt but what if there had been no revision by the aldermanic board Mr. Dean would be entitled to a seat here. No one questions but what the ward officers were authorized by law and under the law to specially decide the question as to who received the majority of the votes cast, or rather who were elected at that election. The burden is therefore upon Mr. Field to show that the tribunal by which that election, or rather the count of the ward officers, was set aside was authorized by law; that the authority of the aldermanic board was beyond all question, and that the facts upon which they claim to act were supported by proper testimony.

I hold that under no fair construction of the act of Massachusetts, in pursuance of which the aldermanic board assumed control of this matter, had they any authority to act upon it at all; therefore their entire action is null and void.

Gentlemen have referred to what has been the practice in Massachusetts. I know nothing about that practice. A practice may have grown up there, in cases where there is a close vote, of allowing a recount as a necessary incident to the rights which belong to every candidate. I say that is no fair construction of this law. I call attention to the wording of the law.

After the officers appointed by law—the officers whom the law designates as the proper parties to determine this question—have decided what is the vote at the election, what then? As I said before, their decision is final, unless it is impeached. How? By anybody who may choose to come forward and ask the privilege of having a recount? Is that the meaning of the law? Has any candidate who imagines that the count has been false or is not correct, has he a right to come forward and ask the aldermanic board to make a recount to determine the question? Is that the meaning of this law? There is not a gentleman on this floor who will hold that doctrine.

Will any one contend that under the law of Massachusetts it is the right of any individual, without the specification of any facts charging fraud, or the statement of any circumstances showing that the election was unfair or improper, to ask for a recount upon the simple allegation that there is doubt in regard to the correctness of the announcement of the result? Nobody will affirm that proposition. Yet in point of fact that is the very ground upon which this case is to be determined in behalf of Mr. Field. It is in fact claiming that any man whom the returns show has been defeated can demand a recount upon a mere affirmation that there has been an error, without the specification of what that error is.

Hence it was that I asked my distinguished friend from New York, a member of the Committee of Elections, [Mr. HISCOCK,] if he must not necessarily strike out of the law the words "specifying wherein they deem them in error." I asked him if according to his construction those words were not necessarily eliminated, and that if they did not go upon the idea that no specification of error was to be made. I say that it is attempted here to give a construction to the law which the law-makers of Massachusetts, if they knew what language they were using, must have known could not be given to the language of the law which they passed. What is that law?

> If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reasons to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election.

Now suppose you strike out the words "specifying wherein they deem them in error;" do you not then state the ground of the argument upon the other side? You must necessarily eliminate those words from the law, in order to give the aldermanic board authority to make the recount which was made in this case.

By giving this statute a construction which amounts to nothing more than that where the vote is close either party may try a recount and take the chances, you open a door to fraud; you open a door to frivolous contests in order to determine whether the return of the officers appointed under the law, whose duty it is to see that the parties are properly dealt with, shall be set aside and another tribunal acting without authority in this matter shall determine the election. I say that such a construction is in fraud of the law.

The report of the minority in favor of Mr. Field says:

> It is the opinion of your committee that these statements were sufficient in law to authorize the examination and count of the ballots cast in the several wards, by the board of aldermen.

What are the specifications? Merely that there had been an overcount on one side and an under-count on the other. Why, sir, if these 25 votes cast for Mr. Field as a member of Congress from the fourth district had been specified as the ground for a recount, there would have been reason for an examination as to that particular fact. But unless facts be asserted which give jurisdiction to the aldermanic board, I hold that their action in undertaking a recount is absolutely void. When the question is whether we shall give a seat here to a man who has received the majority of votes as returned by officers properly authorized, whose duty it was to examine and make such report, as against a man who is returned by persons assuming jurisdiction without authority, I cannot hesitate in my judgment, unless there can be shown some controlling decision of the courts of Massachusetts or some other tribunal authorized to decide this question. For my life I cannot see upon what legal ground the election is claimed for Mr. Field; for, as I have said, the aldermanic board in my opinion had no authority, under a proper construction of the law, to make the recount.

The gentleman from Georgia [Mr. CANDLER] remarks that this was the same sort of proceeding which took place in the case of Abbott *vs.* Frost in the last Congress. That may be so; I know nothing about it. But I say that if such is the practice in Massachusetts it is an improper practice, a practice not justified by the statute; and no court in Christendom will hold it to be a proper construction of the law, that upon a general allegation of an over-count on one side and an under-count on the other, where the election is close, a recount can be had in order to take advantage of any possible mistake that may have been made. If upon such an allegation a recount can be had, then you can have a recount in any case; and you might as well strike out the words of the statute requiring the party to specify the grounds upon which he asks a recount.

Why, sir, there is a principle of common sense applicable here; a principle upon which the Committee of Elections in this very Congress acted in determining an application made in the case of Frost *vs.* Metcalfe. The application there was to open and recount the ballots where there was some dispute of about 10 or 15 votes; and the committee, as I understand, refused to order the recount until specific facts were shown to justify that action. This is in accordance with the law as laid down by McCrary. It is a principle applicable to all questions of this sort. Where the law imposes certain duties upon public officers, the legal presumption is that they have acted according to law; and in order to overturn that presumption you must make substantive allegations, and not mere vague suggestions; you must make statements of fact, which can be controverted or sustained before the tribunal which is to try them.

If the construction relied upon by the sitting member is correct, then in such case as this there is no necessity to do anything else than simply to ask the aldermanic board to make a recount, because the election is close and there may have been some mistake on one side or the other. I understand Mr. Field's title to depend exclusively upon that position; and I hold that such a position has not a particle of law to sustain it. I might on this question cite the decisions of the courts of Massachusetts in which they have affirmed the same general principle that, in order to reverse the action of an officer having jurisdiction by law to do a particular thing you must show affirmatively some grounds which will invalidate that action. I say no such grounds are shown here; and the parties might just as well have said: "Here is a close vote; we are in doubt who is elected, and therefore we ask for a recount." Is that the meaning of the statute? Will any gentleman from Massachusetts say that such is the practice in his State?

[Here the hammer fell.]

Mr. SCALES. Mr. Speaker, in this election there have been two counts, the warden count and the aldermanic count. The aldermanic count is the last count, and if authorized by law is the final count, upon which the *prima facie* case is made out. Was this count, then, a legal count? And to determine this we must look at the statute which authorizes it, as well as the objects and purposes of those who framed it.

For more than one hundred years, by the law of Massachusetts, there had been but one count, and that was the first count in this case—the count at the polls known as the ward count. This had been deemed amply sufficient in the election of her governors, her Representatives, her State senators, and all other State officers, from the time she became a State down to 1853, and there had been no complaint. Why was the change made, and what was its purpose? Not to provide for another count in the absence of complaint, and most certainly not to provide for another count with proper complaint unless there could be added greater facilities for testing and verifying the original count.

If the first count, that had so long governed and controlled all elections in the State, was to be set aside, surely it would not be done simply because another and later count had reached a different result. All things else being equal, the last count could no more prove the first count erroneous than the first count would prove that the last count was erroneous. A counts $100 and hands it over to B to count, and B makes it ninety-five; who is right and who is wrong? A and B being equally honest and equally qualified in all respects, the count of one proves no more than the other, and leaves the mind in doubt, which must be settled in some other way. But if C should stand by while A counted, and say, "I have reason to believe that A made a mistake, and my reason is that I saw A count ten bills. Nine were ten-dollar bills, and the last was a five-dollar bill; and that A counted this last as he did all the others as a ten-dollar bill, and thus made up the $100." This was a good reason; and should be considered, and might well and sensibly form the basis of an appeal to B. Calling his attention to a specified error, B would count with special reference to this, and if he found that there was one five-dollar bill in the roll of notes every one would say at once the last count was the true one, the error was specified, pointed out and found to exist just as C had witnessed it, and therefore all the presumptions are in favor of it.

So in our case. The Legislature did not intend to do anything so absurd and unreasonable as to appeal from one count to another without investing the last count with something, either in the quali-

fication of those who counted or in the circumstances under which the count took place, which would bring conviction that the last was the better and true count. Any other construction of the law would be a slander upon the legislative body, and I stand ready to vindicate it, if such vindication were necessary; but it is not needed; the language of the act vindicates it to every unprejudiced mind. In her great jealousy over the ballot-box, and in her great desire that every vote should not only be counted but that all should be satisfied it was counted fairly, the State provides, in 1863, more than one hundred years after the first and only count was established, *that if within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing, that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election.*

Now, if ten voters shall say in writing *that they have reason to believe that the returns are erroneous and shall specify the error*, then the first count, so long the true and unaltered count in the history of Massachusetts, shall be subjected to a revisory count. They must have reasons, and not only must they have them but they must state they have them, and not only must they state they have them but they must specify the reasons themselves, and thus point out the special error, as required by the statute, that the appellate board of count should have their attention called to the specific complaint, and try that and that alone, and when that is done there would be reason, good and satisfactory reason, to believe the last count would be correct.

Now, let us see whether this law has been complied with; if not, then the last count is void; for the statute must be strictly complied with, and without this compliance it would be nothing more nor less than an appeal from the count of A to the count of B, which must leave, if they differ, the whole in doubt, and will deprive the people of all confidence in the "result of any election" thus obtained.

The notice says in so many words *that the count was erroneous in that all the ballots cast for W. A. Field were not counted and credited to him, and that more ballots were counted for Benjamin Dean than were cast for him.* Does this specify the error? Could the complaint be in more general terms? One received too many and the other did not receive enough. Or, in other words, the count was wrong. But they were required to state that they had reasons to believe that the count was wrong. What were the reasons for the supposed wrong? The law demands them and will not be satisfied without them, and without them there can be no ground for an appeal and no sense in a recount. With them the error will be sufficiently specified.

The assertion is that there was error, and *that they have reason to believe there was error.* Can it satisfy the law to say there was error, for the reason that there was error? Surely the bare statement will refute any such idea. But the reason for the belief that there is a wrong is what we want, what the law demands, and no proceeding is valid without it. Give us that. Let the aldermen know them, and then let them test these reasons, and all will bow to the recount and abide by it. It is contended by the advocates for the last count that the notice was in compliance with the law. Let us test it again by the language itself of the law. *The count was erroneous, for the reason that one got too many votes and the other too few;* but what we want is the reason for believing, which you said you had, that one got too many and the other got too few. Will it, can it be insisted upon that such an absurdity was intended by the law? Surely not. In support of our view we have the cases cited by the gentleman from Illinois, [Mr. SPRINGER,] which are in point, Carpenter's case and Kneas's case, decided in Pennsylvania. In these cases the court says in substance:

> We were forced as soon as the law passed giving this court appellate jurisdiction to the necessity of assimilating all such to other legal proceedings. We demanded of the parties seeking to impeach an election return preciseness and exactitude of allegation, refusing to recognize all general charges.

[Here the hammer fell, and, upon motion of Mr. SPRINGER, Mr. SCALES was allowed by unanimous consent of the House to proceed.]

If these decisions apply to our case, then it is settled. Why do they not apply? I have listened in vain for anything that approaches to an answer. Indeed the statute uses almost the same language as the court, and surely there is no error in giving it the same construction. Next we are supported beyond successful refutation by the legislative cases also cited with so much point by the distinguished gentleman from Illinois. These cases *declare that unless the petitioner shows a reasonable ground for supposing an error in the count other than the mere closeness of the vote the committee will not recount the ballots.* The force of these decisions is felt by the learned gentleman from New York, [Mr. POTTER,] and he attempts to parry it by saying that these precedents requiring such specification relate to legislative recounts and not to the statutory one in question. But the gentleman does not condescend to tell us why the Legislature should insist so much upon the specification when they recount, and yet require no specification when it makes a law providing for another count. The same reasoning applies to both, and there certainly is as much reason for specification in the aldermanic count which has only a restrictive jurisdiction as in the legislative account that had full and complete jurisdiction of the whole matter. Consider it for a moment. In 1863 the Legislature pass a law, according to the gentleman from New York, and re-enacts it in 1876, which changes a law of count that is now one hundred years old, *upon a general statement of any ten voters that they believe the count is wrong*, and yet in 1872 and before and afterward the same Legislature says of itself, "We will not recount unless the error is precisely and specifically pointed out." In other words, "We will allow to the board a greater license than we claim ourselves." They meant no such thing, they said no such thing; their language shows it; to insist upon it is to charge the Legislature with folly.

Again, we are supported by the only construction given so far as I know in the State, and that is the construction of the city solicitor in Lynn. In this case the grounds for the recount as given were much more specific, to wit, that "they believed the returns to be erroneous, as we learn that three or four counts were made and no two agreed;" and yet in this case the solicitor says:

> They have wholly failed to specify wherein they deem them in error, and in want of such specifications there is no question for the aldermen or committee to determine.

This is unmistakable, and, if right, should settle the case. This view is also fully sustained by McCrary on Elections. Indeed, it does seem to us not only that there is an entire absence of respectable authority to sustain the view contended for by the friends of Mr. Field, but it is directly in the face of sound reason and common sense. If the law has not been complied with in giving the notice, then the board of aldermen had no jurisdiction and their count or that of the committee is simply void, and that is the end of this case.

Mr. HARRIS, of Massachusetts. Mr. Speaker, I propose to discuss this case entirely upon its merits and as if it were about to be decided by a wholly just and impartial tribunal; and I trust I do not rely too confidently upon the hope that there is to be found in this House a spirit of exact justice. If the House were evenly divided between the two great political parties, I might expect little success from such a mode of argument, but this House is so decidedly in the control of one party that there would seem to be little temptation for that party to do wrong for the sake of a single additional vote.

The other party is in such an infirm minority that it can hardly be tempted, for the purpose of securing an additional vote, to forget the obligations of justice.

Mr. Speaker, the contestants here I assume to be gentlemen seeking not their own personal success, but that the cause of their constituents shall be decided justly and according to the law and the fact. To assume that either of them would be willing to accept and occupy a seat upon this floor to which the people of his district had not legally and constitutionally called him, would be to presume him utterly unworthy of so great an honor. This is the people's contest and not theirs, and we are to endeavor to settle it with reference to the rights of the people alone.

Now, sir, by the laws of Massachusetts, and by the laws of most of the States, if not all, a plurality of ballots elects a member of Congress, a law recognized by the States, by the United States, and by Congress; and a plurality of 5 votes is as sacred under the law as a plurality of 100 votes. This House is the judge, under the Constitution, of the election and qualification of its own members. In coming to this judgment it may properly and wisely follow precedent, but no precedent can control the conscience and judgment of this House. It has a right to exercise the utmost freedom. It is at perfect liberty to make the investigation as broad and as wide as it pleases, and if it follows precedent and makes investigation solely with a purpose to do exact justice, it is safe in that liberty.

The Constitution, article 1, section 4, provides:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This provision of the Constitution is mandatory upon the States. The power reserved to Congress is merely permissive, and I suppose no gentleman on this floor will claim that when a Commonwealth of this Republic has, under the mandatory clause of the Constitution, provided a system of laws calculated to secure a fair and free and pure election, and that an election held in accordance with such system has been conducted honestly and fairly, and a result has been determined according to the law, that such result ought to be disregarded here. Such a result so reached will certainly be respected unless Congress has exercised its reserved power and changed the law. I assume so much. Now, Massachusetts, loyal to the Constitution in this as in other respects, has provided a system of laws for the election of Representatives to Congress. That system was evidently established for the purpose of securing the freedom of the elector, and of gathering up at the end the result of the election with unfailing certainty and truth.

The laws of Massachusetts provide, first, as to who shall be voters. Every native-born citizen of twenty-one years of age and every naturalized citizen who can read and write, and who has within two years of the day of the election paid a tax, municipal, county, or State, shall have the right to vote for all officers, State, county, town, city, and national. The registration of the voters shall take place before the day of election, and under our law in all cities the aldermen, who take charge of the election, are not allowed to put on the voting-list the name of a single individual whose right to vote has not been determined at a meeting held prior to the day of election. We then come to the election itself. The law provides that in cities there shall be at each ward a warden who presides at the election, three

inspectors elected by the people, and for greater security three inspectors appointed by the mayor of the city, and a clerk.

On the day of voting ordinarily, I believe, in the city of Boston there are three ballot-boxes in each ward-room, and at each ballot-box there are stationed two inspectors, one with a section of the check-list in his hand, whose duty it is to find and check the name of the voter before he is allowed to deposit his ballot, and the other in charge of the ballot-box, the warden presiding over all, and the clerk is present to make a record, and assist as his services may be required in sorting and counting the votes.

Now, sir, under a system guarded like this we may naturally conclude and expect that the result of the election will be the expression, and the exact expression, of the will of the people. But what next? When the ballots are all in they shall be sorted, counted, sealed up, record of them made in open ward meeting, and the declaration of the vote made before the election can be declared concluded and finished.

The statute is in the following words:

SEC. 15. The votes in elections for national, State, county, and district officers shall be received, sorted, and counted by the selectmen and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person and the title of the office for which he is proposed shall be entered in words at length by the town and ward clerks in their records. The ward clerks shall forthwith deliver to the city clerks certified copies of such records, who shall forthwith enter the same in the city records.

SEC. 17. City and town clerks shall, within ten days from the day of an election for governor, lieutenant-governor, councilors, senators, secretary, treasurer, and receiver-general, auditor, attorney-general, Representatives in Congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district attorneys, or clerks of courts, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen and sealed up, to the secretary of the Commonwealth.

The clerk must make a transcript of his record and that transcript must be sealed and sent to the city clerk. What more? After all this has been done the warden reads the record thus made in the presence of the voters there assembled, which makes the public declaration that the law requires. The ballots themselves must be sealed up in order that there may be no chance that any fraud shall be committed upon the voters of any ward in the city, and the ballots thus sealed up must be transmitted on the night of the election to the city clerk to be placed by him under lock and key in the city hall. For what, Mr. Speaker? Why transmit the record and the ballots also, and require them to be kept under lock and key? Why, if that election can never be inquired into for any reason?

Mr. Speaker, there is no question that every act required by the laws of Massachusetts in these respects was honestly, intelligently, and faithfully executed, so that at the close of the election on the 7th day of November, 1876, there had been no act committed by any man connected with that election which can hereafter be referred to as a dishonest or fraudulent act. The ballots were all in the city hall. The record was in the city hall; and nobody denies it to-day.

Mr. Speaker, my friend who makes the majority report from the committee makes wonderful confusion in regard to the language "recorded in words at length." He tells us in his report that the result of the election must be "recorded in words at length in the ward record." I agree to that. He says next it must be "recorded in words at length in the city record." I deny that. He next states that it must be "copied in words at length" in the return to the governor of the Commonwealth; which I also deny.

Mr. Speaker, the Commonwealth of Massachusetts recognizes in making returns municipalities, towns and cities; not wards or parts of towns. The ward clerk must make his record in the ward record-book before the election is closed, and he must do it in "words at length," and there it is to remain forever and cannot be changed. There is no power in the Commonwealth to change a ward record. But the law requires that the ward records shall be transcribed and the copy sent to the city clerk. The city clerk makes the final record of the election. He makes the record of a unit, of a city, not of a ward, and no law requires him to record in wards at length the voluminous transcripts of the records of the ward clerk. He will gather under their appropriate heads the ballots for governor and record them, taking item by item from the ward records; he gathers under one head the votes for Representative of Congress from the third congressional district, taking them from the ward records as they come in and tabulating them upon his record necessarily.

The city clerk of Boston well understands his duty and how to truthfully record upon the city records the returns which come up to him from the several wards. Extracting from these returns every item of fact which they are intended to furnish him with, he places these items each in its proper place and under its proper heading, so that when his record is completed it shows at a glance, and with as great simplicity as would a town record in which there was but one polling-place, the result of the election in the whole city. Such a system tabulates as well as records. If it is a correct record it is in accordance with law, for while the law has specified how a ward clerk shall make his record it has not descended to the absurd details of directing the mode of keeping a city record. The city clerk must "forthwith enter" the ward returns in the city record, but to enter is not equivalent to "recording in words at length." The ward returns are of course entered by him as a part of the city record and may always be referred to, but to copy them entire into the city record would serve no good purpose.

Mr. McCleary, the city clerk of Boston, has had twenty-five years' experience, has been elected almost unanimously by both parties, is respected by everybody, and this is perhaps the first time that his judgment as to the modes of keeping the records of his great city has ever been questioned. The expression "words at length" occurs but once in the law, and when the gentleman undertakes to spread those words further he certainly makes a great errror. But I pass over what I believe to be a misquotation of the committee or a misinterpretation of the meaning of the law.

Now, Mr. Speaker, the ward officers finished their duty and transmitted their ballots and their record to the city hall. But is that the end of an election in Massachusetts? Is that the complete execution of the law in Massachusetts? The proposition contended for here to-day is that the law of Massachusetts shall not go on to its final and complete execution; that we shall be obliged to take this ward count with all its errors upon its head; that we are estopped from ever finding what the voters said.

Mr. Speaker, I hold in my hand the city record, the record of the aldermen of the city of Boston, and I turn to page 745 for the year 1877. It is a recount for representative to the house of representatives of Massachusetts, and I find a recount under this law which we are now trying to execute.

I find in one ward, ward 8, the following to have been the result of the recount: Francis Granger in ward 8 is returned by the ward officers as having 788 votes; the official count returns 667. I will read the ward and then the official counts: Thomas L. Locke, 605; 625. Dennis O'Connor, 621; 526. I turn to ward 12: Edward J. Jenkins, 702; 712. Patrick Hamlin, 585; 592. And if gentlemen would take pains to investigate the various recounts which have been had under this law in Massachusetts they would find there are numerous errors detected every year in the ward counts which are corrected precisely as the errors in this count were corrected. It is the system. Everybody knows, no gentleman here need be told, that at the close of a hotly contested election in a great city with from one hundred to five hundred people hustling around the ballot-box, often excited and turbulent, errors innumerable are committed. The Commonwealth of Massachusetts recognized the fact and the danger, and provided a system of law by which these inevitable errors could be corrected. And yet this House says or may say that that effort of Massachusetts to secure purity of election shall be disregarded.

Mr. Speaker, the official count took place at the city hall. It is said against it by the committee, and I think it has been said upon this floor by some gentlemen, that this count was had in secret. In secret at the city hall! Sir, it was held in the city hall of Boston, in a spacious apartment near to the vault in which the ballots were kept, the only proper place for the discharge of so important a duty, under a blaze of gas-light so bright as to make the "midnight outshine the noon-day sun." In secret! that is the proposition. The recount was made by the three aldermen authorized by law to make it, and the presence of any unauthorized person would have rendered it, if not unlawful, yet of questionable authority.

The city clerk was called upon for the ballot-boxes. He brought them with their seals unbroken. Of the aldermen two were democrats and one republican, and there is no gentleman upon this floor who would question the integrity or honesty of either of them. Each one was counting for himself, and they never ceased until they all agreed.

But, Mr. Speaker, it is said that the count took place partly in the night-time. It took place in the night-time only because the sun set before their arduous labors could be completed; and there never was a more honest, straightforward act performed than that which was performed by those three aldermen in that city hall.

But, Mr. Speaker, what did they count? Gentlemen on the other side claim, and I presume they rely upon it, that the ward counts were perfectly correct and that therefore the aldermanic count cannot be correct. Let us look at the ward count as made, made as I have said, under circumstances such as I have recounted. The record was made, the ballots sealed up.

Gentlemen say that the men who counted the votes in the wards assert that their count is right. Grant that they thought so, but they say something more: all the ward clerks and two inspectors swear that they sealed up all the ballots cast at that election. If that is true, their testimony proves too much. It is no use to say that they counted correctly and rest there, for they also say they "sealed up all the ballots cast and none other;" therefore, unless you believe that the aldermen who made the recount did not count correctly in the city hall, you must concede that the ward officers committed errors in their count. The committee of aldermen counted the ballots which had been furnished to them by the ward officers "and none others," and they counted them exactly as the law of Massachusetts required, according to its letter, and then they made a declaration of the result and caused it to be recorded by the clerk, and a copy as prescribed by law was sent to the governor. The law of Massachusetts was executed in every feature and in every particular.

Now, if that is true, and nothing has been done by the authorities of Massachusetts but to execute the law which the Constitution of the United States by its mandate required the State to enact, then I ask why not accept the voice of Massachusetts, thus constitutionally uttered?

But this House, as I have said, has a right, independent of all other questions, to inquire which of the contestants had the most ballots,

and in determining that question may disregard all counts and all forms. If it be true, as is claimed, Mr. Dean had the most, he is entitled to this seat, and Mr. Field ought to surrender it to him. This count of the aldermen was made with great care and deliberation, under circumstances favorable to accuracy. They were making it with full knowledge of its importance, and that upon its accuracy depended the question of who should hold a seat in this House. They had admonition wanting to the ward officers when they made their count. They found errors in the count in every one of the ten wards composing the third district. The total number of errors was 84.

By the official count Mr. Dean gained 2 in ward 13, 25 in ward 14, and 1 in ward 17, a total of 28. He lost 7 in ward 16, 6 in ward 18, 1 in ward 19, 3 in ward 20, 2 in ward 21, and 2 in ward 24, a total of 21. So that by the official recount he made a net gain of 7 votes over the ward count.

Mr. Field gained 6 in ward 13, 11 in ward 14, 4 in ward 16, 3 in ward 18, 2 in ward 21, and 1 in ward 24, or a total gain of 27. But he lost 2 in ward 15, and 6 in ward 20, a total of 8, leaving him a net gain of 19.

By the ward count Mr. Dean had been found to be elected by a plurality of 7. In the re-count Mr. Field made a net gain of 12 more than Mr. Dean, which wiped out Dean's plurality of 7 and left him with a plurality of 5. If this was a true and honest count it settles the question of who had the most votes, and therefore who is entitled to a seat on this floor. I have heard no one deny that the aldermen counted correctly the ballots which were found sealed in the boxes which the city clerk brought to them. I think that is an undisputed fact, if not indeed an admitted one.

But it has been said by the gentleman from Missouri [Mr. BUCKNER] that there was no jurisdiction for the official count, that it was not justified by law, and that however correct it may have been it ought not to have been made, and that therefore it cannot bind us. He urges with great persistence and with great apparent confidence that the notice which was given by Mr. Field's friends was not adequate to give jurisdiction to the aldermen to make the recount.

Here is the law of Massachusetts on the subject:

SEC. 4. If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election. The board of aldermen, or their committee, shall thereupon, and within five days, Sunday excepted, next following the day of election, open the envelope and examine the ballots thrown in said ward, and determine the questions raised; they shall then again seal the envelope, either with the seal of the city or a seal provided for the purpose, and shall indorse upon said envelope a certificate that the same has been opened and again sealed by them in conformity to law; and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen or their committee, shall alter and amend such ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

SEC. 5. The board of aldermen shall not declare the result of an election until the time specified in the preceding section for filing a request for a recount of ballots shall have expired, or, in case of such request having been made, until the said ballots have been examined and the returns amended, if found erroneous, any provision in the charter of any city or in any act in amendment thereof to the contrary notwithstanding.

It must be borne in mind that this was a recount provided for by law as a part of the process provided for determining the result of an election, one of the steps to be taken when demanded for that purpose.

A recount by a legislative body is quite another thing, and he cites in defense of his position the action of the Legislature of Massachusetts upon certain cases in which a legislative recount was asked for. And yet legislative counts are quite proper in cases where it can be made certain that all the ballots cast are at hand and have been had long after an election has been concluded.

What precise allegation of fact might be proper in a petition for a recount by a Legislature I cannot say; but the statute of Massachusetts declares exactly what shall be sufficient under her election laws, as we have seen.

In this case it appears Mr. Field offered to allow the ballots which had been brought here for the use of the committee to be recounted at this late day, and to abide by the result. His offer was not accepted.

The friends of Mr. Field complied strictly with the law, and made use of this form of notice:

To the CITY CLERK *of the City of Boston:*

The undersigned, qualified voters of ward 13, in the third congressional district, hereby state that they have reason to believe that the returns of the ward officers of said ward for member of Congress in said congressional district at the election of November 7, 1876, are erroneous, in that all the ballots cast for Walbridge A. Field as member of Congress were not counted and credited to him, and that more ballots were credited to Benjamin Dean as a member of Congress than were cast for him; and they ask for a recount of the vote of said ward for member of Congress, in accordance with the provisions of section 4 of chapter 188 of the acts of the year 1876.

My friend says that is too general. Judge Abbott, who has done us the honor to lay his printed argument upon our tables, has taken that position at last. Let me say here, however, that before the return was finished and decided upon in the city hall after the recount, the distinguished gentleman from Massachusetts, Mr. Abbott, was himself before the board of aldermen, and there he did not question the right of that board to make the recount. There was then no question about the jurisdiction of those officers. There were 25 votes which had been cast in ward 18 for Walbridge A. Field for the fourth district. By striking those votes out the recount by the aldermen would have had no effect; Mr. Dean would still have been declared elected. By counting them for Mr. Field, he would have been elected.

The struggle then was to strike out those 25 votes entirely from Mr. Field's credit, although no man anywhere, who knows anything about elections, doubts that they were honest votes cast for Mr. Field by legal voters. The honorable Committee of Elections of this House has reported here that those 25 votes should be counted for Mr. Field. The struggle in Boston was to wipe those honest votes out of existence.

Now, I claim that no words could more clearly state the proposition than those used in this petition. How could you say that more votes had been cast for Mr. Field than had been counted for him except by the use of the language here employed? What language would you use to say that Mr. Dean had too many votes counted for him than had been cast for him except the precise language used in this notice? Would it have helped the matter to have stated precise numbers? If the facts stated were true, a recount was demanded by every principle of justice. The law of Massachusetts has declared that if ten voters had reason to believe it true, they had a right to a recount upon making the allegation in writing as of their belief.

But perhaps this House desires democratic authority. I believe I might appeal to my friend Mr. MORSE to admit that in his district at the last election there was a recount of the ballots cast for the different candidates upon precisely this notice. During the last Congress Mr. Abbott, who places his argument in this case upon our tables here, was a member of this House. He had a recount under the statute of 1874. His friends made application to the city government of Chelsea, one of the cities of Massachusetts. What was the language used?

The following is a copy of the petition, omitting the names:

To SAMUEL BASSETT, Esq.,
*City Clerk of the City of Chelsea:*

We, the undersigned, being legal voters of ward one in said Chelsea, notify you that we have reason to believe that the returns of the ward officers in said ward are erroneous, in that they give too many votes for Rufus S. Frost for Representative to Congress for the fourth district and too few votes for Josiah G. Abbott as Representative to Congress for the fourth district, and they demand a recount of said votes and an examination of said returns.

It will be noticed that the difference is slight and more in form than in substance. That Mr. Field's case regards the courtesies of official station and requests a recount, while the other demands it as if sure he was right and entitled as of right to a recount. The difference, in manner and substance, is in favor of Mr. Field, "in that they gave too many votes for Rufus S. Frost for Representative of Congress for the fourth district and too few votes for Josiah G. Abbott."

That was their understanding of the law. I do not believe that any gentleman upon this floor will have the audacity to tell me that Judge Abbott did not understand those words, and did not see the language before it was made use of in his case. It was good enough for Judge Abbott and for Chelsea, but it is not good enough for my distinguished friend, Mr. Field, and the city of Boston. Sir, what was good enough for Judge Abbott and Chelsea ought to be good enough elsewhere in the Commonwealth of Massachusetts.

Mr. SPRINGER. Will the gentleman allow me to ask him a question?

Mr. HARRIS, of Massachusetts. I have but a few minutes left. You have already had your hour, and you have discussed this proposition; I only reply.

Mr. SPRINGER. I yielded to you frequently.

Mr. HARRIS, of Massachusetts. Yes, you did, and I will yield to you.

Mr. SPRINGER. The gentleman has stated that Judge Abbott was resposible for the petition in the Chelsea case.

Mr. HARRIS, of Massachusetts. I beg your pardon; I made no such statement.

Mr. SPRINGER. That was the inference that I drew. That was a petition of ten electors in that ward. And if the petition of ten electors is to be brought before the House as of equal authority with the decision of a court binding upon this House as to the construction of a statute, then I yield the point.

Mr. HARRIS, of Massachusetts. I do not see that any question has been put to me. I made the statement that I believed no one would say that Judge Abbott was not consulted upon the language used in that petition; that is all I mean to say. Judge Abbott came into Congress, not by a recount, he had other resources; he was admitted here for other reasons. Yet so far as I know he never manifested any hostility to the proposition that it was wise for Congress to "go behind the returns" in order to get at the honest result of an election.

Now if we are honestly seeking to ascertain what was the voice of this congressional district of Massachusetts, it seems to me that we are at liberty to go behind any returns or any count made by anybody, and to seek for the real vote by whatever means in our power.

The majority of the committee asks this House to adhere to the ward returns, which, upon the most conclusive proof, are shown to have been erroneous; and to shut our ears to the testimony given according to law, having the same authority as that authorizing the ward count, and declared to be final and conclusive.

Now here we have a tribunal acting under the law of the Commonwealth of Massachusetts, selected beforehand by the aldermen of the city of Boston, who are charged with all matters relating to the election. The aldermen selected two very respectable democrats and

one republican. That is the tribunal which declares that the count made in the city hall is the honest, true, and just count, and that Mr. Walbridge A. Field was elected. That count takes no votes from Mr. Dean, but gives him seven more than the ward count; and it takes none from Mr. Field, but gives him nineteen more than the ward count.

Mr. McCrary, in his book upon elections, says:

Before the ballots shall be allowed in evidence to overturn official counts or returns it should appear affirmatively that they have been safely kept by the proper custodian of the law, and that they have not been exposed to the public or handled by unauthorized persons, and that no opportunity has been given for tampering with them.

That is the law, as quoted by the committee, and by it we are willing to be tried. When this House remembers the care with which these ballots were preserved, that a few days only elapsed before they were recounted, that they were counted by three men, two of whom desired a different result, counted by gentlemen against whom no man makes the charge of having counted wrongly, it would seem that the question of who had the most ballots can no longer be an open one.

I claim that the election as provided by the law of Massachusetts was lawfully and honestly conducted; that every requirement of the law was obeyed; that every vote of everybody entitled to vote was counted, and that the result showed that Walbridge A. Field was elected the constitutional representative of the third congressional district of the Commonwealth of Massachusetts.

I leave this branch of the subject believing that according to the law of Massachusetts there is no taint upon the title of the sitting member. I now turn to a consideration of that provision of the Constitution of the United States which authorizes Congress to make or alter the regulations of the respective States with reference to the times, places, and manner of holding elections for Representatives in Congress. I admit that Congress has the power reserved to it in the Constitution. I care not where we find the power to make any regulation governing the manner of holding elections for Representatives in Congress, and it does not seem to me important that I should stop and decide the question as to the precise place in the Constitution where that power may be found. I grant that it exists.

But, sir, to say that a power exists in the Constitution is not equivalent to saying that the power has been exercised. I deny that there has been any legislation of Congress changing the "manner" of holding elections in the State of Massachusetts. The manner of holding those elections has been fixed by that State, and it exists to-day as it did on the 7th of November, 1876, as the State had fixed it, unless Congress has made some law changing it. Let us examine and see whether there has been any such change. I presume it will not be claimed that Congress has provided by law a system under which an election could have been held in Massachusetts. What has the law of the United States provided about the registry of voters, about the place of voting, the manner of voting, the check-lists of the officers who preside at elections? Not one word anywhere. I hold that under the provision of the United States Revised Statutes no election could have been held in the State of Massachusetts. Congress has not provided the "manner" of holding elections, &c.

But it may be asserted that the Revised Statutes have in some way altered the law of the State, taking something from it or adding something to it. This position also I think is incorrect. To alter a law is to change in some respects its substance; and a law of the United States which undertakes to change in every State the law regulating elections ought to be specific. It certainly ought to have the same application in one county of the State that it has in another and the same application at one hour in the afternoon as at another hour. But I shall show hereafter, I think, that the law of Congress, if it varies or repeals the State law at all, does so according as the inspector happens to be attending to his business. But it may be claimed that if the United States law has not repealed the State law absolutely it has provided for its temporary suspension at times and in certain places at the will of ten voters, and this seems to me to be the extent which can be claimed for it; and this is no more tenable than the other.

If this is the position, the United States has not exercised a power under the Constitution to make a regulation by law altering a State law, but, leaving the State law intact, it has provided that ten voters in any locality may obstruct its execution if their caprice so dictates. This is a mode of altering a State law unheard of before, and I think never contemplated by the Constitution.

The sections of the Revised Statutes which are relied upon to establish the repeal or suspension of the State law are the following. I put in italics the expressions which seem to me to declare the purpose of the law:

SEC. 2011. Whenever, in any city or town having upward of twenty thousand inhabitants, there are two citizens thereof, or whenever, in any county or parish, in any congressional district, there are ten citizens thereof, of good standing, who, prior to any registration of voters for an election for Representative or Delegate in the Congress of the United States, or prior to any election at which a Representative or Delegate in Congress is to be voted for, may make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town, county or parish, is situated, *their desire to have such registration, or such election, or both, guarded and scrutinized*, the judge, within not less than ten days prior to the registration, if one there be, or, if no registration be required, within not less than ten days prior to the election, shall open the circuit court at the most convenient point in the circuit.

SEC. 2012. The court, when so opened by the judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the judge, and under the seal of the court, for each election district or voting-precinct in such city or town, or for such election district or voting-precinct in the congressional district as may have applied in the manner hereinbefore prescribed, and to revoke, change, or renew such appointment from time to time, two citizens, residents of the city or town, or of the election district or voting-precinct in the county or parish, who shall be of different political parties and able to read and write the English language, and who shall be known and designated as supervisors of election. (See sections 5521, 5522.)

SEC. 2013. The circuit court, when opened by the judge as required in the two preceding sections, shall therefrom and thereafter, and up to and including the day following the day of election, be always open for the transaction of business under this title, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time; and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court.

SEC. 2014. Whenever, from any cause, the judge of the circuit court in any judicial circuit is unable to perform and discharge the duties herein imposed, he is required to select and assign to the performance thereof, in his place, such one of the judges of the district courts within his circuit as he may deem best; and upon such selection and assignment being made, the district judge so designated shall perform and discharge, in the place of the circuit judge, all the duties, powers, and obligations imposed and conferred upon the circuit judge by the provisions hereof.

SEC. 2015. The preceding section shall be construed to authorize each of the judges of the circuit courts of the United States to designate one or more of the judges of the district courts within his circuit to discharge the duties arising under this title.

SEC. 2016. The *supervisors* of election, so appointed, are authorized and required to *attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a Representative or Delegate in Congress, and to challenge any person offering to register; to attend at all times and places when the names of registered voters may be marked for challenge, and to cause such names registered as they may deem proper to be so marked;* to make, when required, the lists, or either of them, provided for in section 2026, and verify the same; and upon any occasion, and at any time when in attendance upon the duty herein prescribed, to personally *inspect* and *scrutinize* such registry, and for purposes of *identification* to affix their signature to each page of the original list and of each copy of any such list of registered voters, at such times, upon each day when any name may be received, entered, or registered, *and in such manner as will, in their judgment, detect and expose the improper or wrongful removal therefrom or addition* thereto of any name.

SEC. 2017. The supervisors of election are authorized and required to *attend at all times and places for holding elections of Representatives or Delegates in Congress, and for counting* the votes cast at such elections; to challenge any vote offered by any person whose legal qualifications the supervisors, or either of them, may doubt; to be and remain where the ballot-boxes are kept *at all times after the polls are open until every vote cast at such time and place has been counted*, the canvass of all votes polled wholly completed, and the proper and requisite certificates or returns made, whether the certificates or returns be required under any law of the United States, or any State, territorial, or municipal law, and to personally *inspect and scrutinize*, from time to time, and at all times, on the day of election, *the manner* in which the *voting is done*, and the way and method in which the poll-books registry-lists, and tallies or check-books, whether the same are required by any law of the United States, or any State, territorial, or municipal law, are kept.

SEC. 2018. To the end that each candidate for the office of Representative or Delegate in Congress may obtain the benefit of every vote for him cast, the supervisors of election are, and each of them is, required to *personally scrutinize, count, and canvass* each ballot in their election district or voting-precinct cast, whatever may be the indorsement on the ballot or in whatever box it may have been placed or be found; to make and forward to the officer who, in accordance with the provisions of section 2025, has been designated as the chief supervisor of the judicial district in which the city or town wherein they may serve, acts, such certificates and returns of all such ballots *as such officer may direct and require*, and to attach to the registry-list, and any and all copies thereof, and to any certificate, statement, or return, whether the same, or any part or portion thereof, be required by any law of the United States, or of any State, territorial, or municipal law, *any statement touching the truth or accuracy of the registry or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach*, or which should properly and honestly be made or attached, *in order that the facts may become known.*

SEC. 2019. The better to enable the supervisors of election to discharge their duties, they are authorized and directed, in their respective election districts or voting-precincts, on the day of registration, on the day when registered voters may be marked to be challenged, and on the day of election, to take, occupy, and remain in such position, from time to time, whether before or behind the ballot-boxes, as will, in their judgment, *best enable them to see each person offering* himself for registration or offering to vote, and as will best conduce to their scrutinizing *the manner* in which the registration or voting is being conducted; and at the closing of the polls for the reception of votes, they are required to place themselves in such position, in relation to the ballot-boxes, for the purpose of engaging in the work of canvassing the ballots, as will enable them to fully perform the duties in respect to such canvass provided herein, *and shall there remain until every duty in respect* to such canvass, certificates, returns, and statements *has been wholly completed.*

I maintain that these provisions of law were intended to secure the perfect and complete execution of the State law—nothing else. Section 2011 provides that a certain number of voters may have inspectors appointed, if they make application within a certain time, where they desire to have the election "guarded and scrutinized." This is the language of the law: "guarded and scrutinized." These supervisors are to "guard" the election, how? Under the laws of Massachusetts "scrutinize" what? Scrutinize the acts of the officers of Massachusetts and see that no crime is committed, no fraud perpetrated. Is not this the meaning of the section? and does it attempt anything more or authorize the supervisors to do anything else than guard and scrutinize an election provided for and proceeding under a State regulation?

Then it is provided in section 2016 that the supervisors shall attend at all times and places fixed for the registration of voters, when the names of registered voters may be marked for challenge. They may also on election day challenge voters. Challenge them under what law? Under the law of Massachusetts, of course. And when the registration is going on they have a right to be present to mark for challenge on the ballot-list; and they have a right to put their names upon the list so that it may be identified afterward. The nature of their duties is summed up in these words:

In such manner as will in their judgment detect and expose the improper or wrongful removal therefrom or addition thereto of any name.

In other words these gentlemen were to see that the State law was executed honestly, faithfully, fairly. This was to be the scope of their power at the election.

Section 2017 requires the supervisors to attend at all times and places for holding elections; and it has been maintained here that they are bound to stay by until the last legal act of the State is completed. But this clause certainly must refer to the proceedings at the polls and on election day. It says that they shall—

Personally inspect and scrutinize from time to time and at all times on the day of election.

My friends on the other side have undertaken to make this provision go further, and to say that the supervisors are bound to attend all the way through until everything provided for by the State law has been done.

Again, they are required to observe—

The manner in which the voting is done, and the way and method in which the poll-books, registry-lists, and tally or check books, whether the same are required by any law of the United States or of any State, territorial, or municipal law, are kept.

Now section 2019, the last to which I shall refer, goes on to state what shall be done. It declares that these officers shall—

Place themselves in such position in relation to the ballot-boxes for the purpose of engaging in the work of canvassing the ballots as will enable them to fully perform the duties in respect to such canvass provided herein, and shall there remain until every duty in respect to such canvass, certificates, returns, and statements has been wholly completed.

The law puts them at the ballot-box and then says they shall there remain until all the work has been completed.

Now, Mr. Speaker, may I not well claim that this law intends nothing more than that on the day of the election the officers appointed under the United States law shall be present to witness every act, to watch and scrutinize, to protect the rights of voters, and that when the sun goes down and the result of the election is declared by the proper officers the duty of the supervisors is completed? May I not assume that the Congress of the United States, in passing that law and guarding the ballot-box until the close of the election, felt itself safe in allowing the legally constituted authorities of the Commonwealth, the dangers of violence, ballot-stuffing, and frauds being passed, to complete the remaining duties, and figure out the general result, and make the final declaration?

Mr. Speaker, the recount was as carefully provided for by the State law as was the count at the polls. In Massachusetts the same system has existed and been practiced for several years, and before the United States law was passed. Congress has neither provided a substitute for it nor forbidden it and it ought therefore to be assumed that, the statute having only provided for an enforcement of the State law at the polls on the day of the election and to secure the means of punishing all violations of that law committed up to the close of election day, Congress intended to leave to the State to complete the work and find out the result. It will not do to assume that Congress intended more than it said; and it has not said, even by implication, that any act done in accordance with the State law should be void. It made no provision for any act to be done by the supervisors after the election was closed except to make a report to the chief supervisor of the district; and if any defect exists the defect is in the law of the United States appointing supervisors. Because the United States law stops in its execution, is it to be assumed the State law shall stop also? When an inspector is at the polls to watch the election and fails to do his duty, shall it be said the election shall stop? The election under the State law begins without waiting for a supervisor, and it does not stop when he leaves. Is the law of Massachusetts repealed? Is that the way to repeal provisions of the statute established under the mandate of the Constitution, designed to protect the ballot?

Is the State law repealed when the supervisor is faithfully watching and scrutinizing and not repealed when he neglects his duty or goes away? The State law is enforced and not repealed everywhere except where supervisors have been appointed, and where they have been appointed and do not do exactly what the law points out for them as their duty, they are as if they were not; and therefore it comes down to this: that the repeal of the State law is or is not, now is and now is not, as they are attentive or listless, watchful or neglectful. To appeal to the Constitution to shield such a repeal seems monstrous, not to say ridiculous and absurd.

Now, Mr. Speaker, I think I have conclusively shown the whole object of the law of the United States was to enforce and carry into complete execution every provision of the act of Massachusetts. To enforce the law is not the same as to repeal it, and the assumption of the committee is a mere assumption, if the committee hold that Massachusetts cannot complete her elections because the United States law does not provide for it.

The law of the State neither having been repealed nor modified by Congress and having in a lawful and orderly manner declared Mr. Field elected, we as candid and just men, deciding this case on the law and the evidence, can have no legal or just excuse for reversing the decree of the people, thus lawfully uttered. We have the power, Mr. Speaker, to set aside the decree of a State, thus lawfully made. We have the power to do wrong. This House is invested with the power to judge of the election and qualification of its own members. By a perversion of that power and by disregarding the voice of the people as legally ascertained we may elect the members of this House; but, sir, when that day comes that Union and that liberty of which we as a people are so apt to boast will have perished together.

Mr. WALSH. Mr. Speaker, I have not been able to concur with the report of the majority of the committee in this case. I do not like, when I can avoid it, to differ with a committee of this House in the conclusions at which it arrives; and if this were upon a question of policy or a question of expediency, I might surrender my own judgment to that of the committee. But it is not upon a question of that kind; it is a question of law I am to pass upon as a sworn judge, and I am bound by every obligation that can tie the conscience of man to the Almighty who created him to render that sworn judgment according to my own convictions of the law, and not according to those of anybody else.

Mr. Speaker, I do not particularly desire to control the judgment of any other man, but I do desire to occupy the attention of this House for a short time, while I state, as briefly as I can, some of the reasons which compel me to vote against the conclusions of the majority of the committee.

By the Constitution of the United States in article 1, section 4, it is provided that—

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.

The times, places, and manner shall be prescribed in each State by the Legislature thereof——

Mr. SPRINGER. Read the rest of it.

Mr. WALSH. The rest of the paragraph states that Congress may alter such regulations, and I want to see whether it has done so or not. It says:

But the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Now, sir, the Congress of the United States has made two laws upon this subject, and those are all: a law requiring the election for Representatives in Congress to be by districts and not at large, and a law requiring the elections of Representatives to be all held on the same day throughout the United States. To prescribe the times, the places, and the manner of holding the elections is, then, a sovereign right of the State of Massachusetts, and of every other State in this Union, except in regard to those two matters where Congress has come in with its paramount power and fixed and regulated them.

The great question in this case, and the only question in it, is whether the State of Massachusetts has the right to prescribe the mode and the manner of conducting her elections and of ascertaining the result by the processes which she has enacted into law upon her statute-book. That is the only question. The effort has been made here to get rid of this recount provided for under the laws of Massachusetts; in the first instance, upon a mere technicality that is not applicable to these proceedings, had among the people in regard to the result of elections, and that would not hold good in this case even in a court of record and of law; and, in the next place, by exaggerating and magnifying the authority of the United States supervisors appointed by a law passed, not under that provision of the Constitution, but under the provisions of the fifteenth amendment, to protect certain classes of voters at the polls. Well, sir, I cannot concur in either of those reasons for getting rid of the recount. The law of Massachusetts says—and I will quote the law in my printed remarks—that the voters have a right to petition within a certain number of days for a recount. The State of Massachusetts had a right to say that. It is a right that she had the absolute power to give to her voters if she chose, and she did give it to them. And the law of Massachusetts says that the first count, which is made upon the election day at the polls, shall go for nothing, shall determine nothing, and that no result shall be announced or declared from it until the number of days have elapsed within which the right is secured to the citizens to have a recount of the vote. The first count amounts to nothing until this time elapses; the whole process is incomplete. The whole election process is yet unfinished until that time elapses, and if within that time any ten citizens choose, or any greater number of citizens, as prescribed in the law, choose to petition for a recount, the aldermen are bound to examine the ballots.

Mr. HARRIS, of Virginia. I desire at this point——

Mr. WALSH. I decline to be interrupted.

Mr. HARRIS, of Virginia. I wish to correct my friend. I am sure he does not mean to misstate the law or to misrepresent the law of Massachusetts.

Mr. WALSH. I have declined to yield to the gentleman.

Mr. HARRIS, of Virginia. I want to correct the gentleman in regard to the law. If the gentleman declines to be corrected——

Mr. WALSH. The gentleman can correct me to-morrow.

Mr. HARRIS, of Virginia. I want to correct you while it is yet time, that you may be converted before you go too far into error. To-morrow will be too late.

Mr. WALSH. I read the gentleman's report, and if he could have corrected me on the law I would have found the correction there. And I cannot make any error in the law, because, as I have said, I will quote the law at length in my remarks in the RECORD, where the House can see it.

Mr. HARRIS, of Virginia. But the House will not hear the gentleman's remarks, as he says he will set them out in the RECORD.

Mr. WALSH. What I say now will be set out, as I say it, in the RECORD, but the law will be set out as it is in the statute-book.

Mr. HARRIS, of Virginia. I want you to give the law as it is in the statute-books to the House in your remarks now, and not leave it to be done in the RECORD afterward.

Mr. WALSH. I am giving it as it is in the statute-book. The law prohibits the declaration of the result until the time for the recount has passed. I repeat it again, and there is no mistaking of it. It says that these aldermen shall examine the ballots. Some gentleman said that did not mean a recount. Well, what does it mean? What do you mean by examining ballots? Do you mean by that looking at the color of the paper, whether they are printed in black ink or in red ink? What do you mean by ascertaining the result of an election, by examining the ballots, if it is not to find for whom the ballots are cast, whose names are on them, and how many they amount to when all are added together? But the fifth section of the law expressly says that there shall be a recount.

*Extract from Election Laws of Massachusetts, act of* 1874, *chapter* 376.

SEC. 40. In all elections in cities, whether the same shall be for United States, State, county, city, or ward officers, it shall be the duty of the warden or other presiding officer to cause all ballots which shall have been given in by the qualified voters of the ward in which such election has been held, and after the same shall have been sorted, counted, declared, and recorded, to be secured in an envelope, in open ward meeting, and sealed with a seal provided for the purpose; and the warden, clerk and a majority of the inspectors of the ward shall indorse upon the envelope for what office and in what ward the ballots have been received, the date of the election, and their certificate that all the ballots given in by the voters of the ward, and none other, are contained in said envelope.

SEC. 41. The warden, or the presiding officer, shall forthwith transmit the ballots, sealed as aforesaid, to the city clerk, by the constable in attendance at said election, or by one of the ward officers other than the clerk; and the clerk shall retain the custody of the seal, and deliver the same, together with records of the ward and other documents, to his successor in office.

*Act of* 1876, *chapter* 188.

SEC. 4. If within three days next following the day of any election, ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen, or the committee thereof appointed to examine the returns of said election. The board of aldermen, or their committee, shall thereupon and within five days, Sunday excepted, next following the day of election, open the envelope and examine the ballots thrown in said ward, and determine the questions raised; they shall then again seal the envelope, either with the seal of the city or a seal provided for the purpose, and shall indorse upon said envelope a certificate that the same has been opened and again sealed by them in conformity to the law; and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen, or of their committee, shall alter and amend such of the ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

SEC. 5. The board of aldermen shall not declare the result of an election until the time specified in the preceding section for filing a request for a recount of ballots shall have expired, or in case of such request having been made, until the said ballots have been examined and the returns amended if found erroneous, any provision in the charter of any city or in any act in amendment thereof to the contrary notwithstanding.

Well, now, my friend from North Carolina, [Mr. SCALES,] whom I esteem highly, says, as other gentlemen say, that the law was not complied with in applying for the recount and that therefore the recount goes for nothing, because it is necessary to get the recount out of the way by an alleged defect in the petition or else by relying upon the absence of the United States supervisors. It is claimed that the application for a recount did not state sufficient to justify it.

My friend said that it did not state the reasons for a recount. Why, sir, pleadings do not state reasons, the courts do not try reasons. The pleadings state facts, not reasons; and it is facts upon which the courts determine rights. Now, what did the petition of these friends of Mr. Field for a recount say? I have here the petition, and they say:

To the CLERK *City of Boston:*

The undersigned, qualified voters of ward 13, in the third congressional district, hereby state that they have reason to believe that the returns of the ward officers of said ward for member of Congress in said congressional district, at the election of November 7, 1876, are erroneous.

Now, it does not stop there in specifying in what the returns were erroneous, but proceeds and points out the error "in that all the ballots cast for Walbridge A. Field as member of Congress were not counted and credited to him, and that more ballots were credited to Benjamin Dean as member of Congress than were cast for him; and they ask for a recount of the vote of said ward for member of Congress, in accordance with the provisions of section 4 of chapter 188 of the acts of the year 1876." (Signed by 15 voters of the ward.)

It states the reasons, the grounds, the facts on which the recount was asked, namely, that more ballots were cast for one candidate than were counted in his favor; and that a fewer number were cast for the other than were counted in his favor. Could anything be more definite than that? If that statement does not justify a recount under the law, then a recount never could be made, unless indeed you could get some one to watch the ballots as cast and specify the number of ballots supposed to be illegal.

Mr. HARRIS, of Virginia. Will the gentleman allow me to ask him a question?

Mr. WALSH. I have declined to yield for the reason that I have not the physical constitution that will enable me to stand here much longer at this late hour in the afternoon.

Mr. HARRIS, of Virginia. The gentleman says that nobody can know how many erroneous ballots were cast. If that be so, how can any one know that any erroneous ballots were cast?

Mr. WALSH. Suppose these gentlemen who petitioned for a recount had said that 9,000 votes had been illegally counted for one of the candidates; it would have been a mere guess upon their part. It would not have made any better case either before a court of law or before sensible men anywhere. They stated everything that could be stated according to the nature of the transaction, and that was all that they could be required to state in any place, namely, that there had been errors in the count by crediting one man with votes which he did not receive, and by not crediting another man with votes that he had received at the election of that day. That settles, I think, the point as to the jurisdiction for the recount.

The next thing is in regard to the supervisors. Now, no one in the United States, until it got into the heads of the committee, or of the gentleman who drew up this report of the majority, ever supposed that these supervisors of elections, who may be called into operation or may not be accordingly as a few men in particular districts desire, can overrule all the regulations of the State law, and take charge of the ballots, or that they may make the returns and ascertain the results, and that the governor, or the State officers who issue the certificate of election, had to act not upon the authority of the election officers appointed by the law of the State but upon what these supervisors said.

Now, the reading of the law shows that it does not mean anything of that kind. These supervisors are there to inspect the voting and to stay until the count is completed, and they have nothing to do with the return excepting to make it to some head supervisor.

Their count is not returned to the governor who issues the certificate, it is not returned to any State officers connected with the elections; and I say it is an absurdity to talk here before the lawyers of this House about its superseding anything which the State in her sovereign capacity under the Constitution of the United States has prescribed as to the mode of counting the ballots and ascertaining the result of an election.

Sir, that law covers everything. If you take it up you will find that it is a law to enforce the rights of citizens of the United States in elections. It relates to all elections, State elections, town elections, every little election held; it is not confined to any one class of elections under the terms of the law; but the Supreme Court of the United States in the case of Cruikshanks *vs.* The United States pretty well knocked the bottom out of that law. Whatever is left of it I do not know, but I know that it never was intended to interfere with the power of the States over elections for Representatives to Congress contained in the fourth section of article 1 of the Constitution of the United States.

Now, then, sir, there stands the law of Massachusetts regulating her elections, and the most careful law, the most particular, the most minute law; and that law was honestly and fairly executed in this case according to the concession of all parties; and when the law of Massachusetts has been executed what right have we in this House to trample down that law and say that this legal and constitutional mode which she has adopted for ascertaining the result of an election in her jurisdiction shall not prevail, but that the count by the little petty officers of wards, counts made in the hurry and excitement of an election, shall prevail, and that we will walk over the laws of that State providing for the ascertainment of the result of an election in a manner clearly within her constitutional power? Or else that these United States supervisors, who may be called in or may not be called in, shall be elevated to the grand importance of overriding all the laws and regulations of a State in connection with elections. I say that there is no authority in the law, no authority in the Constitution for any such proposition as that. I say that we, acting in this House, are not bound by any of their counts if there is anything to impeach or disturb them; we are bound by none of them. We have a right to get at the real truth of the matter.

But it is conceded in this case that there is nothing before us but the counts, and that we must take the one or the other of those counts. Whether we shall override the law of Massachusetts and give all significance to that count which was made in the primary stages of the election because it will yield a result that would be pleasant to us, and cast aside the final and revisory count that was in pursuance of the law of Massachusetts, that is the question for us to consider.

I do not think that any party ever gained in the long run by doing violence to law or to strict right. I believe that the masses of the American people are honest and intelligent. They hold parties to strict accountability when they come to understand that anything wrong has been done by them. I have never understood that the republican party in the long run reaped any particular advantage from any of the abuses that it committed upon the rights of the people and the rights of the States in the days when it had unlimited and absolute power in every part of the Union. I never knew that any party in the long run ever reaped any benefit from acts wrongfully committed, from violence done to right. And I thank God, Mr. Speaker, that the people of the United States are so intelligent, so honest, that they are able to sit in judgment upon parties and to bring them to the bar of accountability, and to cast them aside when they fail to discharge the high trust with which the people have commissioned them.

I have collected all the testimony in regard to these different counts,

every important particle that is in the record relating to them. I call attention to that testimony in order that those who may take an interest in how I may vote will understand why it was that I could not sustain the report of the majority of the committee in this case.

COUNT OF WARD OFFICERS.

Fury, deputy United States marshal, ward 16, says, page 63:

Interrogatory 11. Were the ballots in ward 16 all carefully counted and the full number ascertained?
Answer. I think they were.

Cross-examination by William G. Russell, esq., of counsel for the incumbent:

Cross-interrogatory 1. By whom?
Answer. By the warden and the supervisors.
Cross-int. 2. By any one else?
A. I think not.
Cross-int. 3. Did not the clerk count them?
A. I did not see the clerk count them.
Cross-int. 4. Did you see the warden count them?
A. I did.
Cross-int. 5. All of them?
A. Not all of them.
Cross-int. 6. Did you not see the clerk count any of them?
A. No.
Cross-int. 7. Nor any of the inspectors?
A. None of the inspectors.

Leavitt, inspector, ward 15, democrat, says, page 44, he and one Smith counted the scratched tickets.

Patrick M. Denon, ward 16, inspector, democrat, says, page 58, fifteenth cross-interrogatory, did not assist in counting the votes. Had charge of the ballot-box all day.

William H. Thomas, ward 18, inspector, democrat, says, page 76, his position was at one of the check-lists; "I had nothing to do with the counting."

Nicholas W. McGee, clerk of election, ward 13, says, page 163, he helped Mr. Hanscom count the great majority of the ballots.

C. B. Hunting, clerk, ward 16, says, page 166, counted the ballots as carefully as he could.

HOW THE UNITED STATES SUPERVISORS COUNTED.

William Swinson, United States supervisor, ward 18, republican, says, page 60:

Interrogatory 6. What ward officers counted the ballots for members of Congress?
Answer. The warden—I think only one person at a time, with the assistance of the clerk—they kept a very correct method, a regular debit and credit account, so that there was no chance for mistakes. One inspector also counted, and as they were counted they were passed to our table and we counted. The whole counting was done by two persons at a time; the others were attending at the boxes.

Page 61, Swinson says he was absent some time, but not at dinner.

Daniel P. Sullivan, United States supervisor, ward 18, democrat, says, page 45:

Interrogatory. 3. Will you describe as fully as you can the manner in which the votes cast in that ward for member of Congress on November 7, 1876, were counted by you and the other officers in that ward?
Answer. The system was the warden, clerk, and one of the inspectors did the counting. The warden and clerk were present at the counting of each lot taken out, and the inspector was absent when one lot was being counted. After they counted all the ballots for all the candidates on the tickets, they tied the ballots together; they had the republican ballots in one lot and the democratic in another and the prohibition in another, and they tied a string round each bundle, and marked on each bundle, on a ballot, the vote for Mr. Dean and for Mr. Field; then they were handed to the supervisors, Mr. Swinson and myself. Mr. Swinson would count the ballots and I would watch him, and after he got through he would hand them over to me and he would watch me counting. In some cases I counted them over two or three different times to see if the figures compared with the ward officers' count, and each time I found them to be correct.

Sullivan says Swinson was at dinner. Swinson was absent half hour to forty minutes: pages 46, 49.

Abraham J. Lamb, United States supervisor, ward 16, says, page 68, he was a democrat and Daly a republican; were United States supervisors; counted all the ballots. They put all they counted in the box, and no other.

John H. Daly, United States supervisor, ward 16, says, pages 69 and 70, he and Lamb counted all the ballots and put them in the box and saw them sealed. The warden and clerk counted them first. Their count always corresponded.

William H. Thomes, democratic inspector, ward 18, says, page 76:

Cross-interrogatory 3. Did the United States supervisors in your ward personally examine and count the votes for members of Congress?
Answer. I think not.
Cross-int. 4. Did neither of them count and scrutinize those ballots?
A. I didn't see either count a vote; they seemed to do the heavy standing round.
Cross-int. 5. Was not the last count of the ballots at the election of November 7, 1876, made just before depositing them in the boxes to be sent to the city hall?
A. The clerk and the warden keep a tally on the sheet of paper, and the warden and one of the inspectors, whom the warden details to assist in counting, keep the ballots so closely counted that in ten minutes after the polls are closed the vote can be declared.
Cross-int. 6. And were they never again counted in the ward meeting after the count you have thus described?
A. They were not; there was no necessity for it; they were all carefully counted and laid aside; tied up in bundles of a hundred.

Albert Thayer, clerk of ward 19, says, page 168:

Interrogatory 8. State whether said supervisors personally scrutinized, canvassed, and counted all the ballots for Representative to Congress cast in said ward at said election.
Answer. I should say not carefully scrutinized. Mr. Pickering personally counted every ballot, but I should say he didn't scrutinize it to find out just what names were on the ballots. Mr. Riley, I think, made no attempt in that line.
Cross-int. 3. Mr. Pickering examined the ballots carefully enough to see what names were on them for member of Congress, did he not?
A. I should think not. After I had counted the piles he merely took the piles and counted them to see how many there were in each pile, without scrutinizing them. As to Mr. Riley, if his intentions had been ever so good, I don't think he could have done anything; the space was so small there where the tables were that there wasn't room for anyone else to get in.

McGee, clerk, ward 13, says, page 163:

Interrogatory 7. State who acted as United States supervisors in said ward at said election.
Answer. J. J. McNamara and Frank Hanscom.
Int. 8. State whether said supervisors personally scrutinized, canvassed, and counted all the ballots for Representative to Congress, cast in said ward at said election.
A. I couldn't say they counted all of them; they helped count some of them; they supervised things generally and kept an eye on the boxes. Mr. Hanscom counted a great majority of them with myself. I overlooked all that he counted.

Goodwin, clerk, ward 14, says, page 163:

Interrogatory 8. State whether said supervisors personally scrutinized, canvassed, and counted all the ballots for Representative to Congress cast in said ward at said election.
Answer. They were very particular to do so. I think Mr. Reddy counted every ballot cast. I remember it very distinctly, because he was of different politics from me, and was very particular to have them carefully counted, especially for Representative to Congress.

Reddy was democratic United States inspector, and William S. Crosby the republican, at ward 14. In this ward they left out 25 votes for Mr. Dean and 11 for Field.

Alban S. Green, clerk, ward 15, says, page 164:

Interrogatory 7. State who acted as United States supervisors in said ward at said election.
Answer. I couldn't give their given names; there were two; one was a Mr. Osgood, I think; the other was McCarty. I work in the same room with him; have forgotten his first name.
Int. 8. State whether said supervisors personally scrutinized, canvassed, and counted all the ballots for Representative to Congress cast in said ward at said election.
A. They did personally scrutinize the counting, but did not count all the ballots; they did not scrutinize every ballot.

Kemp Kimball, clerk, ward 17, says, page 167:

Interrogatory 8. State whether said supervisors personally scrutinized, canvassed, and counted all the ballots for Representative to Congress cast in said ward at said election.
Answer. The supervisors sat by the table where they were being counted, within the rail, watching the counting as it proceeded, and, I think, in a few cases counting certain piles of ballots. The entire counting for all officers was done in their presence, and they had free access to all the proceedings. I do not think they counted all the ballots for Representative to Congress.

WHO M'CLEARY, CITY CLERK, IS.

Hugh O'Brien, democratic alderman, says, page 55:

Interrogatory 7. Did your committee take any evidence with regard to the challenged votes above referred to?
Answer. We took no evidence.
Int. 8. To what political party does Mr. Samuel F. McCleary, the city clerk, belong?
A. That's a question I couldn't answer. I think he is very indifferent about such matters. I never heard him express an opinion about those matters.

William H. Thomes, democratic inspector, ward 18, says, pages 75 and 76:

Interrogatory 14. According to common reputation in ward 18, to what political party in national politics does Mr. McCleary, the city clerk, belong?
Answer. He never makes much demonstration as a politician, but he has always been classed as a republican.

Cross-examination by William G. Russell, esq., of counsel for incumbent:

Cross-int. 1. Do you know for whom Mr. McCleary has voted at any presidential election, or what has been his vote for governor at any election?
A. No; I can't positively swear. I think the last time he voted he put his vote in a sealed envelope, in the city election.
Cross-int. 2. Has he not for twenty years and upward been elected to the present office by the voters of both parties?
A. He has.

THE SAFE WHERE M'CLEARY KEPT THE BALLOTS.

O'Brien says, page 153:

Cross-interrogatory 10. Please describe what sort of a safe it is, and where it is.
Answer. It is on the lower floor of city-hall, the basement, adjoining the office of the board of heath; you enter it after opening two iron doors, but when you get inside it is a well-lighted apartment; there is a barred window which lights it up. I asked if it was entirely fire-proof and a good place to deposit records. The city clerk answered the question by saying it was immediately under the vault of the treasurer's office.

No one suspected they were tampered with. O'Brien says, page 157:

Interrogatory 36. Have you any suspicion, or reason for suspicion, that in the case of the election of November 7, 1876, the envelopes or ballots were in any way tampered with before they were recounted by your committee?
Answer. None whatever.
Int. 37. Did you ever hear a suggestion of any such suspicion?
A. Never.

It is agreed the boxes with the ballots were delivered to McCleary on election day, page 171:

It is agreed that these envelopes were duly transmitted from the several wards to the city clerk of said city, on the day of the election, November 7, 1876, sealed with the seals of the several wards, and bearing the certificates now appended thereto, copies whereof are hereto annexed, and that the several parties signing the said certificates were the ward officers, acting in the several capacities in which they appear by such certificates to have acted on the day of such election.

W. G. RUSSELL,
*Of Counsel for Walbridge A. Field.*
S. A. B. ABBOTT,
*Of Counsel for Benjamin Dean.*

HOW M'CLEARY RECEIVED AND KEPT THE BALLOTS.

Mr. McCleary says:

Interrogatory 2. How long have you held the office, and did you hold this office on the 7th of last November?

Answer. I have held the office for twenty-five years, and held it on 7th of November last.

Int. 3. Please state whether or not on that day the envelopes containing the ballots for member of Congress for the third congressional district were received by you at your office and from whom, and whether sealed or not, and what was done with them?

A. The said ballots were received by me on that day in sealed envelopes, as required by law, from the several constables appointed for the different wards, at my office. I then placed them in my safe and locked them up.

Int. 4. What were the seals upon the envelopes, and in what condition were they when received by you.

A. The seals were of wax, stamped with the seals of the several wards, and they were unbroken at the time of their reception in my office.

Int. 5. From what wards in this congressional district were they so received by you?

A. Wards Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, and 24.

Int. 7. Please state what certificates there were, if any, upon each of the boxes when they were received by you, as testified.

A. There were certificates on each of the boxes in the same form as the blank here produced and marked "W. W.—K," and each certificate was signed by the warden, clerk, and a majority of the inspectors for the ward from which it came; differing only in the numbers of wards and districts, as indicated by the blanks in the form here produced. The original certificate is pasted upon each box here produced.

Int. 8. State whether or not the said envelopes, containing the ballots, were retained in your care; and, if so, where and in what condition and to what time.

A. They were; they continued locked up in my safe, under my care, with the seals unbroken, until examined by the committee of the board of aldermen (appointed for that purpose) in accordance with petitions presented for a recount of the votes for member of Congress for the third district. I have furnished a copy of the proceedings of the board of aldermen upon a recount of said votes to be annexed to the depositions in this case, and also of the petitions on which said proceedings were had.

Int. 9. Please state what took place as to the recount, so far as you know.

A. At the request of the committee, I delivered the envelopes containing the votes for Representative to Congress for the third congressional district to them for the purpose of a recount, and they opened the envelopes and counted the votes in an adjacent room, within five days of the election, and returned the boxes to me with a certificate upon each box, sealed with the seal of the city, and signed by the committee, setting forth that the boxes were opened for that purpose. I annex a copy of the certificate referred to. The certificates only varied in this respect, that some were dated November 10 and some November 11, according as the day on which the count was made varied. The certificates for wards 13 to 17 inclusive were dated November 10, and wards 18 to 24 inclusive November 11. (The copy referred to is marked "W. W.—L."

HOW RECOUNT WAS MADE.

S. B. Stebbins, alderman, page 124:

Interrogatory 4. State what then took place; from whom the committee received the envelopes containing the ballots; in what condition these envelopes were when received by the committee, and what was then done by the committee in respect to a recount.

Answer. The first meeting of the committee was on Friday afternoon, November 10, in one of the committee rooms in the city hall. The committee received the envelopes containing the ballots from the city clerk; they were in proper form and order and sealed with the several ward seals, and the seals were unbroken. The committee were all present and commenced their labor with ward 13 first. The envelope was opened by the chairman of the committee, myself, in presence of the other members of the committee. The ballots were carefully taken from the envelopes and carefully placed upon the table, and were then first counted by the chairman of the committee for candidates for member of Congress from the third congressional district. Each member of the committee made a separate count and each member arrived at precisely the same result, and each member made a record of the result; the ballots were then resealed in the envelope. There was an application for a recount for member of the Legislature for that ward, I think, and, before sealing them, I think we made a recount of that vote also.

McCleary, page 132:

Redirect 15. Which count of ballots was made first, the count for member of Congress from the third district or the count for State officers, referred to in your cross-examination as being made about the same time?

Answer. The count for member of Congress was made first by the committee, and at the conclusion of their count the count was made to verify the election for State officers; it was the same in each ward.

Int. 23. In the cases which you have referred to, where a count was made by Messrs. Priest, Lee, and Clapp of the votes for members of the State Legislature, while the boxes were open for the purposes of counting the ballots for member of Congress from the third district, which count was made first, that by the committee of ballots for member of Congress, or that which was made by the assistants for members of the Legislature? State the whole course of proceeding.

A. I think I have already stated the envelopes containing the ballots cast for member of Congress for the third congressional district was, in every instance, opened and counted by the committee before the count was made for members of the Legislature.

Alderman Viles, page 135:

Interrogatory 7. What seals, if any, were upon the envelopes when they were so brought in, and in what condition were the seals?

Answer. The city seal was upon them and always whole.

* * * * * * *

Int. 15. Was this recount for State officers in wards 13 and 14 made before or after the recount made by the committee of the board of aldermen for member of Congress for the third district?

A. Made after.

O'Brien, democratic alderman, page 151:

Interrogatory 12. What seals, if any, were upon the envelopes when you received them, and in what condition were the seals?

Answer. The seals of the ward officers and the condition of them were perfect. One seal was a little out of place, broken little by moving the boxes round, not broken so as to indicate opening. I don't know whether that was at this count or the others.

Int. 13. How did the committee proceed to count? State fully and particularly all that was done.

A. After breaking the seal, we generally put as many ballots together of one kind as we could conveniently get at, and then counted in piles of twenty-five each. Alderman Stebbins commenced the count, followed by Viles, and then by myself, and each member of the committee made their count agree. Each member of the committee counted every vote separately, not relying upon each other. If the democratic votes came up first in the box we took those out and counted them, and then took the others out.

Int. 14. Whether you counted the ballots contained in each envelope severally before beginning on any other?

A. We counted the ballots in each box separately, and before commencing on any other that box was sealed up and put away. Before we sealed up the box we made a record of the ballots in it, and the count of all three agreed before we sealed it.

* * * * * * *

Int. 18. Whether or not this recount of ballots for State officers was made before or after the same ballots had been counted by you for member of Congress and the recount recorded by you?

A. Made after.

NO STICKERS FELL OFF.

Stebbins says, page 133:

Interrogatory 22. Whether or not you are familiar with what are known as pasters or stickers, and whether your committee carefully examined the boxes to see if there were any such detached from the ballots, and the result of such examination?

Answer. I am familiar with them; they are names of candidates printed upon paper prepared with gluten, to paste over other names upon election ballots. Great care was exercised by the committee, and no pasters for candidates for Congress were found detached from the ballots.

Viles says, page 137:

Interrogatory 25. Did you look to see whether there were any pasters or stickers in the envelopes separated or detached from the envelopes?

Answer. I did in every instance, in every box, and also on the floor where Mr. Stebbins sat. Stebbins was chairman, and no one ever took any ballots out of the envelopes, except Stebbins.

Int. 26. Did you find any such stickers or pasters remaining in the envelopes or upon the floor or the table?

A. I did not.

O'Brien says, page 151:

Interrogatory 16. Did you satisfy yourself that you counted all the ballots, and did you look to see whether there were any stickers or pasters in the boxes?

Answer. I am satisfied that I counted every ballot. I don't remember that any pasters or stickers were in the boxes for Mr. Field or Mr. Dean. I always looked to see.

*Result of both counts in the third congressional district.*

| | Ward returns. | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 13. | 14. | 15. | 16. | 17. | 18. | 19. | 20. | 21. | 24. | Totals. |
| Benjamin Dean | 1,495 | 1,075 | 855 | 896 | 802 | 579 | 1,126 | 1,038 | 547 | 895 | 9,308 |
| Walbridge A. Field | 219 | 939 | 753 | 621 | 1,131 | 1,410 | 614 | 897 | 1,331 | 1,361 | 9,276 |
| Walbridge A. Field, (4th district) | | | | | | 25 | | | | | 25 |
| —— A. Field | | | | | | | 1 | | | | 1 |
| —— Field | | | | | | | 1 | | | | 1 |
| Samuel D. Smith | | | | | | | | | 1 | | 1 |
| | Official count. | | | | | | | | | | |
| Benjamin Dean | 1,497 | 1,100 | 855 | 889 | 803 | 573 | 1,125 | 1,035 | 545 | 893 | 9,315 |
| Walbridge A. Field | 225 | 950 | 751 | 625 | 1,131 | 1,413 | 614 | 891 | 1,333 | 1,362 | 9,295 |
| Walbridge A. Field, (4th district) | | | | | | 25 | | | | | 25 |
| Wm. A. Field | | | | 1 | | | | | | | 1 |
| —— Field | | | | | | | 3 | | | | 3 |
| Leopold Morse | | | | 1 | | | | | | | 1 |
| Rufus S. Frost | | | | 2 | | 1 | | | | | 3 |
| Francis M. Weld | | | | | | | | 1 | | | 1 |
| Field gains | 6 | 11 | | 4 | | 3 | | | 2 | 1 | 27 |
| Field loses | | | 2 | | | | | 6 | | | 8 |
| Dean gains | 2 | 25 | | | 1 | | | | | | 28 |
| Dean loses | | | | 7 | | 6 | 1 | 3 | 2 | 2 | 21 |

I will briefly allude to that testimony. It shows that at this election, when the ballots had been counted at the ward precincts, they were put into a package, or envelope, or box, which was sealed up with a seal, and that seal was kept in the pocket of the ward clerk. A paper indorsed by the inspectors of elections of the ward was then pasted upon the box and those boxes were taken to the city hall and there placed in a vault. Under the law the constables are directed to take the boxes to the city hall. The election was over about four o'clock in the day, and the counting was completed about half an hour later. Then, in the broad, open day-light, these ten ward constables of the ten wards of Boston constituting this congressional district carried the boxes through the streets of Boston to the city hall, the boxes thus sealed and indorsed, upon the evening of Tuesday, November 7, 1876.

The constables delivered those boxes into the custody of the city clerk. According to the record these boxes were so delivered to the proper officer, who put them into the vault upon that Tuesday evening, and there they remained until Friday morning, when this recount began. But two days intervened—Wednesday and Thursday—from the time the boxes were put into the vault until the time when this recount began. One of the witnesses, Mr. McCleary, swears that that vault was locked; that the key was kept in his pocket; that the vault was not open during that time; that no one went into it until the boxes were taken out by himself on the Friday morning for the recount.

Mr. McCleary, according to the record, is an old gentleman, who has been clerk of the city of Boston for over twenty-five years, unchanged and undisturbed amid all the convulsions of parties, personal animosities, and everything of that kind. According to the testimony he is a man who was so pure and free from political bias that none of the witnesses knew what were his politics.

Mr. HARRIS, of Virginia. They say that he voted the republican ticket.

Mr. WALSH. Well, he had a right to do that.

Mr. HARRIS, of Virginia. I do not deny it.

Mr. WALSH. And a republican may be honest.

Mr. HARRIS, of Virginia. I do not deny that either. But you said nobody knew what were his politics.

Mr. WALSH. Upon this Friday morning these boxes were brought out one by one, not all at a time. It is proved that the seals on them were unbroken, that the indorsements upon them were unchanged. Each ward box was opened and the ballots in that box were counted before any other box was opened. The boxes were taken out of the vault one at a time, and only the votes for member of Congress were counted; not the whole twenty-seven or thirty names which were on the ballots.

That count was made by three aldermen, and of those three aldermen two were democrats. They made this recount, they swear that they made it carefully, that they made it correctly, that they counted all the ballots in the boxes, and that the result which they have given you is what was the result of those ballots in the boxes.

Mr. HARRIS, of Virginia. Did not those three men give the plurality——

Mr. WALSH. I cannot yield to the gentleman now; he will have his time to-morrow.

Mr. HARRIS, of Virginia. Did not those three men give the plurality to Dean?

Mr. WALSH. I have no time to be interrupted.

Mr. HARRIS, of Virginia. Did they not give it to Dean?

Mr. WALSH. No; those three men did not give the majority to Dean?

Mr. HARRIS, of Virginia. The plurality.

Mr. WALSH. The contest was whether 25 ballots for Field, with the designation of another congressional district, should be counted for him or not. That was all the contest upon which commenced this whole proceeding now before us here. It is only since the case has come here that this new ground has been taken.

The whole contest there was whether those 25 votes for Mr. Field, giving a wrong designation of the district, should be counted for him or not. These three aldermen, appointed by the democratic mayor of the city of Boston, two of them democrats, swear that the recount was correctly made; that it brings out the result of the ballots which were put in the boxes, and all the testimony shows that the boxes were not tampered with; that no ballots were changed, none put in and none taken out. Where, then, I ask, is there ground for any man to stand upon and say that we shall overthrow the law of Massachusetts and unseat a member who has his certificate like all the rest of us, upon testimony that does not impugn the final count upon which he received that certificate, except by setting up the preliminary count to which the law of Massachusetts does not intrust the ascertainment of the result? Any one who will look at the table of the result of the recount (which I publish with my remarks) will see that there was no tampering with the ballot-boxes. Mr. Dean gains two or three votes in one ward and loses two or three in another, and the case is the same with Mr. Field. Mr. Dean actually gains 25 votes by the recount in ward 16. Now, if any one were tampering with the ballot-boxes he would not do it by making these little changes and going all through the different wards. The ballot-box stuffer would not break open all the boxes, but would put in or take out enough ballots in one of the boxes to give his friend the election. But in this case we have only little fragments of difference, the result of the little errors and accidents that would necessarily happen in the making of the first count. I believe there are very few elections where the first count is absolutely correct, though in general the majority for one party or the other is so large that a recount would be unimportant. But I never yet knew of a recount anywhere where the result was exactly the same as on the first count, because on the recount there is more time to make the computation accurate; the officers are freer from excitement and their attention is not diverted by loud and angry conversation and by hurrahing by the different parties, and all the other things that disturb them on the day of the election. A recount rarely or never corresponds exactly with the original count; and the only reason why a recount is not oftener made is because the majority is generally so large that a recount would not affect the result in any way. Where all possibility of tampering with the ballots is excluded by the testimony, as in this case, we may very safely determine the result by the recount.

Somebody has given great importance to the fact that one vote for a man named Smith was not found in the box on the recount, although it is given in the return of the ward officers. Well, sir, this is a very small feather to overturn the official count made under the laws of Massachusetts, and sworn to as correct by the men who made it, two of them men of my own party. Why, sir, that vote for Smith was not visible to the eyes of the United States supervisors; it does not appear in their count at all. They did not return it because they did not see it.

Mr. SPRINGER. They returned no scattering votes.

Mr. WALSH. I know that they returned no scattering votes; but their papers or returns do not state that they found such votes and did not return them. They are sworn according to law to see that every man gets the votes that are cast for him. Why did they not see that this man Smith received that one vote cast for him for member of Congress? If there was a vote cast for Smith, and if the ward officers saw it, it did not get into the box; for the United States supervisors did not see it, and the three aldermen did not see it. How can the grand sum total of the result of this election be affected by a little question like that, whether one vote for a third party was in the ballot-box or not?

Mr. HARRIS, of Virginia. There was only a difference of 4 votes either way.

Mr. WALSH. Well, this vote for Smith could not go to either of these parties. Smith is not here complaining. The question as to his vote is brought in only because "drowning men catch at straws." When in the trial of a great cause you find men hanging around the outskirts of the great central question for scraps of irrelevant matter it shows, in my view, that they lack weightier matters reaching to the merits to dwell upon.

Now, it has been said that there were "stickers" or "pasters" upon some tickets with Mr. Dean's name on, and that on the recount these may have fallen off. Well, of course, anything may have happened provided it is not a natural impossibility. But the merits of causes like this are not determined by guesses and conjectures. Unfortunately, however, for this wild conjecture, the witnesses all swear—the three aldermen, the city clerk, and everybody who was present—that at the recount "pasters" or "stickers" were carefully looked for, that none were found in the boxes and none fell upon the floor. That disposes of the question as to "stickers."

I have looked at this case carefully and conscientiously, with no desire, of course, to reach a conclusion against my own party friend. I do not profess to be free from party bias. I am a democrat, have always belonged to the democratic party, and always hope to belong to it. I believe it to be the grandest political party that was ever known in the history of the world.

I cannot read the history of the United States without seeing that the democratic party sat at its cradle, and that it was to its statesmanship, its watchfulness, its fidelity to the trust of human liberties committed to it, that the Republic is indebted for the grand and glorious position it now occupies. Sir, I would not do anything to injure the democratic party, but, on the contrary, I would do all I could in honor and in truth to sustain it, to elevate it, and restore it again to the control of the Government. But gentlemen who do not see very far sometimes make great mistakes. They think in their day and generation they are accomplishing a great deal, but it is the man who looks to the outcome of the more distant future who, in my judgment, is to be considered the wisest. However that may be, I shall vote to retain the sitting member in his seat, not certainly from any party predilection for him, but because I honestly believe, under the law and facts which govern me in this case, he is entitled to the seat.

ARMY COOKING.

The SPEAKER *pro tempore*, (Mr. POTTER in the chair,) by unanimous consent, laid before the House a letter from the Secretary of War, recommending the repeal of section 1233 of the Revised Statutes; which was referred to the Committee on the Judiciary.

WASHINGTON ARSENAL.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House a letter from the Secretary of War, relative to the disposition of the Washington Arsenal; which was referred to the Committee on Military Affairs.

PROTECTION OF FUR SEALS.

The SPEAKER *pro tempore* also, by unanimous consent, laid before

the House a letter from the Secretary of the Treasury, relative to sending a vessel to Alaska for the protection of seal, and asking an appropriation for the same; which was referred to the Committee on Appropriations.

FEES FOR COPIES OF OFFICIAL PAPERS.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House a letter from the Secretary of the Treasury, in reference to the expenses of furnishing certified copies of official papers for purposes in which the Government has no interest, and suggesting the propriety of some provision authorizing a charge to cover said expenses; which was referred to the Committee on Appropriations.

LEAVE OF ABSENCE.

Mr. FREEMAN, by unanimous consent, was granted leave of absence for the remainder of the week, on account of important business.

SWAYNE, HOWARD & CO.

On motion of Mr. CRAVENS, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers in the case of Swayne, Howard & Co., no adverse report having been made on it.

JAMES SUTLISE.

On motion of Mr. SMITH, of Georgia, by unanimous consent, leave was granted for the withdrawal from the files of the House of the papers accompanying House bill No. 240, for the relief of James Sutlise, no adverse report having been made on it.

J. D. BINFORD.

Mr. PRICE moved, by unanimous consent, to withdraw from the files of the House the papers accompanying House bill No. 704, granting a pension to J. D. Binford, reported adversely from the Committee on Invalid Pensions.

The SPEAKER, *pro tempore*. Under the rule the application will be referred to the Committee on Pensions.

ENROLLED BILL AND JOINT RESOLUTION.

Mr. RAINEY, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill and joint resolution of the following titles; when the Speaker signed the same:

Joint resolution (H. R. No. 133) to prescribe the time for the payment of the tax on distilled spirits, and for other purposes; and

An act (S. No. 528) to authorize the Worthington and Sioux Falls Railroad Company to extend its road into the Territory of Dakota, to the village of Sioux Falls.

LUCINDA ROBINSON.

Mr. TIPTON, by unanimous consent, introduced a bill (H. R. No. 4107) granting a pension to Lucinda Robinson; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

NAVY OF THE UNITED STATES.

Mr. KIMMEL, by unanimous consent, from the Committee on Naval Affairs, reported back a bill (H. R. No. 2240) to amend sections 1416, 1417, 1418, 1419, 1420, and 1624 of the Revised Statutes of the United States, relating to the Navy; which, with the accompanying report, was ordered to be printed, and recommitted, not to be brought back by a motion to reconsider.

NORMAN WIARD.

Mr. BANKS, by unanimous consent, introduced a bill (H. R. No. 4108) for the relief of Norman Wiard; which was read a first and second time, referred to the Committee of Claims, and ordered to be printed.

DISTRICT TAXES.

Mr. WILLIAMS, of Michigan. I move, by unanimous consent, to take from the Speaker's table an act (H. R. No. 2371) to amend an act entitled "An act for the support of the government for the District of Columbia for the fiscal year ending June 30, 1878, and for other purposes," returned from the Senate with amendments. This bill relates to the new assessment for the District of Columbia, which was passed by the House some time ago, but has been delayed to the present time in the Senate. The amendments of the Senate merely strike out "July" where it occurs and inserts "August." It is important the bill should pass at once, and I hope there will be no objection to concurring in the Senate amendments.

There was no objection, and the amendments of the Senate were concurred in.

Mr. WILLIAMS, of Michigan, moved to reconsider the vote by which the Senate amendments were concurred in; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

GEORGE CLENDENIN, JR.

Mr. MAGINNIS, by unanimous consent, introduced a bill (H. R. No. 4109) for the relief of George Clendenin, jr.; which was read a first and second time, referred to the Committee on Military Affairs, and ordered to be printed.

And then, on motion of Mr. HISCOCK, (at five o'clock and three 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: The petition of printers, engravers, booksellers, electrotypers, and others, of Philadelphia, Pennsylvania, for the imposition of a duty on electrotype printing plates—to the Committee of Ways and Means.

Also, the petition of Mary N. De Haven, for a pension—to the Committee on Invalid Pensions.

By Mr. BELL: Resolutions of the Augusta (Georgia) Cotton Exchange, favoring the passage of the Stephens Pacific Railroad bill—to the Committee on the Pacific Railroad.

Also, the petition of 393 citizens of Hall County, Georgia, of similar import—to the same committee.

By Mr. BLACKBURN: The petition of citizens of Frankfort, Kentucky, for the repeal of the bankrupt law—to the Committee on the Judiciary.

By Mr. BLAIR: The petition of O. C. Hatch and 37 other citizens of Littleton, New Hampshire, of similar import—to the same committee.

By Mr. BLISS: The petition of J. J. Vail, Thomas D. Hudson, J. P. Crawford, Alexander Underhill, J. N. Christmas, George H. Eageman, Robinson Gill, and other citizens of Brooklyn, New York, against a revival of the income tax—to the Committee of Ways and Means.

By Mr. CALDWELL, of Tennessee: The petition of Ferdinand M. Tuck, for compensation for a horse lost in the United States service—to the Committee on War Claims.

By Mr. CHALMERS: The petition of James M. Sweareagin, executor, &c., for compensation for property taken by the United States Army—to the same committee.

By Mr. DAVIS, of California: The petition of citizens of San Francisco, California, against an increase of duty on boiler-tubes—to the Committee of Ways and Means.

By Mr. FELTON: The petition of citizens of Cobb County, Georgia, for Government aid to the Texas Pacific Railroad, provided it is constructed on the thirty-second parallel—to the Committee on the Pacific Railroad.

By Mr. FOSTER: The petition of citizens of Ohio, against the passage of the Williams bill for the protection of fish—to the Committee on Commerce.

By Mr. GAUSE: The petition of citizens of Lee County, Arkansas, in relation to the improvement of L'Anguille River—to the same committee.

By Mr. HARTZELL: Memorial and resolutions of the city council of Cairo, Illinois, favoring the passage of the Texas Pacific Railroad bill—to the Committee on the Pacific Railroad.

Also, memorial and resolutions of the city council of Cairo, Illinois, for the adoption of such measures for the improvement of the Mississippi River and the protection of the country bordering on it as will speedily afford relief from the dangers of its navigation and its excessive floods—to the Committee on Commerce.

By Mr. HASKELL: The petition of the publisher of the Republican Daily Journal, Lawrence, Kansas, for the abolition of the duty on type—to the Committee of Ways and Means.

By Mr. HERBERT: The petition of Hon. A. N. Worthy and other citizens of Troy, Alabama, for aid to the Texas Pacific Railroad—to the Committee on the Pacific Railroad.

By Mr. HISCOCK: The petition of citizens of New York, against the revival of the income tax—to the Committee of Ways and Means.

By Mr. HUBBELL: The petitions of the publishers of the Manistee (Michigan) Times and Standard, of the Wexford County (Michigan) Pioneer, of the Evart (Michigan) Review, of the Reed City (Michigan) Weekly Clarion, and of the Otsego County (Michigan) Herald, for the abolition of the duty on type—to the same committee.

Also, the petition of Peter W. Hornback, Stephen R. Rhodes, and 150 other citizens of Point Saint Ignace, Michigan, against the passage of the bill to regulate and protect fisheries—to the Committee on Commerce.

By Mr. JONES, of Alabama: The petition of citizens of Choctaw County, Alabama, for the distribution of the proceeds of the sales of public lands among the States in aid of popular education—to the Committee on Education and Labor.

By Mr. LORING: Papers relating to the claim of Thomas Niles, of Massachusetts—to the Committee on War Claims.

By Mr. LUTTRELL: The petition of Sarah L. Knox, of San José, California, for the removal of her political disabilities—to the Committee on the Judiciary.

By Mr. MAISH: Papers relating to the pension claim of Mary Wade—to the Committee on Invalid Pensions.

By Mr. McKINLEY: The petition of 130 citizens of Stark County, Ohio, against any change in the tariff on wool and woolens—to the Committee of Ways and Means.

Also, the petition of 35 citizens of Columbiana County, Ohio, against any change of the tariff on wool and woolen goods and against any change of the tariff laws—to the same committee.

Also, resolutions of the Ohio State grange, Patrons of Husbandry, of Castalia, Ohio, opposing any reduction of the tariff on wools and woolens—to the same committee.

By Mr. MORRISON: The petitions of the publishers of the Daily and Weekly Gazette, East Saint Louis, Illinois, and of the Highland

(Illinois) Courier, for the abolition of the duty on type—to the same committee.

By Mr. MORSE: The petition of citizens of Boston, Massachusetts, against any tax upon incomes—to the same committee.

By Mr. NEAL: The petition of T. M. Cherry and 50 other citizens of Hocking County, Ohio, against any change in the tariff—to the same committee.

By Mr. O'NEILL: Memorial of the Philadelphia Board of Trade, for the adoption of certain amendments to the bankrupt law, making it uniform, decreasing expenses, &c—to the Committee on the Judiciary.

By Mr. PUGH: Resolutions of the Board of Freeholders of Hudson County, New Jersey, in favor of making Jersey City a port of entry—to the Committee on Commerce.

By Mr. SAYLER: The petition of Allison, Smith & Johnson and other printers, stereotypers, and others of Cincinnati, Ohio, in regard to the duty on type and stereotype or electrotype plates—to the Committee of Ways and Means.

By Mr. SINGLETON: The petition of John A. Park, for a pension and land warrant—to the Committee on Invalid Pensions.

Also, the petition of Purifay Tingle, for compensation for stores taken by the United States Army—to the Committee on War Claims.

By Mr. STARIN: The petition of John W. Thompson and others of Ballston Spa, New York, and of N. M. Estebrook and others of the same place, for the repeal of the bankrupt law—to the Committee on the Judiciary.

By Mr. STEPHENS, of Georgia: Memorial of the Cotton Exchange of Augusta, Georgia, in favor of the Texas and Pacific Railroad bill introduced in the House by Mr. STEPHENS, of Georgia—to the Committee on the Pacific Railroad.

Also, memorial of Professor L. H. Charbonnier, of the Georgia State University, in the behalf of Athens, Georgia, as a proper place for the location of a branch mint of the United States—to the Committee on Coinage, Weights, and Measures.

By Mr. YOUNG: The petition of J. C. Johnson and others, of Memphis, Tennessee, and of James N. Falls, administrator, &c., for the refunding of taxes collected from them on rope and bagging—to the Committee of Claims.

Also, the petitions of F. M. Mendenhall and of James R. Wray, for compensation for property taken by the United States Army—to the Committee on War Claims.

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## IN SENATE.

### WEDNESDAY, *March* 27, 1878.

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

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

#### INTERMENT OF HON. J. E. LEONARD.

The VICE-PRESIDENT. Under the provisions of the concurrent resolution of the House of Representatives relating to the subject, the Chair appoints Messrs. EUSTIS, SAUNDERS, and CONOVER as the committee on the part of the Senate to meet the body of Hon. JOHN EDWARDS LEONARD, late a Representative from the State of Louisiana, upon its arrival at New York, and escort it to the place of interment at West Chester, Pennsylvania.

#### PETITIONS AND MEMORIALS.

Mr. FERRY presented a memorial of M. M. Locke and others, citizens of Michigan, merchants, fishermen, &c., remonstrating against the proposed transfer of the life-saving service from the Treasury to the Navy Department; which was ordered to lie on the table.

Mr. HOAR presented the memorial of James William and others, of Massachusetts, and the memorial of Edward Lawrence and others, of Boston, remonstrating against the passage of any act imposing a tax on incomes; which were referred to the Committee on Finance.

Mr. HOAR. I present the memorial of Alexander H. Rice, governor, the lieutenant-governor, all the members of the executive council, and the secretary of State of the Commonwealth of Massachusetts, expressing their opinion that the efficiency of the life-saving service will be greater if left with the Revenue-Marine Bureau than if the same be transferred to the Navy Department, and they most respectfully recommend that such transfer should not be made. I move that the memorial lie upon the table.

The motion was agreed to.

Mr. MATTHEWS. I present the memorial of Wilcox Brothers and others, vessel-owners, masters, and agents, of the city of Toledo, Ohio, respectfully and earnestly remonstrating against the passage of the bill to transfer the life-saving and coast-guard service from the Treasury to the Navy Department, and stating that in their opinion the life-saving service under its present administration has given satisfactory proof of efficient management, and any interference, as contemplated, they regard as dangerous, wild, and speculative. I move that the memorial lie upon the table.

The motion was agreed to.

Mr. BOOTH presented the petition of James C. Horton and others, citizens of Kansas, praying that Congress may pass an act for the relief of Alexander McDonald who purchased eight hundred and seventy-two acres of land from the Leavenworth, Lawrence and Galveston Railway Company, and from the Missouri, Kansas, and Texas Railway Company, being a part of the Osage ceded tract, so that the same may be granted to him; which was referred to the Committee on Private Land Claims.

Mr. WITHERS. I present a joint resolution of the General Assembly of Virginia, requesting certain Congressional action upon the award of the commissioners for settling the boundary line between Virginia and Maryland. As the Legislature of Maryland has not yet acted upon that matter, I move that for the present the resolution lie upon the table.

The motion was agreed to.

Mr. CAMERON, of Pennsylvania, presented a petition of the Board of Trade of the city of Philadelphia, praying for the adoption of certain amendments therein mentioned to the bankrupt laws; which was ordered to lie on the table.

Mr. HAMLIN presented the memorial of S. J. Abbott and others, citizens of Waterville, Maine, remonstrating against the passage of any act imposing a tax on incomes; which was referred to the Committee on Finance.

Mr. BECK presented the memorial of John W. Story and others, citizens of Louisville, Kentucky, remonstrating against the passage of any act imposing a tax on incomes; which was referred to the Committee on Finance.

Mr. THURMAN presented the petition of George R. Herrick, of the District of Columbia, praying to be reimbursed a certain amount of money paid by him under an order of the board of police commissioners on account of the robbery of his office safe while he was property clerk of the Metropolitan police of the District of Columbia; which was referred to the Committee on Claims.

Mr. CONKLING. I present the memorial of Archibald Turner & Co., Jacob Lorillard, Isaac Bell, and a large number of other prominent merchants, bankers, and ship-owners in the city of New York, remonstrating against the proposed change of the life-saving service from the Treasury to the Navy Department. I move that this memorial lie upon the table.

The motion was agreed to.

Mr. CONKLING presented the petition of William F. Rogers and others, citizens of the city of New York, engaged in the business of printing, remonstrating against the removal by Congress of duties on foreign imports; which was referred to the Committee on Finance.

Mr. CONKLING. I present also a memorial signed by a large number of active business men of New York, remonstrating, for very abundant reasons, as I think, against the reimposition of the income tax. I move the reference of this memorial to the Committee on Finance.

The motion was agreed to.

#### REPORTS OF COMMITTEES.

Mr. HARRIS, from the Committee on Claims, to whom was referred the bill (S. No. 342) for the relief of Henrietta Groesbeck, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 471) for the relief of M. S. Draughn, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. COCKRELL, from the Committee on Claims, to whom was referred the bill (H. R. No. 1224) for the relief of Will R. Hervey, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. MORGAN, from the Committee on Claims, to whom was referred the bill (S. No. 378) for the relief of William L. Hickam, of Missouri, reported it with amendments, and submitted a report thereon; which was ordered to be printed.

Mr. HEREFORD, from the Committee on Claims, to whom was referred the petition of William L. Adams, late collector of customs at Astoria, Oregon, praying to be relieved from all liability on account of money stolen from him while being transported to San Francisco, submitted a report thereon, accompanied by a bill (S. No. 997) for the relief of William L. Adams.

The bill was read twice by its title, and the report was ordered to be printed.

Mr. MITCHELL, from the Committee on Claims, to whom was referred the petition of George R. Dennis, of Maryland, praying compensation for damages to his schooner, William J. Dennis, alleged to have been caused by her being run into and sunk by the Government steamer General Meigs, submitted a report thereon, accompanied by a bill (S. No. 998) for the relief of George R. Dennis, of Maryland.

The bill was read twice by its title, and the report was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Mrs. Eliza E. Hebert, of Louisiana, praying compensation for commissary and quartermaster stores alleged to have been taken by order of Brigadier-General Halbert E. Paine in 1863, submitted a report thereon, accompanied by a bill (S. No. 999) for the relief of Mrs. Eliza E. Hebert.

The bill was read twice by its title, and the report was ordered to be printed.

Mr. CAMERON, of Wisconsin. I desire to state that the chairman