to elect a successor to Mr. Wadleigh, the Committee on Elections and Privileges made a report (No. 485) that only the Legislature chosen in November, 1878, had the power; which report was adopted by the Senate. The Legislature chosen in March thereupon took no steps to elect a successor to Mr. Wadleigh. But the Legislature chosen in November, 1878, cannot be assembled until June, 1879. Therefore in March, 1879, when the vacancy occurred, there was no Legislature in being or capable of being assembled with the power to elect a Senator. On the principle of Sevier's case, therefore, the governor had the right of appointment.

Under these circumstances, Mr. President, with these precedents, I hope the oath of office will be administered to Mr. Bell. Then, if it is desirable to make any inquiry, the credentials may be referred to the Committee on Privileges and Elections and it may be had.

Mr. WALLACE. I must insist on my motion as following the usual precedents in such cases.

The VICE-PRESIDENT. The question is on the motion of the Senator from Pennsylvania that the credentials lie upon the table.

Mr. BLAINE. Until to-morrow?

Mr. WALLACE. Until to-morrow.

The motion was agreed to.

NOTIFICATION TO THE HOUSE.

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

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

NOTIFICATION TO THE PRESIDENT.

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

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

By unanimous consent, the Vice-President was authorized to appoint the committee; and Messrs. BAYARD and ANTHONY were appointed as the committee on the part of the Senate.

HOUR OF MEETING.

On motion of Mr. WHYTE, it was

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

RECESS.

Mr. WHYTE, (at twelve o'clock and thirty minutes p. m.) I move that the Senate take a recess for half an hour.

The motion was agreed to; and at the expiration of the recess (at one o'clock p. m.) the Senate reassembled.

Mr. WHYTE. From information which I have received from the House of Representatives, I do not think it possible for the House to organize before three or half past three o'clock, and therefore I move that the Senate adjourn until to-morrow.

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

HOUSE OF REPRESENTATIVES.

TUESDAY, *March* 18, 1879.

The House of Representatives of the Forty-sixth Congress of the United States, in compliance with the President's proclamation of the 4th day of March, 1879, convened this day in extra session; and, at twelve o'clock m., was called to order by Hon. GEORGE M. ADAMS, Clerk of the last House.

The CLERK. On the 4th day of the present month the following proclamation was issued by the President of the United States:

By the President of the United States.

A PROCLAMATION.

Whereas the final adjournment of the Forty-fifth Congress without making the usual and necessary appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and without making the usual and necessary appropriations for the support of the Army for the same fiscal year, presents an extraordinary occasion, requiring the President to exercise the power vested in him by the Constitution to convene the Houses of Congress in anticipation of the day fixed by law for their next meeting:

Now, therefore, I, Rutherford B. Hayes, President of the United States, do, by virtue of the power to this end in me vested by the Constitution, convene both Houses of Congress to assemble at their respective Chambers at twelve o'clock noon on Tuesday the 18th day of March instant, then and there to consider and determine such measures as, in their wisdom, their duty and the welfare of the people may seem to demand.

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

Done at the city of Washington this 4th day of March, A. D. 1879, and of the Independence of the United States of America the one hundred and third.

[SEAL.] R. B. HAYES.

By the President:

WM. M. EVARTS, *Secretary of State.*

The time designated by this proclamation for the meeting of the Forty-sixth Congress having arrived, the Clerk of the preceding House of Representatives will call the roll (which by law he is required to prepare) of the Representatives elected to the Forty-sixth Congress. Pending which, however, persons who are not entitled to the privileges of the floor are requested to retire from the Hall in order that the Representatives-elect may occupy the seats which are prepared for that purpose; and the Doorkeeper and the Sergeant-at-Arms will see to it that the rules of the House in this regard are rigidly enforced. Gentlemen will please respond distinctly to their names when called.

The roll being then called, the following persons answered to their names:

MAINE.

Thomas B. Reed.
William P. Frye.
Stephen D. Lindsey.
George W. Ladd.
Thompson H. Murch.

NEW HAMPSHIRE.

Joshua G. Hall.
James F. Briggs.
Evarts W. Farr.

VERMONT.

Charles H. Joyce.
James M. Tyler.
Bradley Barlow.

MASSACHUSETTS.

William W. Crapo.
Benjamin W. Harris.
Walbridge A. Field.
Leopold Morse.
Selwyn Z. Bowman.
George B. Loring.
William A. Russell.
William Claflin.
William W. Rice.
Amasa Norcross.
George D. Robinson.

RHODE ISLAND.

Nelson W. Aldrich.
Latimer W. Ballou.

CONNECTICUT.

Joseph R. Hawley.
James Phelps.
John T. Wait.
Frederick Miles.

NEW YORK.

James W. Covert.
Simeon B. Chittenden.
Archibald M. Bliss.
Nicholas Muller.
Samuel S. Cox.
Edwin Einstein.
Anson G. McCook.
Fernando Wood.
James O'Brien.
Levi P. Morton.
John H. Ketcham.
John W. Ferdon.
William Lounsbery.
John M. Bailey.
Walter A. Wood.
John Hammond.
John H. Starin.
David Wilber.
Warner Miller.
Cyrus D. Prescott.
Joseph Mason.
Frank Hiscock.
John H. Camp.
Elbridge G. Lapham.
Jeremiah W. Dwight.
David P. Richardson.
John Van Voorhis.
Richard Crowley.
Ray V. Pierce.
Henry Van Aernam.

NEW JERSEY.

George M. Robeson.
Hezekiah B. Smith.
Miles Ross.
Lewis A. Brigham.
Alvah A. Clark.
Charles H. Voorhis.
John L. Blake.

PENNSYLVANIA.

Henry H. Bingham.
Charles O'Neill.
Samuel J. Randall.
William D. Kelley.
Alfred C. Harmer.
William Ward.
William Godshalk.
Hiester Clymer.
A. Herr Smith.
Reuben K. Bachman.
Robert Klotz.
Hendrick B. Wright.
John W. Ryon.
John W. Killinger.
Edward Overton, jr.
John I. Mitchell.
Alexander H. Coffroth.
Horatio G. Fisher.
Frank E. Beltzhoover.
Seth H. Yocum.
Morgan R. Wise.
Russell Errett.
Thomas M. Bayne.
William S. Shallenberger.
Harry White.
Samuel B. Dick.
J. H. Osmer.

DELAWARE.

Edward L. Martin.

MARYLAND.

Daniel M. Henry.
J. Frederick C. Talbott.
William Kimmel.
Robert M. McLane.
Eli J. Henkle.
Milton G. Urner.

VIRGINIA.

R. L. T. Beale.
John Goode, jr.
Joseph E. Johnston.
Joseph Jorgensen.
George C. Cabell.
John Randolph Tucker.
John T. Harris.
Eppa Hunton.
James B. Richmond.

NORTH CAROLINA.

Joseph J. Martin.
W. H. Kitchin.
Daniel L. Russell.
Joseph J. Davis.
Alfred M. Scales.
Walter L. Steele.
Robert F. Armfield.
Robert B. Vance.

SOUTH CAROLINA.

John S. Richardson.
M. P. O'Connor.
D. Wyatt Aiken.
John H. Evins.
George D. Tillman.

GEORGIA.

John C. Nicholls.
William E. Smith.
Philip Cook.
Henry Persons.
N. J. Hammond.
James H. Blount.
William H. Felton.
Alexander H. Stephens.
Emory Speer.

ALABAMA.

Thomas H. Herndon.
Hilary A. Herbert.
William J. Samford.
Charles M. Shelley.

Thomas Williams.
Burwell B. Lewis.
William H. Forney.
William M. Lowe.

MISSISSIPPI.

Henry L. Muldrow.
Van H. Manning.
Hernando D. Money.

Otho R. Singleton.
Charles E. Hooker.
James R. Chalmers.

LOUISIANA.

Randall L. Gibson.
E. John Ellis.
Joseph H. Acklen.

Joseph B. Elam
J. Floyd King.
Edward W. Robertson.

OHIO.

Benjamin Butterworth.
Thomas L. Young.
John A. McMahon.
J. Warren Keifer.
Benjamin Le Fevre.
William D. Hill.
Frank H. Hurd.
Ebenezer R. Finley.
George L. Converse.
Thomas Ewing.

Henry L. Dickey.
Henry S. Neal.
A. J. Warner.
Gibson Atherton.
George W. Geddes.
William McKinley, jr.
James Monroe.
J. T. Updegraff.
James A. Garfield.
Amos Townsend.

KENTUCKY.

Oscar Turner.
James A. McKenzie.
John W. Caldwell.
J. Proctor Knott.
Albert S. Willis.

John G. Carlisle.
Joseph C. S. Blackburn.
Philip B. Thompson, jr.
Thomas Turner.
Elijah C. Phister.

TENNESSEE.

R. L. Taylor.
L. C. Houk.
George G. Dibrell.
Benton McMillin.
John M. Bright.

John F. House.
Washington C. Whitthorne.
John D. C. Atkins.
C. B. Simonton.
Casey Young.

INDIANA.

William Heilman.
Thomas R. Cobb.
George A. Bicknell.
Jeptha D. New.
Thomas M. Browne.
William R. Myers.
Gilbert De La Matyr.

Abraham J. Hostetler.
Godlove S. Orth.
William H. Calkins.
Calvin Cowgill.
Walpole G. Colerick.
John H. Baker.

ILLINOIS.

William Aldrich.
George R. Davis.
Hiram Barber.
John C. Sherwin.
Robert M. A. Hawk.
Thomas J. Henderson.
Philip C. Hayes.
Greenbury L. Fort.
Thomas A. Boyd.
Benjamin F. Marsh.

James W. Singleton.
William M. Springer.
Adlai E. Stevenson.
Joseph G. Cannon.
Albert P. Forsythe.
William A. J. Sparks.
William R. Morrison.
John R. Thomas.
Richard W. Townshend.

MISSOURI.

Martin L. Clardy.
Erastus Wells.
R. Graham Frost.
Lowndes H. Davis.
Richard P. Bland.
James R. Waddill.
Alfred M. Lay.

Samuel L. Sawyer.
Nicholas Ford.
Gideon F. Rothwell.
John B. Clark, jr.
William H. Hatch.
Aylett H. Buckner.

ARKANSAS.

Poindexter Dunn.
William F. Slemons.

Jordan E. Cravens.
Thomas M. Gunter.

MICHIGAN.

John S. Newberry.
Edwin Willits.
Jonas H. McGowan.
Julius C. Burrows.
John W. Stone.

Mark S. Brewer.
Omar D. Conger.
Roswell G. Horr.
Jay A. Hubbell.

FLORIDA.

Robert H. M. Davidson.

Noble A. Hull.

TEXAS.

John H. Reagan.
David B. Culberson.
Olin Wellborn.

Roger Q. Mills.
George W. Jones.

IOWA.

Moses A. McCoid.
Hiram Price.
Thomas Updegraff.
Nathaniel C. Deering.
Rush Clark.

James B. Weaver.
Edward H. Gillette.
William F. Sapp.
Cyrus C. Carpenter.

WISCONSIN.

Charles G. Williams.
Lucien B. Caswell.
George C. Hazelton.
Peter V. Deuster.

Edward S. Bragg.
Gabriel Bouck.
Herman L. Humphrey.
Thaddeus C. Pound.

MINNESOTA.

Mark H. Dunnell.
Henry Poehler.

William D. Washburn.

OREGON.

John Whiteaker.

KANSAS.

John A. Anderson.
Dudley C. Haskell.

Thomas Ryan.

WEST VIRGINIA.

Benjamin Wilson.
Benjamin F. Martin.

John E. Kenna.

NEVADA.

Rollin M. Daggett.

WASHINGTON.

Thomas H. Brents.

NEBRASKA.

Edward K. Valentine.

DAKOTA.

Granville G. Bennett.

COLORADO.

James B. Belford.

ARIZONA.

John G. Campbell.

NEW MEXICO.

(Vacant.)

IDAHO.

George Ainslie.

UTAH.

George Q. Cannon.

MONTANO.

Martin Maginnis.

WYOMING.

Stephen W. Downey.

After calling the names of the Representatives from Florida,

The CLERK said: In reference to the State of Florida, if there be no objection, the Clerk will state the reasons which controlled him in placing the name of Mr. Hull upon the roll as the Representative-elect from the second district. He received a certificate of election signed by the governor and authenticated by the seal of Florida, as prescribed by the following provision in the statutes of that State:

Whenever any person shall be elected to the office of elector of President or Vice-President, or Representative in Congress, the governor shall make out and sign and cause to be sealed with the seal of the State and transmit to such person a certificate of his election:

duly accrediting Mr. Hull as a Representative-elect to the Forty-sixth Congress. He subsequently received a number of papers, among which was a certified copy of a canvass of the votes in the second district of Florida, made by the board of State canvassers in pursuance of an order of the supreme court of that State, from which canvass it appears that Mr. Horatio Bisbee, jr., was elected, but those papers were not accompanied by the certificate of the governor, authenticated by the seal of the State, as required by the statute just cited.

The Clerk did not feel at liberty to regard anything as a credential within the meaning of the law governing him in making up the roll except a certificate made out and signed by the governor and sealed with the seal of the State, as prescribed by this provision of the statutes of Florida; and as Mr. Bisbee, who claims to have been elected, presented no such certificate, the Clerk could not regard him as possessing the *prima facie* evidence of an election which the law of Florida requires that he should have, and consequently omitted his name from the roll. As the credentials presented by Mr. Hull, however, did possess all the requisites prescribed by the law, the Clerk deemed it his duty to place his name upon the roll, and accordingly did so.

When the State of Iowa was reached and the Representatives from that State had been called,

The CLERK said: In reference to the State of Iowa, the Clerk also begs the indulgence of the Representatives-elect while he makes a statement as to the reasons by which he was controlled in placing upon the roll the names of the gentlemen he has just called as Representatives-elect from Iowa. There were presented to the Clerk certificates duly signed by the governor of the State of Iowa, under the seal of the State, accrediting the nine gentlemen whose names have been announced as Representatives duly elected on the 8th day of October, 1878. Sundry papers were also presented to the Clerk in reference to an election claimed to have been held on the Tuesday next after the first Monday in November, 1878. These papers, however, do not conform to the requirements of the laws of Iowa. They are not signed by the governor; they are not under the seal of the State; they are simply papers which came unauthenticated and in no sense constitute credentials within the meaning of the laws of Iowa. Whatever may be the fact, therefore, in reference to the time at which the election should have been held in the State of Iowa, even though it were definitely and clearly settled that the election should have been held in November instead of October, the Clerk could not in any event place on the roll the names of those persons in whose behalf papers have been filed in reference to the November election for the reason that these papers do not comply with the laws of the State of Iowa and do not constitute credentials.

As to whether the election should have been held in October or in November, there are grave doubts in the minds of those learned in the law. It is a question about which he confesses he has not been able to arrive at so clear and satisfactory a conclusion as he could himself have desired. But in the discharge of the duty imposed upon him, unless he could arrive at a clear and satisfactory conclusion that those gentlemen were not elected on the proper day, he did not feel at liberty to withhold their names from the roll of members-elect, but thought it proper to give the benefit of the doubt in favor of representation, and to remand that question for the consideration of the House when it shall have organized.

When the State of Kansas was reached and the names called,

The CLERK said: The Clerk begs also to remark, with the permission and indulgence of the Representatives-elect, that he has received a certificate accrediting an additional Representative from the State of Kansas as elected from the State at large; but as he is not

aware of any law authorizing that State to have more than three Representatives, he has not placed the name of the person who is claimed to have been elected for the State at large upon the roll.

The call of the roll having been completed, it was ascertained that all the members-elect had responded to their names except Mr. Daniel O'Reilly and Mr. Amaziah B. James, both of the State of New York.

The CLERK said: Two hundred and eighty-five Representatives-elect have responded to their names—more than a quorum—and the Clerk is now prepared to receive a motion looking to the organization of the House.

Mr. FERNANDO WOOD. I rise to a privileged question. I move that the House now proceed to the election of a Speaker of the House of Representatives for the Forty-sixth Congress, and upon that motion I call the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the motion was agreed to.

The CLERK. Under the order of the House just made the House will now proceed to the election of a Speaker by ballot, and the Clerk will receive nominations for the office of Speaker.

Mr. CLYMER. I place in nomination for the office of Speaker of the House for the Forty-sixth Congress the name of Hon. SAMUEL J. RANDALL, a Representative-elect from the State of Pennsylvania.

Mr. FRYE. I place in nomination for the Speaker of the Forty-sixth Congress Hon. JAMES A. GARFIELD, a member-elect from the State of Ohio.

Mr. DE LA MATYR. I place in nomination Hon. HENDRICK B. WRIGHT, a member-elect from the State of Pennsylvania. [Applause in the galleries.]

The CLERK. If there are no further nominations, the Clerk announces that the nominees are:

Hon. SAMUEL J. RANDALL, a Representative-elect from the State of Pennsylvania;

Hon. JAMES A. GARFIELD, a Representative-elect from the State of Ohio; and

Hon. HENDRICK B. WRIGHT, a Representative-elect from the State of Pennsylvania.

The Clerk will request Mr. CLYMER of Pennsylvania, Mr. ELLIS of Louisiana, Mr. HISCOCK of New York, and Mr. STONE of Michigan to act as tellers.

The tellers took their places at the Clerk's desk.

Mr. CONGER. I will move that the name of each member be called, and that upon the call of his name he announce his vote *viva voce*.

Mr. BLACKBURN. I second that motion.

The CLERK. That is the usual practice.

Mr. CONGER. I ask whether, without a special rule upon the subject, that practice will be pursued?

The CLERK. The Clerk was about to state to the gentleman from Michigan that that is the usual way in which the election of a Speaker is conducted, but that does not dispense with the necessity for tellers.

Mr. CONGER. I move that the vote be taken in that way.

The CLERK. Does the gentleman, in view of the fact that that is the way in which the vote will be taken, insist upon his motion? That is the rule of proceeding.

Mr. CONGER. I made the motion because the Clerk inadvertently stated that the election would be by ballot.

Mr. GARFIELD. The rule of the House is that the vote shall be taken *viva voce*.

The roll was then called, with the following result:

For Mr. Samuel J. Randall—143.

Acklen,	Davis, Lowndes H.	Klotz,	Sawyer,
Aiken,	Deuster,	Knott,	Scales,
Armfield,	Dibrell,	Lay,	Shelley,
Atherton,	Dickey,	Le Fevre,	Slemons,
Atkins,	Dunn,	Lewis,	Simonton,
Bachman,	Elam,	Lounsbery,	Singleton, J. W.
Beale,	Ellis,	Manning,	Singleton, O. R.
Beltzhoover,	Evins,	Martin, Benj. F.	Smith, H. B.
Bicknell,	Ewing,	Martin, Edward L.	Smith, W. E.
Blackburn,	Felton,	McKenzie,	Sparks,
Bland,	Finley,	McLane,	Speer,
Bliss,	Forney,	McMahon,	Springer,
Blount,	Frost,	McMillin,	Steele,
Bouck,	Geddes,	Mills,	Stephens,
Bragg,	Gibson,	Money,	Talbott,
Bright,	Goode,	Morrison,	Taylor,
Buckner,	Gunter,	Morse,	Thompson,
Cabell,	Hammond, N. J.	Muldrow,	Tillman,
Caldwell,	Harris, John T.	Muller,	Townshend, R. W.
Carlisle,	Hatch,	Myers,	Tucker,
Chalmers,	Henkle,	New,	Turner, Oscar
Clardy,	Henry,	Nicholls,	Turner, Thomas
Clark, Alvah A.	Herbert,	O'Brien,	Vance,
Clark, John B.	Herndon,	O'Connor,	Waddill,
Clymer,	Hill,	Persons,	Warner,
Cobb,	Hooker,	Phelps,	Wellborn,
Coffroth,	Hostetler,	Phister,	Wells,
Colerick,	House,	Poehler,	Whiteaker,
Converse,	Hull,	Reagan,	Whitthorne,
Cook,	Hunton,	Richardson, J. S.	Williams, Thomas
Covert,	Hurd,	Richmond,	Willis,
Cox,	Johnston,	Robertson,	Wilson,
Cravens,	Kenna,	Ross,	Wise,
Culberson,	Kimmel,	Rothwell,	Wood, Fernando
Davidson,	King,	Ryon, John W.	Young, Casey.
Davis, Joseph J.	Kitchin,	Samford,	

For Mr. James A. Garfield—125.

Aldrich, Nelson W.	Davis, George R.	Keifer,	Robeson,
Aldrich, William	Deering,	Ketcham,	Robinson,
Anderson,	Dick,	Killinger,	Russell, William A.
Bailey,	Dunnell,	Lapham,	Ryan, Thomas
Baker,	Dwight,	Lindsey,	Sapp,
Ballou,	Einstein,	Loring,	Shallenberger,
Barber,	Errett,	Marsh,	Sherwin,
Bayne,	Farr,	Martin, Joseph J.	Smith, A. Herr
Belford,	Ferdon,	Mason,	Starin,
Bingham,	Field,	McCoid,	Stone,
Blake,	Fisher,	McCook,	Thomas,
Bowman,	Fort,	McGowan,	Townsend, Amos
Boyd,	Frye,	McKinley,	Tyler,
Brewer,	Godshalk,	Miles,	Updegraff, J. T.
Briggs,	Hall,	Miller,	Updegraff, Thos.
Brigham,	Hammond, John	Mitchell,	Urner,
Browne,	Harmer,	Monroe,	Valentine,
Burrows,	Harris, Benj. W.	Morton,	Van Aernam,
Butterworth,	Haskell,	Neal,	Van Voorhis,
Calkins,	Hawk,	Newberry,	Voorhis,
Camp,	Hawley,	Norcross,	Wait,
Cannon,	Hayes,	O'Neill,	Ward,
Carpenter,	Hazelton,	Orth,	Washburn,
Caswell,	Heilman,	Osmer,	White,
Chittenden,	Henderson,	Overton,	Wilber,
Claflin,	Hiscock,	Pierce,	Williams, C. G.
Clark, Rush	Horr,	Pound,	Willits,
Conger,	Houk,	Prescott,	Wood, Walter A.
Cowgill,	Hubbell,	Price,	Young, Thomas L.
Crapo,	Humphrey,	Reed,	
Crowley,	Jorgensen,	Rice,	
Daggett,	Joyce,	Richardson, D. P.	

For Mr. Hendrick B. Wright—13.

De La Matyr,	Jones,	Murch,	Yocum.
Ford,	Kelley,	Russell, Daniel L.	
Forsythe,	Ladd,	Stevenson.	
Gillette,	Lowe,	Weaver,	

For Mr. William D. Kelley—1.

Barlow.

Mr. CLYMER, in behalf of the tellers appointed to conduct the vote, reported that the whole number of votes cast was 282, of which number Mr. SAMUEL J. RANDALL had received 143, Mr. JAMES A. GARFIELD 125, Mr. HENDRICK B. WRIGHT 13, and Mr. KELLEY 1.

The CLERK. The tellers report that the whole number of votes cast is 282, of which number Mr. RANDALL, of Pennsylvania, received 143 votes; Mr. GARFIELD, of Ohio, 125 votes; Mr. WRIGHT, of Pennsylvania, 13 votes; and Mr. KELLEY, of Pennsylvania, 1 vote.

Mr. CONGER. Before the final announcement of the result of the vote I wish to ask the Clerk what the rule is; whether it does not require a majority of all the members elected to this House to elect a Speaker under its rules?

Mr. SPRINGER. The majority of a quorum will elect at any time any officer whom the House might elect, and also transact any other business.

Mr. CONGER. I was addressing my inquiry to the Clerk.

Mr. O'REILLY. I ask that my name be called in order that I may vote for Speaker.

The Clerk called the name of Mr. O'REILLY, and he announced that he voted for Mr. RANDALL.

Mr. CONGER. The point I make is one which is made very frequently. I care nothing about it on the present occasion, except that this may not pass into precedent without being at least mentioned. My point is that unless there is a change of the rule it requires a majority of all the members of the House to elect a Speaker.

The CLERK. To what point does the gentleman from Michigan [Mr. CONGER] rise—merely to make an inquiry, or does he propose some action?

Mr. CONGER. I inquire of the Clerk whether it does not require a majority of all the members elected to this House to elect a Speaker?

The CLERK. The Clerk will state in response to the gentleman from Michigan [Mr. CONGER] that it requires a majority of those voting to elect a Speaker, as it does to pass a bill. The rule requires that a quorum shall vote. That is the opinion of the Clerk.

Mr. CLARK, of Missouri. I call for the regular order.

The CLERK. The regular order is the announcement of the result of the vote for Speaker, which is as follows: The whole number of votes cast was 283, of which SAMUEL J. RANDALL received 144, JAMES A. GARFIELD 125, HENDRICK B. WRIGHT 13, and WILLIAM D. KELLEY 1. Accordingly, SAMUEL J. RANDALL, one of the Representatives from the State of Pennsylvania, having received a majority of all the votes given for Speaker, is duly elected Speaker of the House of Representatives for the Forty-sixth Congress.

ADDRESS OF THE SPEAKER.

Mr. GARFIELD and Mr. BLACKBURN, having been named by the Clerk for that purpose, conducted Mr. RANDALL to the chair, when he addressed the House as follows:

REPRESENTATIVES: By your vote I am elevated for the third time to the exalted office of Speaker of this House. For this evidence of your approval and confidence I offer you my heartfelt thanks.

The responsibilities and duties imposed upon me are heavy and difficult. With the blessing of God I shall discharge them without personal bias or ignoble partisanship. Observing strict impartiality as to men, measures, parties, and sections, it will be to me unspeakable joy if I can help to bring about that substantial, fraternal union which comes alone through "wisdom, moderation, and justice."

This new Congress meets in its first session under the call of the President. Owing to irreconcilable differences upon vital issues, important and necessary appropriation bills failed to pass at the previous session. Then the political sentiment of the two Houses was antagonistic. It is now in complete accord. This House, fresh from the people, brings with it their latest will. We are here for such legislation as their necessities, welfare, and honor demand. That will, as expressed by the majority in calm and decorous form, let us hope will meet with universal acceptance. Moreover, the country expects of this Congress that it will wisely and deliberately legislate to remove the burdens that have too long weighed upon the patriotism and prosperity of the people. With the fervent hope that the spirit as well as the letter of the Constitution shall be the controlling influence in directing such legislation, I am now prepared to take the oath of office.

Mr. KELLEY, having served longest continuously as a member of the House, was designated by the Clerk to administer to the Speaker-elect the oath prescribed; which was accordingly done.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that Mr. BAYARD and Mr. ANTHONY had been appointed a committee on the part of the Senate to join such committee as might be appointed by the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House had assembled, and that Congress was ready to receive any communication he might be pleased to make.

SWEARING IN OF MEMBERS.

The SPEAKER proceeded to administer to the members in attendance the oath of office. The members presented themselves as their names were called by States, and took respectively the test oath prescribed by the act of July 2, 1862, or the special oath provided in the act of July 11, 1868, for those whose disabilities under the fourteenth article of amendments to the Constitution of the United States have been removed by a vote of two-thirds of each House of Congress.

When the State of Florida was called,

Mr. FRYE said: I object to the administering of the oath to the gentleman from the second congressional district of the State of Florida, Mr. Hull, and ask that in conformity with usage, he stand aside for the present.

The SPEAKER. The gentleman will stand aside for the present.

SWEARING IN OF DELEGATES.

At the close of the swearing in of the members,

The SPEAKER said: The Clerk will now call the roll of Delegates elected to this House, and those who are present will be sworn in.

The roll of Delegates was called; and the following gentlemen came forward and were sworn in, taking the test oath of 1862:

Utah—George Q. Cannon.
Washington—Thomas H. Brents.
Dakota—G. G. Bennett.
Montana—Martin Maginnis.
Wyoming—S. W. Downey.

REPRESENTATIVE FROM FLORIDA.

The SPEAKER. The swearing in of a member is a privileged question, and unless it be waived——

Mr. FRYE. If there be no objection, I would prefer to bring up for consideration to-morrow the matter relating to the gentleman from Florida, Mr. Hull. I understand that that course will be agreeable to several gentlemen on the other side who desire to take part in the discussion.

Mr. FERNANDO WOOD. If that interferes with the right of the gentleman as a sitting member, I think the matter had better be disposed of at once.

Mr. HARRIS, of Virginia. I offer the resolution which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That Noble A. Hull be now sworn in as a Representative in this Congress from the second district of the State of Florida.

Mr. FRYE. As a substitute for the resolution of the gentleman from Virginia [Mr. HARRIS] I offer the resolution which I send to the Clerk.

The SPEAKER. Does the gentleman from Virginia yield for this purpose?

Mr. HARRIS, of Virginia. Yes, sir; and as so far as I am concerned I do not desire to debate the subject, I will call the previous question.

Mr. CONGER. Oh, no.

Mr. FRYE. We desire to debate it.

The Clerk read as follows:

Whereas the credentials upon which Noble A. Hull claims a seat in the Forty-sixth Congress from the second congressional district of the State of Florida have been annulled and made void by the judgment of the supreme court of that State; and

Whereas, in pursuance and in compliance with such judgment and with the laws of said State, the State board of canvassers of Florida have determined, declared, and certified that Horatio Bisbee, jr., is duly elected a Representative to the Forty-sixth Congress of the United States of America from the second congressional district of the State of Florida: Therefore,

Resolved, That Horatio Bisbee, jr., is entitled to be sworn in as a member of this House on his *prima facie* case.

Mr. FRYE. I hope the gentleman from Virginia will not demand the previous question. This is a matter which we on this side of the House desire to discuss.

Mr. HARRIS, of Virginia. I insist on the demand for the previous question. There will be one hour for debate after the previous question is seconded.

Mr. GARFIELD. Oh, no. This is not the report of a committee. Mr. Speaker, I take it for granted that this new House just assembled will be willing to hear a statement (if the gentleman from Maine has one to present) to the effect that the credentials of Mr. Hull have been invalidated by the authority of the supreme court of the State. If such a statement were true, this House, I take it, would not be willing that a man should be sworn in on an invalidated credential. I say this without anticipating the ground which the gentleman from Maine may take.

Mr. HARRIS, of Virginia. I have always found that time is economized by assenting somewhat to the views of the minority. As in this case they desire a short time to discuss the question, I think it will economize time and give more satisfaction to allow a limited discussion. Therefore I would like to hear from gentlemen on the other side what time they desire.

Mr. FRYE. I should very much prefer that the matter go over until to-morrow, without prejudice to the right of the sitting member to participate in the drawing of seats. This was the course pursued two years ago, in the case from Colorado and other cases, where objection was made to gentlemen being sworn in. We might allow Mr. Hull the right to participate by proxy in the drawing of seats, so that he could not be subjected to injustice in any possible event. I hope that the gentleman from Virginia will consent to allow this question to go over until to-morrow and then permit at least two hours' discussion, one hour on each side.

Mr. HARRIS, of Virginia. While it may not be agreeable to some of my friends on our side of the House, I think time will be saved and the rights of all parties best observed by agreeing to the suggestion of the gentleman from Maine. So far as I am concerned, I agree to it.

The SPEAKER. If there be no objection the further consideration of the resolution and the substitute will be postponed until to-morrow.

There was no objection, and it was ordered accordingly.

Mr. GARFIELD. I hope the credentials and all the papers that have been presented to the Clerk in this case may be printed in the RECORD, so that members may have them in print to-morrow when the question is voted upon.

Mr. COX. How many of these papers are there? They may make a whole volume.

Mr. GARFIELD. I think they are not voluminous. The Clerk himself mentioned that he had received certain papers.

Mr. COX. There may be a volume of testimony.

Mr. HISCOCK. I ask that the judgment record and the opinions of the court be printed.

Mr. COX. There is no objection to that.

Mr. GARFIELD. I understand that the papers in the hands of the Clerk are not voluminous. It would be convenient to all members of the House to have in print to-morrow everything bearing directly and particularly upon this subject. I ask that all the papers—the certificate of the governor, the judgment of the court, and all the papers, whatever they may be—be printed in the RECORD.

The SPEAKER. The Chair understands that the request is to have printed in the RECORD the certificate of the governor, the subsequent opinion of the attorney-general, and the judgment of the court.

Mr. GARFIELD. Certainly; and the certificate of the board of canvassers.

Mr. HISCOCK. And the opinions of the court.

The SPEAKER. Is there objection?

Mr. MORRISON. I object.

Mr. GARFIELD. Is there objection to having these papers printed?

Mr. CONGER. I ask, then, that the papers may be read.

The SPEAKER. The matter has gone over until to-morrow.

Mr. MORRISON. At the request of members around me I withdraw my objection.

The SPEAKER. The gentleman from Illinois [Mr. MORRISON] withdraws his objection; and the papers indicated by the gentleman from Ohio [Mr. GARFIELD] and the gentleman from New York [Mr. HISCOCK] will be printed in the RECORD.

Mr. COX. The papers on both sides?

Mr. GARFIELD. Certainly.

The SPEAKER. The agreement, as the Chair understands, is that all the papers be printed except such as may be of the character of testimony.

Mr. GARFIELD. I do not ask for the printing of any testimony; merely the official papers proper.

The SPEAKER. If there be no objection the order to print will be made.

There was no objection.

The following are the papers:

EXECUTIVE OFFICE,
Tallahassee, Florida.

I, George F. Drew, governor of the State of Florida, do hereby certify that at an election held on the 5th day of November, A. D. 1878, in the several counties of the State of Florida composing the second congressional district of said State for

Representative in the Forty-sixth Congress of the United States of America, under an act to provide for the registration of electors and the holding of elections, approved August 6, 1868, and acts amendatory thereto, Noble A. Hull, of the county of Orange, in said State, received a majority of all the votes cast for Representative in the Forty-sixth Congress from the second congressional district of the State of Florida, and was duly elected to be such Representative, as fully appears from a certificate of the State board of canvassers, made under the laws of said State and now on file in the office of secretary of state of said State of Florida.

In testimony whereof I hereunto set my hand and caused the great seal of the State of Florida to be affixed, at Tallahassee, the capital, this the 23d day of December, A. D. 1878, and of the Independence of the United States of America the one hundred and third year.

GEORGE F. DREW,
Governor of the State of Florida.

By the Governor.
Attest:

W. D. BLOXHAM,
Secretary of State of the State of Florida.

The State of Florida, to William D. Bloxham, secretary of state, George P. Raney, attorney-general, and Columbus Drew, comptroller, members of the board of canvassers of Florida, and to every of them, greeting:

Whereas it has been suggested to us by the petition of Horatio Bisbee, jr., that a general election was held in the State of Florida on the 5th day of November, A. D. 1878, for the election, among other officers, of Representatives to the Forty-sixth Congress of the United States of America; that the petitioner, Horatio Bisbee, jr., is a citizen and resident of Duval County, in said State, and was one of the candidates for Representative to Congress from the second congressional district of said State to be voted for by the voters of said district, and Noble A. Hull was the only other candidate to be voted for for such Representative from said district; that by the *bona fide* and true returns of votes cast at said election received at the office of secretary of state, as provided by law, the whole number of votes cast at said election for your petitioner for such Representative was 10,779, and the whole number of votes cast at said election for the said Noble A. Hull for such Representative was 10,577; that on the 10th day of December, in the year aforesaid, George P. Raney, the attorney-general of Florida, William D. Bloxham, secretary of state, and Columbus Drew, comptroller of public accounts, constituting the board of State canvassers of returns of elections in said State, convened and organized as such board at the office of the secretary of state to canvass the returns of said election and determine and declare who had been elected Representative to Congress as shown by the *bona fide* and true returns of votes cast at said election on file in the office of the secretary of state; that upon so organizing the said board proceeded to canvass such returns of elections, and in making such canvass the said board did improperly and wrongfully reject a *bona fide* return of votes cast in the county of Madison, in said congressional district, and in the exercise of pretended power not conferred upon said board by law did refuse to include in their declaration of the result of said election for such Representative to said Congress the said return of votes cast in Madison County.

That it clearly appears from said return from Madison County that the petitioner received at said election in said county 1,151 votes for Representative in Congress, and said Noble A. Hull received 938 votes for Representative in said Congress, and by the action of said board rejecting and not canvassing said return petitioner is prevented from receiving a certificate, to which he is entitled, certifying that he has been duly elected to the Forty-sixth Congress from the second congressional district of Florida. Whereas if said board of canvassers had counted and included said return in their declaration of said result it would manifestly appear that petitioner had been elected Representative to said Congress.

That said return of votes cast at the said election in Madison County was duly signed by the county canvassers, and that it truly sets forth and contains the vote actually cast at said election in said county for said candidate, as shown by all the precinct returns from established precincts in said county delivered or filed by the inspectors of election at such precincts to the clerk of the circuit court of said county, and to the county judge of said county, or to either of them, and the said board of State canvassers do not deny that the said county canvassers performed their full duty and made a true return of all the votes cast in said county for Representative to Congress in strict accordance with the law, as shown by all the precinct returns aforesaid delivered or filed by the inspectors of election with the said clerk and county judge at the time said county canvassers met and made their canvass and return pursuant to law.

That said board of canvassers rejected and refused to count said return and include it in their declaration of the said result solely and exclusively upon the ground that it was shown, by papers before said board other than said return, that from one of the voting precincts in said county no return of the votes cast thereat was ever delivered or filed by the inspectors at said precinct, or by any other person, either to the clerk of the circuit court of said county or to the county judge of said county, and that the county canvassers of said county consequently did not have before them when they made their canvass, which was on the last day specified by law for making the same, nor within their power or control, a return or paper purporting to be a return of votes cast at any election at said precinct; which said precinct is known as precinct or district No. 4 in said county.

That no return of an election at said precinct has to this day and time been delivered to the said clerk's office or county judge's office, and that it has not at any time since said election been within the power of said county canvassers to make any other or different return of votes cast in said county at said election than the one so rejected as aforesaid by the said board of State canvassers; and the said board of State canvassers admit that the said county canvassing board performed their duty under the law and made a correct canvass and return of all the votes cast at said election in said county, as shown by all the precinct returns before them as aforesaid, all of which will fully appear by a copy of the certificate of said board of State canvassers, showing their action and the ground of their action in the premises, which is herewith filed and marked "Exhibit A."

That the petitioner is informed, and upon information and belief avers, that at said precinct 186 votes were cast for petitioner and 129 votes were cast for Noble A. Hull for such Representative.

And whereas the said Horatio Bisbee, jr., prays for a peremptory writ of mandamus from this court directed to the members of said State canvassing board, and to each of them, commanding them forthwith to reconvene and assemble as such board of State canvassers, at the office of secretary of state, and to canvass the said return of votes cast at the said election in Madison County for said candidates, and include the said return in their declaration of the result of said election for Representative to the Forty-sixth Congress of the United States, as shown by such *bona fide* and true returns of votes cast at said election; and to make and sign, as required by law, a certificate containing in words written at full length the whole number of votes given at said election, as shown by the said returns for the office of Representative to the said Congress from the second congressional district of Florida, and in said certificate declare the result of said election for such Representative to said Congress, and that such other order may be had in the premises as justice may require.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you, William D. Bloxham, secretary of state, and you, George P. Raney, attorney-general, and you, Columbus Drew, comptroller, that you meet forthwith and convene and reassemble as a board of State canvassers in the office of the secretary of state to canvass and count the true and *bona fide* returns of the election on file in the said office of the secretary of state from the second congressional district of Florida of the said election for the office of Representative to the Forty-sixth Congress, held on the 5th day of November, A. D. 1878; and especially that you do canvass and count the return of the said election from Madison County, and include said return in your declaration of the result of said election for Representative to the Forty-sixth Congress of the United States, as shown by such *bona fide* and true returns of votes cast at said election; and to make and sign, as required by law, a certificate containing in words written at full length the whole number of votes given at said election as shown by the said *bona fide* and true returns for the office of Representative to the said Congress from the second congressional district of Florida, and in said certificate declare the result of said election for such Representative to said Congress.

And that you do perfectly execute this writ on this the 8th day of January, A. D. 1879, and how you shall have executed it make return to our supreme court on said day by four o'clock p. m., in writing, to be filed in the clerk's office of said court.

Witness the honorable E. M. Randall, chief-justice of the supreme court of Florida, this 8th day of January, A. D. 1879, at the capital at Tallahassee, Florida, and the seal of said court.

[SEAL.] CHAS. H. FOSTER, *Clerk.*

Supreme court, special term, A. D. 1879.

State *ex rel.* Bisbee
vs.
State Canvassing Board.

We have the honor to certify that we have performed the requirements of the peremptory writ of mandamus issued in this cause.

January 8, 1879.

W. D. BLOXHAM,
Secretary of State.
C. DREW, *Comptroller.*
GEO. P. RANEY,
Attorney-General.

I, Charles H. Foster, clerk of said supreme court, do hereby certify that the foregoing is a correct copy of the original peremptory writ of mandamus issued in the above-entitled cause by this court aforesaid.

In witness whereof I have hereunto set my hand and the seal of said court this 6th day of March, A. D. 1879.

[SEAL.] CHAS. H. FOSTER, *Clerk.*

[Indorsement:] Supreme court, State of Florida. The State of Florida *ex rel.* Horatio Bisbee, jr., *vs.* Wm. D. Bloxham, secretary of state, *et al.* Peremptory writ and answer of respondents. (Copy.) Filed January 8, A. D. 1879. C. H. Foster, Clerk.

Supreme court, special term, January, 1879.

The State of Florida, *ex rel.* Horatio Bisbee, jr.,
vs.
W. D. Bloxham, secretary of state, and others constituting the State canvassing board.
} Mandamus.

The alternative writ sets up the facts that he was a citizen of the State of Florida and one of the candidates for Representative in Congress at an election held in the second congressional district on the 5th day of November, 1878, and received a majority of the votes actually cast and duly returned to the board of State canvassers.

That on the 10th day of December, 1878, the said respondents as a board of State canvassers organized and proceeded to canvass the returns of said election, and that they did improperly reject a *bona fide* return of votes cast in Madison County and refused to include in their said canvass the entire return of votes from said county on the ground that there was no return made from one precinct in said county to the county board of votes cast in such precinct, and such votes were not included in the return made by the county canvassers to the State board, and that by so rejecting the county returns of Madison County the relator was deprived of a certificate of election to which he would have been entitled if such returns had not been so rejected. He therefore demands that the State board be required to convene and canvass and count all the *bona fide* returns of said election, including those from Madison, and declare and certify the result and perform such other duties as are required by law in the premises.

The respondents filed their demurrer to the alternative writ upon the following grounds:

1. It does not show that the relator is twenty-five years of age.
2. There was not nor is there any statute or law of the State of Florida providing for the election of a Representative in Congress from the second congressional district of said State.
3. The said writ shows that the said return from Madison County does not show or represent the true vote cast in said county at said election. (Opinion, Randall, C. J.)

Upon the first ground of demurrer, that the relator is not shown by the alternative writ to be twenty-five years of age, we remark that the title to the office not being by any possibility liable to be controverted in a proceeding of this character, any peculiar qualification prescribed by the Constitution of the United States for members of Congress can be tried only by the Congress. This proceeding seeks only to procure such certificate as the candidate voted for may be entitled to under the laws of this State, which certificate is a property which the person obtaining the most votes is authorized by law to demand. Upon this inquiry the right to take and hold the office is not in question, and a slight examination of the rules laid down in the books does not show that such a question has ever been entertained by the courts. Whether the relator possesses all the qualifications necessary to entitle him to a seat in Congress is a matter that can only be inquired into by the House in which he may present a certificate of election.

The relator shows in the pleadings that he is a citizen of this State and was voted for at the last general election for Representative in Congress from the second district, and that he received a majority of votes actually cast and duly returned, and that such votes have not been counted in full, so that a certificate of election is withheld from him. If all this is true no person other than himself is entitled to the certificate of election, and whether the one or the other is entitled to the seat cannot be tried before a State court. The question raised, therefore, by the first ground of demurrer is not material in this court. Were this a proceeding under a writ of *quo warranto* to test the right to a State office the question of eligibility would be material The first ground of demurrer is not sustained.

The second ground of demurrer was abandoned upon the hearing. We proceed then to consider the third ground of demurrer, involving the only material question before us.

We do not find anywhere in the opinion or judgment of this court in the case of Drew, relator, against the State canvassers, (16 Fla., 17,) or in any other case decided by this court, any expression which will warrant the exclusion by the State board of a return which is regular, genuine, and *bona fide*, merely because the board are informed and satisfied that votes cast at a precinct (of which no return was made to the county board) were not included in the return made by county canvassers to the State board. The power of this board "is limited" (as is expressly stated in the opinion of the court in that case) "by the express words of the stat-

ute which gives them being to the signing of a certificate containing the whole number of votes given for each person for each office, and therein declaring the result as shown by the returns." The judgment of the board may be invoked to lay aside a county return and omit to include it in the statement and determination of the result of the election when it shall appear to them that the return is "so irregular, false, and fraudulent" that it does not show the true vote, but does represent votes not cast according to the precinct returns made to them; or, in other words, that the return in the hands of the State board is not made up in good faith from such precinct returns, but is a thing manufactured, an attempted imposition upon the board, or of such character that it represents falsehood instead of the truth as to the precinct returns of votes actually cast, and is for such reasons not a lawful return of an election.

In the case referred to the court says: "The words 'the true vote' used in the statute indicate the vote actually cast as distinct from the legal vote." The court was considering whether the power of the board to dissect returns and reject such votes as may have been illegally cast was included in the language of the statute, and it was decided that they had no such power under the statute, and that the power given was confined to a determination as to the character of the return—whether it was regular, genuine, *bona fide*, a true or false compilation of precinct returns. This power was deemed incident to the character of the office of the canvassers as created and defined by law for the protection of the board and the people from the effect of unlawful attempts to palm off upon them forged and "doctored" papers or wholesale falsehoods. To maintain under our statute that a county canvass based upon votes not cast is a proper return to be counted is clearly erroneous.

Is this the character of the return from Madison? Does the return made by the county canvassers of that county bear any of the characteristics that place it among returns that the State board may exclude? Does it include any votes but those actually cast according to the precinct returns? Is it false as to those returns?

It is not pretended that the county canvassers of Madison County have violated the letter or the spirit of the law, nor that the return made by them is "irregular or fraudulent" within the meaning of the statute, but that it is false.

The ninth section of chapter 3021, (Laws of 1877,) amending the twenty-fourth section of the act of 1868, provides that "on the sixth day after any election, or sooner if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of the said clerk and to take to their assistance a justice of the peace of the county, * * * and they shall publicly proceed to canvass the votes given for the several officers and persons as shown by the returns on file in the office of said judge and clerk respectively. Such canvass shall be made solely and entirely from the returns of the precinct inspectors in each election district as filed by them with the county judge and clerk of the circuit court respectively; and in no case shall the board of county canvassers change or vary in any manner the number of votes cast for the candidates respectively at any of the polling places or precincts in the county as shown by the returns of the inspectors of such polling places or precincts. They shall compile the result of the election as shown by said inspectors' returns, and shall then make up and sign duplicate certificates, containing in words and figures, written at full length, the whole number of votes given for each office, the names of persons for whom such votes were given for each office, and the number of votes given to each person for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such certificates shall be immediately transmitted by mail to the secretary of state and the other to the governor of the State."

The fourth section of chapter 1868 (Laws of 1872) requires the State board of canvassers to "proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office or as such member, as shown by such returns," unless the returns are shown to their satisfaction to be vicious, as before stated.

Now, the county canvassers of Madison County have fully and honestly complied with the law. They canvassed and certified all the votes returned to the judge and clerk in due form of law.

The statute required them to perform their duty within a certain time, and they performed it. If precinct inspectors failed to return votes from their precinct, still the county canvassers lawfully proceeded without it. The State canvassers "may be authorized by the Legislature (as is said in the Drew case) to inquire into the truth or falsity of the returns sent to them, and if, upon such inquiry, they be satisfied that the return does not show the vote actually cast at the election, but states a falsehood as to that fact, they may lay it aside and refuse to count the return, as is provided in the act of 1872."

The county canvassers of Madison County made a return that contains only the truth and not falsehood. There is no allegation that they made other than a truthful, legal canvass and return of all the votes cast in the county and duly returned to them, and their returns to the State board are regular and intelligible, according to the pleadings in this case.

It was urged in the argument that if there should be in a given county a large number of precincts, and it should happen that the returns of one poll only should reach the county canvassers, and this return only canvassed and returned to the State board, it would be absurd to treat this single poll as the true vote of the county.

It may be that this state of things being made to appear, the State board might well consider that there had been improper conduct on the part of precinct inspectors or messengers, as they would know that the entire vote of the county had not been given to the county board. We will not here instruct them as to their duty in such an extreme case. We submit, however, that because one or more precincts may be disfranchised temporarily by rascality or accident, it does not follow that the residue of the voters of the county should be legally treated in the same manner.

Whether the returns not made would produce a different result of the election, could scarcely be determined by a canvassing board, and parties interested would doubtless seek a remedy.

Suppose that at the close of the election at any polling place it should be ascertained that there were one or more ballots found in the box more than there were names on the poll-lists, and the inspectors, under the law, draw out and destroy a number of ballots equal to the excess, so that the list and the ballots agree in number, and a return is made of the result, excluding the votes so drawn out and destroyed; yet it may be proved that these ballots were "actually cast." On this showing, would the returns give the vote "actually cast?" I think it would, though it did not show the entire vote cast. The votes returned were votes actually cast, and the return does not state a falsehood, is not irregular nor a fraud, because it is a lawful return. Yet this return is precisely as false as the return from Madison County, and with the same propriety should be rejected.

Neither should be rejected, because they are true and according to law.

Under the law and the rules heretofore announced by this court upon the subject, the State board can investigate the good faith and regularity of the action of the county board and their certificate, when these are challenged, for their own protection and that of the public, and the proper exercise of this power is the only protection against imposition.

The omission of the inspectors of a precinct or polling place to make a return to the county board may occasion inconvenience to parties interested in the vote in a contest before a tribunal competent to hear and decide the right to an office, but it is assuredly not the basis of the imputation of fraud or falsehood against the county returns or the county board.

Under the circumstances, and in view of the decision of this court in the case of Drew, relator, against the State Board, the election return from Madison County does not come "under the condemnation" of that decision.

What the court might say if it was alleged by the respondents that a portion of the returns received by the county board from the precincts had been without cause or arbitrarily suppressed, may not be appropriate to this case, for no such charge is made. But for myself I feel bound to say that, in my judgment, the returns made to the State board in 1876 from the county of Clay should have been counted by the board, and had an application been made at the moment looking to that end, I should have voted in favor of it. The court, in its opinion on that question, said: "The answer states that 35 votes were added (by the State board) upon the ground that said votes had been improperly rejected by the county canvassers of the vote of said county at said election, and that 6 votes were deducted upon the ground that said votes were cast by non-residents of the county. It follows, from the view we have taken of the law applicable to the powers and duties of the State canvassers, that any statement of votes by precinct inspectors, which were not included in the canvass made by the canvassing board, cannot be counted by the State board, the powers of the latter being confined by law to counting only such votes as are duly returned by the county board."

I understood then as now, that this was a sufficient indication to the State board that the returns from Clay, so far as they gave evidence of "actual votes," should be counted, there being no alleged evidence of fraud or falsehood as to the returns so made by the county board; but that the precinct return had been omitted by that board in making the county canvass solely (yet probably honestly) upon insufficient grounds.

The State board had at first included the Clay County returns in their canvass, embracing not only the votes regularly returned, but also the votes mentioned in the precinct return which the county board had omitted to include in their formal return to the State board.

The comments of the court, referring to the Clay County return, condemned the action of the State board in including the 35 votes from the rejected precinct returns, and the court said they could not be counted by the State board, their powers being confined by law to counting only such votes as are duly returned. It strikes me that if the opinion of the court had been that the regular return of votes from Clay County could not be counted by reason of the omission to include the precinct votes mentioned, the court would have so expressed itself, which it did not do, but used the language above quoted. But the returns from Madison County are not in the same condition. The canvassing board of Madison counted and duly certified to the State board all the returns made to them; the law above cited required them to do so without reference to returns they did not have, and the law required the State board to count such unimpeached returns.

The demurrer of the respondent is overruled.

I, Charles H. Foster, clerk of the said supreme court of Florida, do hereby certify that the foregoing seven pages (of which a part of page 5 and page 6 and part of page 7 are in print) contain a true copy of the original opinion of said court, filed in my office on the 7th day of January, A. D. 1879.

In witness whereof I have hereunto set my hand and the seal of the said court, this 7th day of March, A. D. 1879.

[SEAL.]

CHAS. H. FOSTER,
Clerk Supreme Court of Florida.

Certificate of board of State canvassers of the general election held November 5, A. D. 1878.

We, William D. Bloxham, secretary of state of the State of Florida, Columbus Drew, comptroller of said State, and George P. Raney, attorney-general of the State aforesaid, do hereby certify that we met at the office of the secretary of state at the capitol, in the city of Tallahassee, on the 8th day of January, A. D. 1879, and proceeded to canvass the returns of the general election held in said State on the 5th day of November, A. D. 1878, for Representative of the said State of Florida in the Forty-sixth Congress of the United States of America, from the second congressional district of said State of Florida, from which canvass we certify as follows:

In Suwannee County: The whole number of votes cast for Representative in Congress for the second congressional district was 1,094, of which Horatio Bisbee, jr., received 553 votes, Noble A. Hull received 540 votes, and Chandler H. Smith received 1 vote.

In Hamilton County: The whole number of votes cast for Representative in Congress for the second congressional district was 1,027, of which Noble A. Hull received 609 votes and Horatio Bisbee, jr., received 418 votes.

In Columbia County: The whole number of votes cast for Representative in Congress for the second congressional district was 1,711, of which Horatio Bisbee, jr., received 803 votes and Noble A. Hull received 908 votes.

In Bradford County: The whole number of votes cast for Representative in Congress for the second congressional district was 920 votes, of which Noble A. Hull received 697 votes and Horatio Bisbee, jr., received 223 votes.

In Alachua County: The whole number of votes cast for Representative in Congress from the second congressional district was 2,923 votes, of which Noble A. Hull received 1,178 votes, Horatio Bisbee, jr., received 1,745 votes.

In Nassau County: The whole number of votes cast for Representative in Congress from the second congressional district was 1,391, of which Noble A. Hull received 622 votes and Horatio Bisbee, jr., received 769 votes.

In Baker County: The whole number of votes cast for Representative in Congress for the second congressional district was 414 votes, of which Noble A. Hull received 256 votes and Horatio Bisbee, jr., received 158 votes.

In Clay County: The whole number of votes cast for Representative in Congress from the second congressional district was 419 votes, of which Noble A. Hull received 307 votes and Horatio Bisbee, jr., received 112 votes.

In Marion County: The whole number of votes cast for Representative in Congress from the second congressional district was 2,198, of which Noble A. Hull received 1,008 votes and Horatio Bisbee, jr., received 1,190 votes.

In Duval County: The whole number of votes cast for Representative in Congress from the second congressional district was 3,344, of which Horatio Bisbee, jr., received 2,214 votes, Noble A. Hull received 1,130 votes.

In Saint John's County: The whole number of votes cast for Representative in Congress from the second congressional district was 878, of which Noble A. Hull received 532 votes and Horatio Bisbee, jr., received 346 votes.

In Putnam County: The whole number of votes cast for Representative in Congress from the second congressional district was 1,238, of which Noble A. Hull received 616 votes and Horatio Bisbee, jr., received 622 votes.

In Volusia County: The whole number of votes cast for Representative in Congress from the second congressional district was 610, of which Noble A. Hull received 367 votes, Horatio Bisbee, jr., received 243 votes.

In Orange County: The whole number of votes cast for Representative in Congress from the second congressional district was 1,041, of which Noble A. Hull received 823 votes and Horatio Bisbee, jr., received 218 votes.

In Dade County: The whole number of votes cast for Representative in Congress from the second congressional district was 61, of which Noble A. Hull received 47 votes and Horatio Bisbee, jr., received 14 votes.

In Madison County: The whole number of votes cast for Representative in Congress from the second congressional district was 2,089, of which Noble A. Hull received 938 votes and Horatio Bisbee, jr., received 1,151 votes.

From which canvass it appears that the whole number of votes cast for Representative to the Forty-sixth Congress of the United States of America from the

second congressional district of the State of Florida was 21,358, of which Noble A. Hull received 10,578 votes, Horatio Bisbee, jr., received 10,779 votes, and Chandler H. Smith received 1 vote.

Wherefore it is determined and declared that Horatio Bisbee, jr., is duly elected Representative to the Forty-sixth Congress of the United States of America from the second congressional district of the State of Florida, as shown by such returns.

And the said board of State canvassers having canvassed the election returns of Madison County of the general election held on November 5, 1878, certify that the whole number of votes cast for State senator was 2,087, of which Enoch J. Vann received 943 votes and Dennis Eagan received 1,144.

Wherefore it is determined and declared that Dennis Eagan is duly elected State senator from the tenth senatorial district.

The whole number of votes cast for members of the assembly was six thousand two hundred and forty, (6,240,) of which John B. Marshall received nine hundred and forty-two (942) votes, Daniel C. Barker received nine hundred and thirty-two (932) votes, Thomas J. Blalock received nine hundred and twenty-three (923) votes, E. J. Alexander received eleven hundred and fifty-two (1,152) votes, A. B. Osgood received eleven hundred and fifty-four (1,154,) and B. F. Tidwell received eleven hundred and thirty-seven (1,137) votes. Wherefore it is determined and declared that E. J. Alexander, A. B. Osgood, and B. F. Tidwell are duly elected members of the assembly from said county of Madison.

We further certify that the above canvass is made in accordance with the decision of the supreme court of Florida in the case of the State *ex rel.* Horatio Bisbee against Board of State canvassers. We further certify that the return from Brevard County, in so far as it relates to or represents the vote for member of Congress cast in that county, was laid aside and not included in the above canvass and declaration for the reasons stated in a separate certificate filed in the secretary of state's office and signed by us, bearing date December 23, 1878.

W. D. BLOXHAM,
Secretary of State.
C. DREW, *Comptroller.*
GEO. P. RANEY,
Attorney-General.

JANUARY 8, 1879.

STATE OF FLORIDA,
Office Secretary of State, ss:

I, W. D. Bloxham, secretary of state, do hereby certify that the foregoing is a correct transcript of the original now on file in this office.

Given under my hand and the great seal of the State of Florida at Tallahassee, the capital, this 13th day of January, A. D. 1879.

[SEAL.]

W. D. BLOXHAM,
Secretary of State.

ATTORNEY-GENERAL'S OFFICE,
Tallahassee, Florida, January 10, 1879.

DEAR SIR: I have the honor to acknowledge the receipt of your communication of yesterday, asking for my legal opinion as to your official duty in the matter of the application of Hon. H. Bisbee, jr., for a certificate of election as Representative to the Forty-sixth Congress of the United States from the second district of Florida. The facts of the case are, that by the canvass of the returns from this district, concluded by the State board of canvassers on the 21st day of December, A. D. 1878, as shown by the certificate of the board of that date in the office of the secretary of state, Hon. Noble A. Hull was declared elected as such Representative. This certificate of the board shows that, according to that canvass, Mr. Hull received the majority of votes, he receiving 9,640 votes and Mr. Bisbee receiving 9,628 votes; and it also shows that the returns from Madison and Brevard Counties were laid aside by the board and not included in the canvass because the board found that they did not represent the "true vote" cast in such counties. After this canvass and certificate were made you issued a certificate of election to Mr. Hull, under section 30 of chapter 1625 of the laws of Florida. After this a proceeding was commenced by Mr. Bisbee in the supreme court, by writ of mandamus, to test the legality of the board's action in ejecting the return from Madison County; and the court decided that the board erred in rejecting this return, and ordered the board to reassemble and canvass the true and *bona fide* returns on file in the office of secretary of state, and to include and count in such canvass and in the declaration of the result of the election the return from Madison County; and to make and sign a certificate, as required by law, containing in words written at full length the whole number of votes given at such election, as shown by such *bona fide* and true returns, for Representative to such Congress, and to declare the result of such election.

Pursuant to such decision and order the board reassembled on the 8th instant and canvassed the returns, including that of Madison County, but not that of Brevard, this return being rejected by the board, as shown by the certificate, because it did not represent the "true vote" cast in that county. The certificate of this canvass on file in the secretary of state's office shows that Mr. Bisbee received 10,779 votes and Mr. Hull received 10,578 votes; and declares that Mr. Bisbee was elected.

You, therefore, have before you two certificates in so far as the election for Representative to Congress from the second district is concerned. The last has been made under and is in accordance with the decision of the highest court in the State as to the return from Madison County. The action of the board in rejecting the Brevard return and counting the other returns in each canvass by the board has not been questioned by legal proceedings, and should, in my opinion, be held as proper in so far as your duties in the premises are concerned, until it has been reversed by a competent court. The statute contemplates that you should give a certificate to the person, whom the canvass of the board shows entitled to it; and as between the two canvasses made by the board, the one made on the 8th day of January should, in my opinion, be regarded as the legal canvass. Any officer should hesitate to refuse to conform his action to the decision of the supreme court of his State. This decision has settled the right of Mr. Bisbee to the certificate made by the board; and thus, also, directed the formation of the basis to which you are to look for guidance in your action. The fact that you issued a certificate to Mr. Hull on the former canvass, before the court had convened, should not, to my mind, prevent you from issuing one on the second canvass to Mr. Bisbee. A recital in the one you may issue Mr. Bisbee should, in justice to yourself, state the facts of the case set forth above.

The duty devolved upon you is plainly ministerial; there is nothing properly resting in executive discretion. It is true that some supreme courts have decided that the judiciary would have no right to issue a mandamus compelling you to issue the certificate, and others have decided the contrary; but the question of your duty is not settled by the power of the courts to interfere in the matter. The supreme court of Georgia, in a case somewhat similar, except that there had not been a legal ascertainment of the relator's right to the office as there has been of Mr. Bisbee's right in this case to the last canvass and declaration made by the board, adopted the view of non-interference, basing it upon political reasons, but said:

"The framers of the constitution, doubtless, never anticipated that the executive officer of the government, whose sworn duty it is to cause justice to be executed according to law, would ever refuse to comply with the law when authoritatively adjudicated by the proper department of the government. In England, as we have already seen, when a right is claimed by the subject as against the Crown, the King is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court. In the monarchical government of Great Britain, when the subject appeals to the courts of justice for his legal rights as against the Crown and the judgment is in favor of the subject and against the right claimed by the Crown, the King does not feel, it would seem, 'an involuntary shudder, as if, at the near approach of grasping power, the judiciary was about to plant its iron heel upon a prostrate constitution,' but always manifests his respect for the laws of his kingdom by invariably complying with the judgments of his courts. Such being the established course of the executive department of the government in Great Britain, we cannot and we will not presume that the chief magistrate of a republican State would for one moment hesitate to issue a commission to the relator when his right and title to the office shall be established by the judgment of a court of competent jurisdiction. To presume that the executive officer of the government would withhold the commission from one who had been judicially declared by a court of competent jurisdiction legally elected to the office would be to say, in the language of this court in Bonner *vs.* Pitts, that such officer was above the laws of the people; that he had the right to exercise despotic power, regardless of the laws of the people; and, in the language of Chief-Justice Marshall, at his discretion sport away the vested rights of individuals secured and protected by the laws of the land."

Mr. Bisbee's right to the certificate from you is legally consequent upon his right to the certificate and declaration made by the board.

Yours, very respectfully,

GEO. P. RANEY,
Attorney-General.

Hon. GEORGE F. DREW,
Governor of Florida.

I do hereby certify that the foregoing is a true copy from the records of the office of the attorney-general of the State of Florida.

G. P. RANEY,
Attorney-General.

TALLAHASSEE, FLORIDA, *January* 30, 1879.

EXECUTIVE OFFICE,
Tallahassee, Florida, January 14, 1879.

SIR: In reply to your several communications upon the subject, and in accordance with my promise of the 11th instant, I have to say, that under existing circumstances it will be impossible for me to issue to you a certificate of election as member of Congress from the State of Florida to the Forty-sixth Congress of the United States of America. I have some time since issued and signed a certificate for another person to that position, and I have no power to revoke the former certificate.

If you are entitled to a seat in the Forty-sixth Congress, it is for that body to decide.

This conclusion was reached after careful consideration and after consultation with some of the ablest lawyers in the State.

Very respectfully,

GEO. F. DREW.

To Hon. HORATIO BISBEE, JR.

ELECTION OF CLERK, SERGEANT-AT-ARMS, ETC.

Mr. CLYMER submitted the following resolution:

Resolved, That Hon. George M. Adams, a citizen of the State of Kentucky, be, and is hereby, elected Clerk of the House of Representatives of the Forty-sixth Congress; that John G. Thompson, of the State of Ohio, be, and is hereby, elected Sergeant-at-Arms of the House of Representatives of the Forty-sixth Congress; that Charles W. Field, of the State of Georgia, be, and is hereby, elected Doorkeeper of the House of Representatives of the Forty-sixth Congress; that James M. Steuart, of the State of Virginia, be, and is hereby, elected Postmaster of the House of Representatives of the Forty-sixth Congress; and that Rev. W. P. Harrison, of the District of Columbia, be, and is hereby, elected Chaplain of the House of Representatives of the Forty-sixth Congress.

Mr. FRYE. I submit the following amendment:

Amend resolution by striking out that portion naming candidates, with the respective offices to which they are nominated, and inserting in lieu thereof the following:

For Clerk of the House of Representatives of the Forty-sixth Congress, Joseph H. Rainey, of South Carolina.
For Sergeant-at-Arms, Jeremiah M. Rusk, of Wisconsin.
For Doorkeeper, James M. Melton, of Tennessee.
For Postmaster, Henry Sherwood, of Michigan.
For Chaplain, Rev. Henry R. Nailor.

Mr. WEAVER. I move to amend the amendment by striking out that portion naming the candidates, with the respective offices to which they are nominated, and inserting in lieu thereof the following:

For Clerk of the House of Representatives of the Forty-sixth Congress, Lee Crandall, of Alabama.
For Sergeant-at-Arms, Charles Brouse, of Indiana.
For Doorkeeper, Benjamin E. Green, of Georgia.
For Postmaster, D. P. Mitchell, of Kansas.

Mr. CLYMER. I demand the previous question.

Mr. PRICE. I move to amend the original proposition of the gentleman from Pennsylvania by striking out the name of Rev. W. P. Harrison and inserting in lieu thereof the name of Rev. Henry R. Nailor, of the District of Columbia.

Mr. MILLS. That amendment has already been moved.

The SPEAKER. The gentleman from Pennsylvania demands the previous question.

Mr. PRICE. My object, Mr. Speaker, is to amend the original proposition and have the vote first taken on that amendment, because if adopted it may change the vote on the substitute.

The SPEAKER. Does the gentleman from Pennsylvania yield for that purpose?

Mr. CLYMER. I do not.

Mr. FRYE. I think the gentleman from Pennsylvania had better consent, or otherwise it seems to me under the rule we may demand a separate vote on each one of these offices, and in that way the gentleman from Iowa could reach his object.

Mr. CLYMER. For the purpose of saving time I withdraw the objection.

Mr. FRYE. This will save time undoubtedly.

The SPEAKER. The question will be first put upon the amendment of the gentleman from Iowa as an amendment to the original proposition.

The House divided; and there were—ayes 122, noes 144.

So Mr. PRICE's amendment to the amendment was rejected.

Mr. CLYMER. I now demand the previous question.

The previous question was seconded and the main question ordered.

The question recurred on Mr. WEAVER's amendment to the amendment.

The House divided; and there were ayes 7, noes not counted.

So Mr. WEAVER's amendment to the amendment was rejected.

The question next recurred on the amendment of Mr. FRYE.

The House divided; and there were—ayes 119, noes 145.

So the amendment was rejected.

Mr. CLYMER's resolution was then adopted.

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

The latter motion was agreed to.

The officers just elected presented themselves at the Speaker's desk and were duly qualified, Mr. ADAMS and Mr. THOMPSON taking the test oath, and Mr. FIELD, Mr. STEUART, and Mr. HARRISON the modified oath.

NOTIFICATION TO SENATE.

Mr. FERNANDO WOOD submitted the following resolution; which was read, considered, and agreed to:

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

COMMITTEE TO WAIT ON THE PRESIDENT.

Mr. BLACKBURN submitted the following resolution; which was read, considered, and agreed to:

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

The SPEAKER appointed as such committee Mr. BLACKBURN, Mr. GARFIELD, and Mr. BRIGHT.

Mr. BRIGHT. I have a resolution to present and I ask the Speaker to appoint some other person in my place.

The SPEAKER appointed Mr. GOODE, of Virginia, in the place of Mr. BRIGHT.

AMENDMENT OF RULES.

Mr. SPRINGER. I offer the following resolution and ask that it be read and printed in the RECORD. I give notice that I will call it up to-morrow.

The Clerk read as follows:

Resolved, That the rules of the last House of Representatives shall be the rules of this House until otherwise ordered, with the following amendments thereto, namely:

Rule 76 shall be amended so as to read as follows:

76. It shall be the duty of the following committees to take into consideration all executive communications and such other propositions as may be presented and referred to them by the House, namely:

The Committee on Appropriations, matters relating to the legislative, executive, and judicial expenses, and for sundry civil expenses of the Government, except matters relating to the Department of Agriculture, which shall be referred to the Committee on Agriculture.

The Committee on Foreign Affairs, matters relating to consular and diplomatic expenses.

The Committee on Military Affairs, matters relating to the expenses of the Army and of the Military Academy, and for fortifications.

The Committee on Naval Affairs, matters relating to the expenses of the Navy and the Naval Academy.

The Committee on Indian Affairs, matters relating to the expenses of the Indian department.

The Committee on Post-Offices and Post-Roads, matters relating to the expenses of the Post-Office Department and for mail transportation by ocean steamers.

In preparing bills of appropriations for other objects said committees shall not include appropriations for carrying into effect treaties made by the United States; and where appropriation bills shall be referred to any of the foregoing committees for their consideration which contain appropriations for carrying a treaty into effect, and for other objects, they shall propose such amendments as shall prevent appropriations for carrying a treaty into effect being included in the same bill with appropriations for other objects.

Rule 77 shall be amended so as to read as follows:

77. It shall be the duty of the several committees mentioned in Rule 76, within thirty days after their appointment at every session of Congress commencing on the first Monday of December, to report the general appropriation bills, namely:

The Committee on Appropriations, bills for the legislative, executive, and judicial expenses, for all deficiencies, and for sundry civil expenses.

The Committee on Foreign Affairs, the bill for the consular and diplomatic expenses.

The Committee on Military Affairs, the bills for the expenses of the Army and of the Military Academy and for fortifications.

The Committee on Naval Affairs, the bill for the expenses of the Navy and the Naval Academy.

The Committee on Indian Affairs, the bill for the expenses of the Indian department.

The Committee on Invalid Pensions, the bill for the payment of invalid and other pensions.

The Committee on the Post-Office and Post-Roads, the bills for the expenses of the Post-Office Department and for mail transportation by ocean steamers.

The Committee on Agriculture, the bill for the expenses of the Department of Agriculture.

In case any of said committees shall fail to make such report within said time they shall report the reasons of such failure. And said committees shall have leave to report said bills (for reference only) at any time. In all cases where appropriations cannot be made specific in amount the maximum to be expended shall be stated, and each appropriation bill when reported from the committees shall in the concluding clause state the sum total of all the items contained in said bill.

The following additional rules shall be a part of the rules of this House, namely:

167. All private bills hereafter introduced which have been printed by order of either House of the preceding Congress shall not be again printed at the expense of the Government until after a reference to a committee and report thereon with a favorable recommendation.

168. All private bills granting pensions shall hereafter be presented with an accompanying petition of the claimant, and both petition and bill shall be deposited in the petition-box and referred to the appropriate committee without printing, which committee shall consider all such petitions and bills, and shall report from time to time a general bill which shall include therein the names of all persons whom said committee shall find to be entitled to pensions, and accompany each bill with a report upon each case included therein, briefly stating the facts thereof; which general bill and accompanying report shall, when reported to the House, be printed and referred to the Committee of the Whole House on the Private Calendar.

Mr. BLACKBURN. I offer as a substitute for the resolution offered by the gentleman from Illinois what I now send to the desk.

Mr. FERNANDO WOOD. All those propositions must go to the Committee on Rules.

Mr. MILLS. No, sir; no Committee on Rules has been appointed.

The Clerk read Mr. BLACKBURN's substitute, as follows:

Resolved, That a committee of five members be appointed by the Speaker to revise and simplify the rules of the House; that they have leave to sit in vacation, and shall report on or before the first day of the regular session in December next.

Resolved, That until such report is made and adopted the rules of the Forty-fifth Congress be, and are hereby, adopted for the Forty-sixth Congress.

Mr. GARFIELD. I offer an amendment to the last resolution of the substitute offered by the gentleman from Kentucky.

The Clerk read Mr. GARFIELD's amendment, as follows:

Add to the second resolution of the substitute these words:

Except the last paragraph of Rule 120, which shall be so amended as to read as follows:

Nor shall any provision in any such bill or amendment thereto changing existing law be in order.

Mr. HOOKER. I offer as a substitute for the pending proposition what I send to the desk.

The Clerk read as follows:

Resolved, That the committee to revise and reform the rules of this House be, and they are hereby, instructed to report at an early day an amendment of the rules of the House, so as to provide—

First. That the Committee on Military Affairs shall receive the estimates and report the bills for the annual support of the Army of the United States, and receive the estimates and report the bill for the annual support of the Military Academy at West Point.

Second. That the Committee on Naval Affairs shall receive the estimates and report the appropriation bills for the annual support of the Navy of the United States.

Third. That the Committee on Foreign Affairs shall receive the estimates and report the appropriation bill for the maintenance and support of the diplomatic and consular system of the United States.

Fourth. That the Committee on Indian Affairs shall receive the estimates and report the appropriation bill for carrying out the treaties and obligations of the Government of the United States with the various Indian tribes.

Fifth. That the Committee on the Post-Office and Post-Roads shall receive the estimates and make the appropriation for support of the Post-Office Department of the Government.

Sixth. That the Committee on Commerce shall receive the estimates of the Engineer department and introduce the annual appropriation bill for improvement of rivers and harbors.

Seventh. That the Committee on Invalid Pensions shall report the appropriation bill for the payment of pensions.

Eighth. That the Committee on Appropriations shall receive the estimates and report the appropriations for the legislative, executive, and judicial departments of the Government and the sundry civil service bill and all deficiency bills.

Ninth. That the Committee on Public Buildings and Grounds be authorized to report all appropriation bills for such public buildings as the needs of the Government may require.

The SPEAKER. Does the gentleman from Illinois demand the previous question?

Mr. SPRINGER. No, sir; I yielded to the gentleman from Kentucky, and I also yield to the gentleman from Ohio and the gentleman from Mississippi to have their resolutions printed. I desire that the resolution I have offered and the several amendments may be printed.

Mr. GARFIELD. Let them all be printed and go over till to-morrow.

Mr. CONGER. I ask the gentleman from Mississippi [Mr. HOOKER] to include in the sixth clause of his substitute, relating to estimates for the improvement of rivers and harbors, the estimates also for the construction and repair of light-houses. That belongs properly to the Committee on Commerce.

Mr. SPRINGER. That can be moved as an amendment to-morrow.

Mr. CONGER. I ask the gentleman from Mississippi to accept that so that it may be printed with his resolution.

Mr. HOOKER. I have no objection to that being added to the resolution.

Mr. HUNTON. I desire to suggest to the gentleman from Mississippi that he also make this addition:

That the Committee for the District of Columbia receive the estimates and report the appropriations for the District of Columbia.

Mr. HOOKER. I will accept that.

Mr. AIKEN. I desire to offer as a further amendment the following:

That the Committee on Agriculture shall receive the estimates and make the appropriations for the Agricultural Department.

Mr. COX. Is it understood that the amendment of the gentleman from Ohio [Mr. GARFIELD] is to be voted on to-morrow? Are all these resolutions to be then voted on?

The SPEAKER. The Chair is unable to answer when they will be voted on.

Mr. SPRINGER. I will call up the subject to-morrow.

Mr. COX. Are they all pending?

The SPEAKER. They will all be printed.

Mr. COX. I wish to save all points of order, because the amendment of the gentleman from Ohio [Mr. GARFIELD] strikes at the most vital rule we have in the interest of economy.

Mr. CONGER. I understand the gentleman from Mississippi accepts the amendment I suggested, to include the estimates for the construction and repair of light-houses?

Mr. HOOKER. I do.

DRAWING FOR SEATS.

Mr. BRIGHT. I offer the resolution which I send to the desk.

The Clerk read as follows:

Resolved, That the Clerk of the House shall now proceed to place in a box the name of each Member and Delegate of the House of Representatives, written upon a separate slip of paper; that he proceed in the presence of the House to draw from said box, one at a time, the said slips of paper, and as each is drawn he shall announce the name of each Member or Delegate, upon which he shall choose his seat for the present Congress: *Provided*, That before such drawing shall commence the Speaker shall cause each seat to be vacated, and shall see that every seat continues vacant until it is selected under this order, and that every seat after having been selected shall be deemed forfeited if left unoccupied before the call of the roll of the House: *Provided*, That Hon. ALEXANDER H. STEPHENS, of Georgia; Hon. WILLIAM D. KELLEY, of Pennsylvania, the oldest member in continuous service, and Hon. FERNANDO WOOD, of New York, the oldest member in point of service, in this House, be allowed to select their seats before the drawing of seats begins.

Mr. CLARK, of Missouri. I desire to ask the gentleman from Tennessee to include in his resolution the name of my colleague, Mr. LAY, as one of the gentlemen who shall select his seat. It is well known to the House that during last fall my colleague was very severely stricken with paralysis, and although he is in a manner recovered, is still disabled. He is here, and I ask from the House as a favor to the Missouri delegation that he be allowed to choose his seat before the names of other members are drawn.

Mr. BRIGHT. I will accept that as an amendment to the resolution.

Mr. HENDERSON. I desire to make the same request for Major HAWK, who has but one leg.

Mr. MILLS. I desire to offer an amendment to the resolution.

The SPEAKER. The amendment of the gentleman from Illinois [Mr. TOWNSHEND] will now be read.

The Clerk read the amendment, as follows:

Resolved, That the members of the present Congress to whom seats were assigned by consent of the House in the last Congress be allowed to select their seats before the drawing begins.

Mr. MILLS. I desire to offer an amendment so as to place upon the list of those who will draw their seats in advance the name of my venerable friend from New York, Hon. SAMUEL S. COX. [Laughter.]

Mr. BRIGHT. I will accept that amendment, but I would suggest to the gentleman from Illinois that the original resolution covered the exception which he suggests.

Mr. TOWNSHEND, of Illinois. I desire to say, in answer to the gentleman from Tennessee, that the resolution does not cover all the cases of those to whom this privilege was extended in the last Congress.

The SPEAKER. Will the gentleman state whom he has omitted who was entitled to this privilege in the last Congress?

Mr. TOWNSHEND, of Illinois. I allude to my friend from New York, Mr. COX. [Laughter.]

The SPEAKER. It is now in the resolution as amended.

Mr. MCKENZIE. I move to amend the resolution so as to enable all the members to select their seats. [Laughter.]

Mr. FRYE. I desire to request of the House that the gentleman from New York, Mr. CHITTENDEN, who is deaf, and would be unable to hear anything in the back part of the Hall, be permitted to take the front seat which he occupied during the last Congress. It is not a desirable seat for anybody else. I ask that he be permitted to select his seat before the drawing commences.

Mr. BUCKNER. Is not this proceeding against all the rules of the House?

Mr. MILLS. There are no rules of the House yet.

The SPEAKER. The Chair knows of no rule which would forbid this proceeding.

Mr. BRIGHT. I call for the previous question on my resolution.

Mr. CALKINS. I desire to move to insert the name of JAMES A. GARFIELD as among those who may select their seats.

Mr. BRIGHT. I will accept that amendment; and I now insist on the previous question.

Mr. CONGER. I hope the gentleman will not call the previous question. There are a good many gentlemen on this side of the House who wish to select places for their friends. [Laughter.] I desire to say that we are extending this courtesy much beyond the limit to which it has been extended for years past; and it is very unsatisfactory to the members of the House, especially if they happen to be forced by this change of the rules to take extreme back seats.

Mr. BRIGHT. I insist upon the demand for the previous question.

Mr. CONGER. Then I ask that the resolution, as modified, be read, so that gentlemen may know its exact meaning.

Mr. MCKENZIE. Before the previous question is ordered, I move to insert the name of my colleague, [Mr. OSCAR TURNER.] He is lame, and is as much deserving of this distinction as any gentleman upon this floor.

Mr. ATKINS. I hope my colleague will include all the members of the House who have lost one leg or one arm.

Mr. SPRINGER. I call for the regular order.

Mr. ATKINS. Put in all the one-legged men and one-armed men.

Mr. SPARKS. I move that the name of my colleague [Mr. SINGLETON] be included among those who may select their seats in advance of the drawing.

Mr. BRIGHT. I insist on the previous question, and I hope the resolution will be adopted.

The Clerk read as follows:

Resolved, That the Clerk of the House shall now proceed to place in a box the name of each Member and Delegate of the House of Representatives, written upon a separate slip of paper; that he proceed in the presence of the House to draw from said box, one at a time, the said slips of paper; and as each is drawn he shall announce the name of each Member or Delegate upon it, who shall choose his seat for the present Congress: *Provided*, That before said drawing shall commence the Speaker shall cause each seat to be vacated, and shall see that every seat continues vacant until it is selected under this order; and that every seat, after having been selected, shall be deemed forfeited if left unoccupied before the call of the roll of the House: *Provided*, That Hon. ALEXANDER H. STEPHENS, of Georgia; Hon. WILLIAM D. KELLEY, of Pennsylvania, the oldest member in continuous service; Hon. FERNANDO WOOD, of New York, the oldest member in point of service in this House; Hon. A. M. LAY of Missouri, Hon. S. S. COX of New York, Hon. S. B. CHITTENDEN of New York, and Hon. JAMES A. GARFIELD of Ohio, be allowed to select seats before the drawing of the seats begins.

Mr. BLACKBURN. I understood the gentleman from Tennessee [Mr. BRIGHT] to accept the proposition of my colleague [Mr. MCKENZIE] to include the name of Hon. OSCAR TURNER, of Kentucky.

Mr. KEIFER. I understood the name of Mr. HAWK, of Illinois, to be inserted.

Mr. BLOUNT. And I ask that the name of my colleague, Mr. SMITH, of Georgia, be inserted.

Mr. BRIGHT. If that will end the matter I will accept the amendments suggested.

Mr. CHALMERS. Is it in order to move to lay this resolution on the table?

The SPEAKER. It is.

Mr. CHALMERS. Then I make that motion.

Mr. SPRINGER. Will not the object of the gentleman be obtained by calling for a division of the question, and having a separate vote on the part of the resolution excepting certain members?

Mr. CHALMERS. I call for the regular order.

The SPEAKER. The regular order is upon the motion to lay on the table the resolution as modified.

The motion was agreed to.

REPRESENTATIVES FROM CINCINNATI, OHIO.

Mr. MCMAHON. I rise to a privileged question, a question that concerns the right of two members of this House to seats here. It concerns the right of two colleagues of mine from the State of Ohio to seats in this House.

I hold in my hand a memorial signed by twenty-three leading prominent citizens of the city of Cincinnati, giving certain reasons why the seats now occupied by those gentlemen should not be occupied by them. I present this as a matter of duty, being the Representative from the State of Ohio whose district immediately adjoins theirs. I now present the memorial to the House, and ask that it be read. After it shall have been read I desire to offer a resolution to refer it to the Committee of Elections, when appointed.

Mr. KEIFER. I rise to a point of order. There is no contest in this case, and the putting in the RECORD the petition of twenty-three citizens of Cincinnati—"prominent citizens," as the gentleman says—out of a population of three hundred thousand, is simply to put in the RECORD something which I think will be neither of benefit to the Congress of the United States nor in order. I suggest also that no one who is interested in this question has ever taken any steps in it. I make the point that this paper ought not to be read and put into the RECORD merely at the instance of twenty-three men out of all the population of that great city.

Mr. MCMAHON. A word upon the point of order. A contest usually is known to the House as a proceeding between two gentlemen who are contending for a seat here. But there is a contest higher than that, and one that is of a higher privilege, if I may draw the distinction in matters of this character. That is when the electors who have no interest in the profits of the office file in the House specifications against the right of certain gentlemen to hold seats here and ask that the matter may be investigated by the proper committee.

Mr. CALKINS. Will the gentleman allow me to ask him a question?

Mr. MCMAHON. Certainly.

Mr. CALKINS. Do these citizens proceed under the statute provided in such cases?

Mr. MCMAHON. No; they proceed under the Constitution.

Mr. CALKINS. Another question.

Mr. MCMAHON. Very well.

Mr. CALKINS. Is not this, then, in the nature of a petition, which must go, as other petitions, into the petition-box at the Clerk's desk?

Mr. MCMAHON. No, sir.

Mr. CALKINS. What is the difference?

Mr. MCMAHON. It is in the nature of a contest by electors.

Mr. CALKINS. There is no such thing under the law.

Mr. McMAHON. There is. Why, my dear sir, the Constitution says——[Laughter]

Mr. CONGER. The gentleman ought to address the Chair.

Mr. McMAHON. The Chair knows it already, but the gentleman does not.

The SPEAKER. The Chair is unable to decide a point of order upon the paper before it has been read.

Mr. KEIFER. I understood the gentleman to state that he was presenting a petition from twenty-three citizens of Cincinnati—"prominent citizens," as he calls them—a petition affecting the seats of two members of this House now sworn in. If I do not state it correctly he will correct me.

Mr. McMAHON. The gentleman has stated it correctly.

Mr. KEIFER. Now, I say that under the statute there could be no contest, and we could not take cognizance in any way of this petition so far as it asks action at our hands. If it is a mere petition, which the Constitution gives to every citizen of the United States the right to present, then it ought to go to the petition-box; or the gentleman presenting it, if he desires it to be read and printed in the RECORD, should ask unanimous consent for that purpose. His object now, I suppose—I may be mistaken—is to have this paper read before the Congress of the United States and published in the RECORD to-morrow morning, and beyond that nothing; for nothing can come of it beyond the mere publication to the country.

Mr. CARLISLE. Will the gentleman from Ohio allow me to ask him a question?

Mr. KEIFER. Certainly.

Mr. CARLISLE. Do I understand the gentleman to say that it is incompetent for this House, under that provision of the Constitution which authorizes it to judge of the elections, returns, and qualifications of its own members, to take cognizance of this matter unless there are regular contests by some other persons claiming the seats?

Mr. KEIFER. I have said nothing of the kind. I am very much pleased to answer the question and to say that under the Constitution of the United States Congress has seen fit to provide by law a method of attacking the right of any person claiming a seat in this House, and under that legislation we have been professing to proceed for a great many years, if not throughout the entire history of the Government. Now it is proposed, I suppose, if the gentleman means anything by his question, to override the law and adopt a new method without first providing a new law.

Mr. CARLISLE. I mean to say just this: that under the Constitution of the United States this House has the absolute and uncontrollable power at any time and under any circumstances to inquire into and to determine the elections, returns, and qualifications of its own members; and that the act of Congress to which the gentleman from Ohio alludes is a mere practice act, if I may use the expression, which prescribes the method of proceeding in certain cases, that is, in cases where there are regular contests in respect to a seat on this floor; but that legislation does not, and in the nature of things could not, affect the constitutional power which belongs to this House, and which belongs inherently to every legislative body, to judge of the elections, returns, and qualifications of its own members.

Mr. McMAHON. Now, Mr. Speaker——

Mr. KEIFER. Will the gentleman permit me a moment?

Mr. McMAHON. No, sir; I have yielded enough.

Mr. KEIFER. I desire to answer the suggestion of the gentleman from Kentucky, [Mr. CARLISLE.]

Mr. McMAHON. I desire to make the point which I rose to make, and which I have not had the opportunity to make.

The Constitution, which we all know is higher than any law of Congress, declares that—

> Each House shall be the judge of the elections, returns, and qualifications of its own members.

As the gentleman from Kentucky [Mr. CARLISLE] has well said, no statute that may be passed can repeal, alter, or modify this constitutional provision; and whatever law on this subject may have been heretofore enacted is a mere "practice act," as the gentleman from Kentucky says, and even as a practice act is not binding upon the House, for the very theory of an act of Congress undertaking to regulate contested elections is wrong, as it implies the participation of the Senate and the President in the regulation of a subject that is by the Constitution committed exclusively to the power of the House alone. That is too plain a proposition to need argument in the mind of any lawyer.

Now let me state the point I was about to make awhile ago. If the gentlemen who failed to receive the certificates of election in this case chose to make a contest, the Committee of Elections and the House of Representatives would require the showing of some reasons why those gentlemen had not pursued the ordinary course, the practice pointed out in the statute, not because the statute is the absolute binding law, but because it represents a sort of agreed practice. But the House of Representatives, if it should discover that a good case existed outside of the statute, might, without asking the concurrence of the Senate or the approval of the President, take just such action as it pleased. There is no question about that matter. It could, for example, upon the convening of the second session of a Congress, allow a contest to be begun. It could on the very last day of the Congress determine that a certain gentleman was not entitled to a seat, although nobody had ever appeared here contesting his election.

In this case we have a petition from twenty-three citizens of Cincinnati; and my colleague [Mr. KEIFER] seems to make much of the fact that there are three hundred thousand citizens there, which I take pride in knowing is true, but I say to him that the statement of one respectable man, when supported by affidavits and charges such as are filed in this case, is enough to put this august body upon inquiry as to whether there was a free and fair election in the city of Cincinnati at the time these two gentlemen who now hold seats claim to have been elected. I bring that petition before the House of Representatives and ask to have it read. When it has been read I shall ask to have it referred to the Committee of Elections for investigation. I shall make this request in the interest of fair elections against repeaters, against corruption. [Cries of "Oh!" "Oh!" on the republican side.] Yes, we have had a more recent repeater than Hon. Eph Holland, of whom we heard so much in the last Congress. We propose to have in this Congress the proof for whatever we may affirm on this question, and not do as my honorable colleague [Mr. GARFIELD] did in the last Congress when he drew upon his imagination for his facts.

Now I ask, Mr. Speaker, that this be read, and after it is read I will say to gentlemen on the other side that before demanding the previous question I will probably give them an opportunity, if they desire to be heard on it.

Mr. KEIFER. Mr. Speaker, I only desire to say a word or two. The gentleman from Kentucky, [Mr. CARLISLE,] and the gentleman from Ohio, [Mr. McMAHON,] my colleague, both seem to understand the Constitution of the United States very well; but they seem to think, for the first time at least expressed upon this floor, that the Constitution executes itself, and that a law which has been passed to carry out that provision of the Constitution is utterly nugatory. I know the Constitution provides that this House shall be the judge of the qualification and election of its members. Suppose, if they carry that out, they should say this House has power to vote out any member sworn in and to vote in any person they find anywhere outside as a mere matter of power. But the law undertakes to direct here what we shall do and how we shall proceed; and it is a matter of procedure or practice, if gentlemen choose to call it so—it is a matter of procedure. We find here a petition offered, for the sole purpose of getting it into the RECORD, so far as we are able to learn from the gentleman presenting it. Do these twenty-three persons intend to prosecute the inquiry? Have they any standing upon which to do it either under the law or Constitution?

Mr. GOODE. Allow me one moment. I wish to remind the gentleman——

Mr. KEIFER. In a moment I will. I wish to state that this attack is the only step which it is professed these men can take, and therefore they have no standing here except as mere petitioners, such as they may have under the Constitution, but not for the purpose of putting into the RECORD a long charge against a member; and I trust the Speaker will make himself quite familiar with this petition before passing upon it. He will find they are attacking members of this House who have already been sworn in, who have rights, and it is proper we should know how they are doing it.

Mr. HOOKER. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. HOOKER. The point I wish to make is this: the gentleman from Ohio [Mr. McMAHON] has offered this memorial to the House of Representatives accompanied with certain other papers, and I want the paper read before we hear any further discussion.

Mr. McMAHON. And so do I.

Mr. KEIFER. I make the point that it is not proper to present such a paper.

Mr. HOOKER. I understood the gentleman to be discussing the question.

Mr. McMAHON. Let the paper be read.

The SPEAKER. The gentleman from Ohio offers in his place a memorial and states that it embraces a question of privilege. The Chair is unable to decide whether it does or not until it is read.

Mr. KEIFER. You heard the statement of the gentleman from Ohio.

Mr. CONGER. I rise to make this point of order.

Mr. GARFIELD. I desire to be heard before the Speaker decides the question. We had a few moments ago the Florida case before the House, brought up by the gentleman from Maine, [Mr. FRYE,] and the proposition finally was made that the papers in the case should be printed in the RECORD. Objection was made, but it was afterward withdrawn. However, objection was made to anything like testimony being printed; that only the resolution, the credentials, the exact official papers upon which we were to act, should be printed. Now, my colleague from Ohio has offered no resolution for the action of this House.

Mr. McMAHON. I said that when the paper was read I had a resolution to offer.

Mr. GARFIELD. When it is read! That is put in to be voted on, of course; but now the only, the naked proposition is that a petition of some citizens shall now be offered to be read. It is alleged that it contains affidavits relating to an election about which there is no contest. The formal question the Speaker has to decide is, can any man rise up here on this floor now and demand to have read and spread upon our records any petition he pleases? That is the proposition.

A MEMBER. Why not?

Mr. GARFIELD. Is that a privileged question? Here I hold in my hand a printed document of some thirty pages denying the right of a certain gentleman who a few moments ago was sworn in and who has voted—denying his right to be sworn in. I do not know that I have a right now to stand up in my place and offer this and have it printed to defame a man who is a stranger to me, of whom I know nothing. I should hold myself culpable, and violating the ordinary rules of parliamentary bodies, if I now demanded as a right that this paper which I hold in my hand should be spread upon the records.

But now my colleague from Ohio asks that that same thing be done about two of his brethren on this floor, and, as he says, at the behest of twenty-three citizens. Why, sir, does the gentleman from Ohio not know we can get twenty-three citizens from any corner of this country, if we hunt a little while for them, who can defame any man who holds a seat here, and that we can spend all of this summer in rising to questions of privilege and having printed defamations of the individual characters of the gentlemen who are seated here? If the Speaker now decides that it is a question of privilege to have printed out of hand whatever any member offers in the form of a petition because it is supposed to bear upon the elections by which we came here, I say there is no end to it, and we can keep it going the whole summer and make ourselves the dischargers of the contents of a whole squadron of mud-carts, to be thrown at each other from this time to the end of the session.

Mr. HOOKER. I insist on my point of order, that this being a question of privilege raised by the gentleman from Ohio, [Mr. MCMAHON,] it is impossible for the Chair to pass upon the question whether it is a question of privilege or not until he hears the paper read.

Mr. REAGAN. I desire to say a word.

The SPEAKER. To whom does the gentleman from Ohio yield?

Mr. MCMAHON. At present I yield to no one.

Mr. REAGAN. What I wish to say relates to the point of order.

Mr. MCMAHON. I desire first to ask the gentleman from Ohio, who has just taken his seat, what course he would pursue in case a gentleman who had been a candidate for Congress and ought to have contested—that is not this case of course, but it is a supposable case—had been hired by his adversary not to prosecute the contest, and certain of the electors desired to contest the seat and to bring the matter before Congress? and I will go further, what would he do if the facts upon which the contest was based came to the knowledge of the parties after the time fixed for a contest under the statute and when the parties would have to come to the House for authority to enter upon it?

Mr. GARFIELD. I will say this in answer to my colleague: it was found once in Rome that there was no law against parricide because they thought it impossible that any man would kill his father. But when they found that there were men capable of wickedness so great as that, they made a law. Now, if my colleague thinks we have reached the time when such things as he now describes need to be punished or provided for by law, let him bring in a bill and we will pass it and make it lawful to do what he is trying to do without law.

Mr. HARRIS, of Virginia. I ask the gentleman from Ohio to yield to me to say a word on the point of order.

Mr. REAGAN. I desire to be heard on the point of order.

Mr. MCMAHON. At present I yield to no one. I desire to say to the gentleman from Ohio [Mr. GARFIELD] he has got the question in this position: he admits there would be no law for it except the mode I take. Now I want to know whether I violate the privileges of this House, or rather the courtesy due by one colleague to another, when twenty-three citizens and electors in congressional districts sent to me and put in my hands a paper to lay before Congress if I comply with their request. I hold that so important a question as this is higher than all the duties of courtesy to anybody, and when I am requested to present these things to this House I do it and have none of the squeamishness which seems to characterize my colleague from Ohio.

Mr. GARFIELD. The gentleman has the privilege of the petition-box under the Constitution and a reference to any committee he pleases of any and every memorial. That is what I think I ought to do with the paper which I hold, and which my colleague ought to do with his paper.

Mr. REAGAN. The right of petition is guaranteed by the Constitution. A man who was once President of the United States presented a petition to dissolve the Union, and in the presentation of that petition he was sustained by his associates and the judgment of the country. There can be no doubt as to the right of petition. It stands above the rules of the House and all laws and rests upon the Constitution itself.

The statement is made by the gentleman from Ohio [Mr. MCMAHON] who presents the petition that it relates to the privileges of members of this House. If it does so relate to the privileges of members of this House it becomes not only a petition that would go to the box, but a petition to be presented to the House; and on account of the fact that it raises this question, which is the highest of all questions of privilege, the gentleman is entitled to have it not only presented, but read to the House for its consideration. It seems to me we may discard all reference to rules of procedure in cases of petition and look alone to the highest authority under the Constitution to present a petition for any purpose whatever.

We are not to deny an American citizen the right to petition, and when the gentleman from Ohio presenting the petition states that it raises a question of privilege relating to the seat of a member upon this floor, it does not go into the petition-box but on the Speaker's table, to be presented to the House for its consideration. What action shall be taken afterward is a different question.

The gentleman from Ohio has pursued the proper course in presenting it to the House.

Mr. ATKINS. I hope the gentleman will modify his motion so that the petition may be printed in the RECORD.

Mr. HARRIS, of Virginia. In the Forty-second Congress, when the name of Alfred M. Waddell was called and he presented himself to be sworn in, a member of this House, without petition from any citizen, rose, and under his rights, not under the rules of this House, but under the Constitution, rose in his seat, [reading:]

Mr. MAYNARD said: Upon my authority as a member of this House, I charge that Alfred M. Waddell, claiming a seat as Representative from the third district of North Carolina, is personally disqualified under the third section of the fourteenth article of the amendments of the Constitution to hold a seat in this House; and I object to his being sworn in.

The SPEAKER. Following the course adopted in the organization of past Houses, the Chair will first swear in those members against whom no objection whatever is presented.

Mr. KEIFER. I want to know if the Committee of Elections did not report unanimously in a case from Mississippi that the contestant should not prosecute his suit at all because of a mere informality in serving the notice of the contest?

Mr. HARRIS, of Virginia. That is not pertinent to this case.

Mr. MCMAHON. If the gentlemen upon the other side will agree that this memorial will be printed in the RECORD and that the matter shall lie over until to-morrow, I am willing to agree to that.

Mr. KEIFER. I do not understand how my colleague from Ohio can hold the floor upon my point of order.

Mr. HARRIS, of Virginia. I hope the gentleman from Ohio [Mr. MCMAHON] will allow me to answer his colleague's question. What was it?

Mr. KEIFER. I put this question: Whether Mr. Lynch, of Mississippi, did not come here and contest the seat of one of the members from Mississippi, and if his committee were not unanimous in reporting to the House that the contest could not be carried on, because the notice was sent by mail, when it should have been sent in some other way, and whether the petition of that man, a citizen of the United States, was not disregarded?

Mr. HARRIS, of Virginia. I desire to answer that question in justice to the Committee of Elections of the last Congress.

Mr. MCMAHON. I do not want to have the paper read.

The SPEAKER. The gentleman from Ohio states that it is a question of privilege; but the Chair is utterly unable to decide whether it is a question of privilege or not until he knows what is contained in the papers.

Mr. CONGER. Then I submit that, instead of placing that large mass of evidence or affidavits on our record, it is the duty of the Speaker, in such way as he thinks best, himself to examine the papers, and if they involve a question of high privilege to rule upon that. I object to the RECORD being cumbered with the papers.

Mr. MCMAHON. How could the House determine upon the correctness of the decision of the Speaker if it had not heard the papers read?

The SPEAKER. The Chair will himself read the rule:

Whenever the Speaker is of the opinion that a question of privilege is involved in a proposition he must entertain it in preference to any other business.—*Journal*, 1, 29, page 724. [Such opinion, of course, being subject to an appeal.] And when a proposition is submitted which relates to the privileges of the House, it is his duty to entertain it, at least to the extent of submitting the question to the House as to whether or not it presents a question of privilege.

The Chair, of course, would have to present the question to the House.

Mr. CONGER. That is the very point that I make.

Mr. GARFIELD. I believe the Chair decided two years ago that the former rules of the House were not binding on the then House until adopted by the House.

The SPEAKER. We are certainly proceeding under some rules, and the Chair thinks that is the common parliamentary practice.

Mr. MCMAHON. I will make a proposition to gentlemen on the other side: that this paper be printed and laid over until to-morrow, and then I will call up all the questions in it in connection with a resolution.

The SPEAKER. The Chair would himself like to have an opportunity to examine into the point of order.

Mr. GARFIELD. Let it go over until to-morrow without printing.

Mr. MCMAHON. I do not agree to that.

Mr. KEIFER. The gentleman from Ohio [Mr. MCMAHON] has already stated enough to enable us to determine the character of the paper. He says it contains statements affecting the rights of members upon this floor; the gentleman has already stated that. Now, I do not want to consent that this paper shall be printed in the RECORD.

The SPEAKER. The gentleman from Ohio on the left [Mr. KEI-

FER] will observe that the Constitution contains these words: "Each House shall be the judge of the elections, returns and qualifications of its own members."

Mr. KEIFER. I understand that, and I tried to state it myself once before to-day. I understand the gentleman on the other side to state that his petition contains charges against members upon this floor who have already been sworn in. He stated enough of it to indicate that he merely wants to put the paper into the RECORD for the purpose of having it go to the country. He has not stated that it is proposed to proceed under the law and have a contest. It therefore cannot be a question of privilege affecting the seat of any member.

The SPEAKER. The Chair would be clearly unwilling, as going beyond the range of his duties, to decide that a paper touching the right of a member to a seat on this floor does not contain a question of privilege, without opportunity to examine it.

Mr. KEIFER. The gentleman from Ohio has himself said that it does not contain anything——

The SPEAKER. The Chair would not decide upon an allegation.

Mr. MCMAHON. There is a great deal more to be added to what I have said.

The SPEAKER. The Chair desires to decide a question of this character upon the facts contained in the petition.

Mr. SPRINGER. I desire to call the attention of the Chair and of the gentleman from Ohio [Mr. KEIFER] to section 350 of McCrary on Elections, which it seems to me settles this point. I ask the Clerk to read the section which I have marked.

Mr. KEIFER. This petition affects a member upon this floor, and ought to be regarded as a sacred matter.

The SPEAKER. The rule so regards it, and therefore makes it a matter of high privilege.

Mr. KEIFER. Therefore it should not be put in the RECORD when the gentleman who offers the paper, memorial, or whatever he chooses to call it, does not undertake to state to the Chair or to the House that it is proposed to follow up the petition for any purpose in the world.

The SPEAKER. The Chair understood the gentleman to say that he proposed to offer a resolution.

Mr. KEIFER. He has said that this petition is not a proceeding under the law for contesting the right to a seat in the manner provided by law.

The SPEAKER. The Chair does not decide the effect of laws.

Mr. KEIFER. I suggest that the whole subject, without printing, go over until to-morrow.

Mr. SPRINGER. Let the paragraph from McCrary on Elections, which I have sent to the Clerk's desk, be read.

The Clerk read as follows:

The House of Representatives of the United States may, in its discretion, proceed to inquire into the validity of the election of one of its members, without any formal contest having been instituted. A contestant is not absolutely necessary. (Reeder *vs.* Whitfield, 1 Bart, 189.)

The SPEAKER. The people of a district can always petition upon the subject; that has always been held.

Mr. SPRINGER. That is the point involved here.

Mr. MCMAHON. I call for the reading of the paper.

Mr. CONGER. I move that the paper be referred to the Committee of Elections, when appointed.

Mr. MCMAHON. How can the House refer it without knowing what it is?

Mr. KEIFER. Just as well as any other petition.

Mr. COX. I suggest to gentlemen on both sides that this paper be printed, and that we now adjourn, on the suggestion of the Speaker that a question is pending that he wishes to examine before to-morrow.

Mr. CONGER. I will modify my motion so that it be printed and referred to the Committee of Elections, when appointed.

Mr. MCMAHON. I do not yield for that motion

The SPEAKER. The gentleman has not the floor for that purpose. The gentleman from New York [Mr. COX] makes the suggestion that this paper be printed. Does he mean in the RECORD or in the usual form?

Mr. COX. I ask unanimous consent that it be printed in the RECORD, so that we may know to-morrow what it is.

Mr. KEIFER. That is what we object to. Let it be printed in the usual form, and not in the RECORD.

Mr. COX. Let it be printed in the RECORD, of course.

Mr. KEIFER. It can be printed without being printed in the RECORD.

Mr. COX. Then how would we know what it is?

Mr. KEIFER. It might be printed as we print our bills and reports.

Mr. COX. And you might get it in two weeks from now.

Mr. MCMAHON. If gentlemen will not agree to the proposition made on this side, I must have the paper read.

Mr. KEIFER. I understand that the whole object of the gentleman from Ohio and the gentleman from New York in having the paper printed in the RECORD is to give it publicity.

The SPEAKER. The gentleman from Ohio raises a question of order; and the Chair decides that he is not bound to decide, and cannot intelligently decide, a question of order until he hears read the paper on which it is raised.

Mr. KEIFER. The Chair can read the paper without its being printed.

The SPEAKER. If the Chair should read it without its being read to the House, how could the House intelligently act upon the question if an appeal should be taken?

Mr. WILBER. Let it lie over until to-morrow, and let the Chair in the mean time read it. [Laughter.]

The SPEAKER. The Chair overrules the point of order.

Mr. ALDRICH, of Illinois. I move that the House adjourn.

Mr. CONGER. I move that the memorial be laid on the table.

Mr. MCMAHON. I do not yield for that motion.

Mr. KEIFER. Can the gentleman hold the floor all the time the paper is being read?

Mr. MCMAHON. I have not yielded the floor. Gentlemen have been discussing the question of order.

Mr. SPRINGER. Upon a motion to lay the paper on the table, have we not the right to hear it read before we vote on the question?

The SPEAKER. No member can intelligently vote upon a proposition to lay a paper on the table until the paper has been read. Otherwise members would be proceeding entirely in the dark.

Mr. ALDRICH, of Illinois. Is a motion to adjourn in order?

The SPEAKER. It is.

Mr. ALDRICH, of Illinois. I make that motion.

Mr. MCMAHON. If the House should adjourn, this would be the pending business to-morrow morning I presume. I cannot yield the floor except with that understanding.

The SPEAKER. The Chair is bound to recognize the motion to adjourn. The House if it chooses can vote the motion down.

Mr. MCMAHON. If this question comes up to-morrow morning as the unfinished business I do not object.

DAILY HOUR OF MEETING.

The SPEAKER. The Chair desires to suggest that some gentleman offer a resolution fixing the hour of daily meeting.

Mr. COX. I move that the hour for the daily meetings of the House be twelve o'clock m. until otherwise ordered.

The motion was agreed to.

DRAWING FOR SEATS.

Mr. DUNNELL. I ask that by unanimous consent we now proceed to draw seats. The gentleman who has made the motion to adjourn is willing to withdraw it for this purpose.

The SPEAKER. The Chair understands that the gentleman from Ohio [Mr. MCMAHON] allows his matter to go over.

Mr. MCMAHON. If it does not lose its place.

The SPEAKER. The gentleman states that it is a question of privilege; and, if so, it cannot lose its position.

Mr. ALDRICH, of Illinois. I withdraw the motion to adjourn.

Mr. BRIGHT. I offer the resolution which I send to the Clerk, and upon its adoption I move the previous question.

The Clerk read as follows:

Resolved, That the Clerk of the House shall at once proceed to place in a box the name of each Member and Delegate of the House of Representatives, written or printed upon a separate slip of paper; that he proceed in the presence of the House to draw from said box, one at a time, the said slips of paper, and as each is drawn he shall pronounce the name of each Member or Delegate upon it, who shall choose his seat for the present Congress: *Provided*, That before said drawing shall commence the Speaker shall cause each seat to be vacated, and shall see that every seat continues vacant until it is selected under this order, and that every seat after having been selected under this order shall be deemed forfeited if left unoccupied before the call of the roll of the House.

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

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

The latter motion was agreed to.

Mr. CLARK, of Missouri. I ask consent that when the name of my colleague, Mr. LAY, shall be called I may be allowed to select his seat for him. He is now absent on account of sickness. [Cries of "All right!"]

The SPEAKER. The Chair hears no objection, and leave is granted.

Mr. DAVIDSON. There is now on the roll no name from the second district of Florida. I ask that a slip with the words "second district of Florida" be put into the box, and that when this slip is drawn the Clerk be authorized to select a seat to be occupied by the Representative from that district.

There being no objection, it was ordered accordingly.

Mr. BAILEY. I ask that when the name of my colleague, Mr. JAMES, who is necessarily absent, is drawn, a seat be selected for him by the Clerk.

Objection was made.

In pursuance of the resolution of the House, the drawing for seats was then proceeded with, beginning at three o'clock and forty-five minutes p. m., the name of Mr. WILLIS being the first drawn and that of Mr. CLARK, of Missouri, the last.

Mr. SPRINGER. I move that the House now adjourn.

The motion was agreed to; and accordingly (at four o'clock and twenty minutes p. m.) the House adjourned.