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|---|---|---|---|
| Hayes, | Lindsey, | Page, | Thompson, W. G. |
| Hazelton, | Lounsbery, | Phister, | Townsend, Amos |
| Henderson, | Mason, | Pierce, | Tucker, |
| Herbert, | McCoid, | Pound, | Tyler, |
| Herndon, | McGowan, | Prescott, | Updegraff, J. T. |
| Hiscock, | McLane, | Price, | Updegraff, Thomas |
| Houk, | Mitchell, | Reed, | Upson, |
| Hubbell, | Money, | Robinson, | Valentine, |
| Humphrey, | Monroe, | Ross, | Van Aernam, |
| Hunton, | Morrison, | Russell, W. A. | Voorhis, |
| Hurd, | Morse, | Ryan, Thomas | Wait, |
| James, | Morton, | Samford, | Washburn, |
| Johnston, | Neal, | Shallenberger, | White, |
| Joyce, | Newberry, | Shelley, | Wilber, |
| Keifer, | Norcross, | Smith, A. Herr | Williams, C. G. |
| Kimmel, | O'Neill, | Stone, | |
| Lapham, | O'Reilly, | Thomas, | |
| Lewis, | Overton, | Thompson, P. B. | |

NOT VOTING—90.

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| Acklen, | Ellis, | Loring, | Simonton, |
| Aiken, | Fort, | Marsh, | Smith, Hezekiah B. |
| Bailey, | Gibson, | Martin, Benj. F. | Springer, |
| Ballou, | Godshalk, | Martin, Edward L. | Starin, |
| Barlow, | Hammond, John | Martin, Joseph J. | Stephens, |
| Bingham, | Hammond, N. J. | McCook, | Talbott, |
| Bliss, | Harmer, | McKinley, | Townshend, R. W. |
| Blount, | Heilman, | McMahon, | Urner, |
| Bouck, | Henkle, | Miles, | Van Voorhis, |
| Bowman, | Henry, | Miller, | Ward, |
| Bragg, | Hill, | Muller, | Warner, |
| Bright, | Hooker, | O'Brien, | Wells, |
| Caldwell, | Horr, | O'Connor, | Whiteaker, |
| Camp, | Hostetler, | Orth, | Willits, |
| Chalmers, | Hutchins, | Osmer, | Wise, |
| Claflin, | Jorgensen, | Pacheco, | Wood, Fernando |
| Clark, Alvah A. | Ketcham, | Poehler, | Wood, Walter A. |
| Converse, | Killinger, | Rice, | Wright, |
| Cowgill, | King, | Richardson, D. P. | Yocum, |
| Crowley, | Kitchin, | Richardson, J. S. | Young, Casey |
| Dick, | Klotz, | Robeson, | Young, Thomas L. |
| Dwight, | Knott, | Sapp, | |
| Einstein, | Le Fevre, | Sherwin, | |

Mr. BLACKBURN. If no one else desires to be heard, I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and Mr. CARLISLE having resumed the chair as Speaker *pro tempore*, Mr. MCMILLIN reported that the Committee of the Whole House on the state of the Union having according to order had under consideration the Union generally, had come to no resolution thereon.

Mr. THOMPSON, of Kentucky. I move that the House now adjourn.

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

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PETITIONS, ETC.

The following memorials, petitions, and other papers were laid on the Clerk's desk, under the rule, and referred as follows, viz:

By Mr. BEALE: The petition of Edward S. White, for pay for services as light-house keeper at New Point Comfort light-house, in 1861—to the Committee on Claims.

By Mr. BENNETT: The petition of C. A. Lounsberry, of Bismarck, Dakota, for the abolition of the duty on type—to the Committee on Ways and Means.

Also, the petitions of 61 citizens of Mapleton, and of 112 citizens of Grand Forks, Dakota Territory, that the bill creating the Territory of Pembina be amended by striking out "Pembina" and inserting "Northern Dakota" in lieu thereof, and when so amended that the bill pass—to the Committee on the Territories.

Also, the petition of 114 citizens of Pembina County, Dakota, for the passage of the bill creating the Territory of Pembina—to the same committee.

By Mr. CARPENTER: Memorial and resolution of the Legislature of Iowa, in relation to the removal of obstructions from the channel of the Neshwabotina River—to the Committee on Commerce.

By Mr. FORD: The petition of Robert S. Stockton and others, for the equalization of bounties—to the Committee on Military Affairs.

Also, the petitions of John Wagner and others, and of Albert Marshal and others, of Saint Joseph, Missouri, for the passage of the bill (H. R. No. 269) known as the Wright supplement to the homestead act—to the Committee on the Public Lands.

By Mr. FRYE: The petition of John O. Sullivan, for a pension—to the Committee on Invalid Pensions.

By Mr. GIBSON: The petitions of members of the bar of Louisiana, and of merchants and owners of vessels at New Orleans, for an increase of the salary of the judge of the United States district court for the District of Louisiana—to the Committee on the Judiciary.

By Mr. HAWK: The petition of A. Golder, Hon. Tyler McWhorter, and 14 citizens of Whiteside County, Illinois, for legislation on the manufacture, importation, and sale of oleomargarine—to the Committee on Agriculture.

By Mr. MILES: Papers relating to the pension claim of H. E. Edwards—to the Committee on Invalid Pensions.

By Mr. MITCHELL: The petition of John Bodler and 39 others, late Union soldiers of Germania and vicinity, Potter County, Pennsylvania, for the equalization of bounties—to the Committee on Military Affairs.

Also, the petition of Abijah Reynolds and 12 others, late Union soldiers, that prisoners of war who incurred disabilities while imprisoned be granted pensions, and that the oath of an applicant be sufficient to establish the contraction of disability as claimed—to the Committee on Invalid Pensions.

By Mr. PRESCOTT: The petition of B. J. Beach and others, of Rome, New York, against the further introduction of the French metric system—to the Committee on Coinage, Weights, and Measures.

By Mr. WILLIAM G. THOMPSON: The petition of druggists of Iowa City, Iowa, for the removal of the stamp-tax on perfumery, cosmetics, and proprietary medicines—to the Committee on Ways and Means.

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## IN SENATE.

### MONDAY, *April* 5, 1880.

Prayer by the Chaplain, Rev. J. J. BULLOCK, D. D.

The Journal of the proceedings of Friday last was read and approved.

EXECUTIVE COMMUNICATIONS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting communications from the Paymaster-General and the Second Auditor of the Treasury, showing the necessity of appropriations to pay certificates for arrears of pay and bounty, due white and colored soldiers and their heirs, which have been issued since January 1, 1880, and to be issued up to June 30, 1881; which was referred to the Committee on Appropriations, and ordered to be printed.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of the General Assembly of Iowa, in favor of the passage of an act providing for the improvement of the Nishnabatona River; which was referred to the Committee on Commerce.

Mr. ALLISON. I present a duplicate of the memorial of the General Assembly of the State of Iowa, in favor of an appropriation for the improvement of the Nishnabatona River, and I ask that it be printed in the RECORD.

The memorial was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

Memorial and joint resolution in relation to the removal of obstructions from the channel of the Nishnabatona River.

Whereas the Nishnabatona River, in Southwestern Iowa, has been recognized by the National Government as a navigable stream and meandered in the public surveys, as such streams are, from its mouth, in Holt County, Missouri, to a point near Riverton, Fremont County, Iowa; and

Whereas about the year 1867 the Missouri River cut away its east bank until it reached the channel of the Nishnabatona River, and thus made a new mouth for said river about three miles south of the State line between Missouri and Iowa, and about thirty or forty miles north of where said river formerly emptied into the Missouri River; and

Whereas the General Assembly of the State of Missouri, in the year 1868, passed an act authorizing Atchison County, in said State, to put in an embankment across the old channel of the Nishnabatona River, and said county did, soon after the passage of said act, cause an embankment to be constructed across the said old channel below the new mouth of said river; and

Whereas since that time the main channel of the Missouri River has changed and now runs west of McKissick's Island, about five miles west of where the steamboat channel was at the time said river cut into the channel of the Nishnabatona, leaving what had been for many years the steamboat channel of said Missouri River a mere slough, almost without water when said river is low; and

Whereas in times of high water in the Missouri and Nishnabatona Rivers vast quantities of sand and sediment have been deposited in said slough, and thus the new mouth of said Nishnabatona has been filled and choked up so as to prevent the water in said river from flowing into the Missouri River, and thus damming up the water in said Nishnabatona River so as to raise the low-water mark in said river at the State line at least ten feet higher than it was before the mouth of said river was so obstructed, thereby causing said river to overflow its banks and destroy large tracts of valuable farming lands; and by reason of the stagnant water in said river during the summer and autumn months being a cesspool of malaria, thereby severely afflicting the health and comfort of several thousand citizens of Iowa and Missouri: Therefore,

*Be it resolved by the General Assembly of the State of Iowa*, 1. That our Senators be instructed and our Representatives in Congress be requested to use their influence for the passage of an act by Congress to remove the obstructions placed in the old channel of said Nishnabatona River, or to so straighten said river as to avoid said obstructions, and that to accomplish that purpose they procure from the National Government an appropriation of $20,000, to be used in removing said obstructions and straightening said river, or so much as may be necessary to accomplish said object.

2. That the secretary of state be directed to forward to the President of the United States Senate and the Speaker of the House of Representatives a copy of the foregoing resolution, with a request that the same be laid before each House of Congress, and that a copy be sent to each Senator and Member of Congress from this State.

LORE ALFORD,
*Speaker of the House of Representatives.*
FRANK J. CAMPBELL,
*President of the Senate.*

Approved March 25, 1880.

JNO. H. GEAR.

Mr. ALLISON presented a petition, numerously signed by lumbermen on the Mississippi River, praying for an increase of the appropriation to remove the obstructions of the Rock Island Rapids; which was referred to the Committee on Commerce.

He also presented the petition of druggists at Clinton, Iowa, praying for the removal of the present unequal, arbitrary, and annoying stamp-tax on cosmetics, perfumery, and medicines; which was referred to the Committee on Finance.

He also presented the petition of Perry Engle & P. D. Sweet, publishers of the Iowa National, Newton, Iowa, praying that certain materials used in making paper be placed on the free list; which was referred to the Committee on Finance.

He also presented a petition of citizens of Newton, Iowa, praying for the passage of what is known as the Weaver bill; which was referred to the Committee on Finance.

Mr. WHYTE presented the petition of Ed. J. Oppelt, Julius O. Berg, James E. Lardauer, Isaac Adler, John C. Bosley, James C. Randall, and 300 others, manufacturers of cigars in the city of Baltimore, praying for the passage of a bill reducing the tax on cigars from $6 to $4 per thousand, in accordance with the spirit of the reduction heretofore made of the tax on manufactured tobacco; which was referred to the Committee on Finance.

Mr. WHYTE. I present the petition of Thomas Whitridge & Co., Whedbee & Dickinson, C. Morton Stewart & Co., Thornton Rollins, J. M. Bandel & Sons, and other ship-owners and shipping merchants of Baltimore, praying for a modification of the statute in relation to the payment of three months' extra pay to American seamen discharged in foreign ports; and when the proper order of business is reached I shall ask leave to introduce a bill to carry out the wishes of the petitioners. I move that the petition be referred to the Committee on Commerce.

The motion was agreed to.

Mr. WILLIAMS presented the petition of Margaret Longshaw, mother of William Longshaw, jr., deceased, late assistant surgeon United States Navy, praying to be allowed a pension; which was referred to the Committee on Pensions.

Mr. FERRY presented the petition of Mrs. W. B. Robinson, Lucy L. Stout, Catharine A. F. Stebbins, Thomas W. Palmer, J. H. Stone, Giles B. Stebbins, and others, citizens of Detroit, Michigan, praying for an amendment to the Constitution of the United States granting to women the right of suffrage; which was referred to the Committee on the Judiciary.

Mr. BOOTH presented the petition of Mrs. Laura J. Watkins, a citizen of San José, Santa Clara County, California, representing that she is a real-estate owner, and is annually taxed heavily for the support of pauperism and crime, while she has no power to suppress vice or regulate taxation, and asking for the removal of her political disabilities; which was referred to the Committee on the Judiciary.

Mr. PENDLETON presented the petition of Mrs. Sarah Chapman, Mrs. A. R. Kieffer, Rev. A. R. Kieffer, H. B. Perkins, Rev. J. S. Hutson, and 330 others, citizens of Warren, Ohio, praying for an amendment to the national Constitution by which the right of suffrage in the United States shall be based on citizenship, and all citizens of the United States, native or naturalized, shall enjoy this right equally without any distinction founded on sex; which was referred to the Committee on the Judiciary.

He also presented a memorial of type-founders of Cincinnati, Ohio, protesting against the repeal of the duty on type; which was referred to the Committee on Finance.

Mr. KERNAN presented the petition of Henry S. Van De Carr, Elsie M. Reynolds, and Gordon B. Reynolds, of Stockport, New York, praying for the extension of letters-patent granted to Rensselaer Reynolds and Gordon B. Reynolds, for improvements in brakes for power looms; which was referred to the Committee on Patents.

Mr. FARLEY presented a memorial of citizens of California, miners and persons directly interested in mining operations, remonstrating against the passage of the proposed mining law now before Congress; which was referred to the Committee on Mines and Mining.

He also presented the petition of Ellen Clark Sargent and 935 others, citizens of San José, Santa Clara County, California; and the petition of Sarah L. Knox Goodrich, of San José, Santa Clara County, California, praying for the passage of a law granting women the right of suffrage; which were referred to the Committee on the Judiciary.

Mr. HAMPTON presented the petition of William Aiken, Robert Adger, William C. Bee, and 515 others, citizens and tax-payers of South Carolina, praying to be refunded money illegally collected from them, and received by the United States, without warrant of law, as in payment of dues under the direct-tax laws; which was referred to the Committee on the Judiciary.

Mr. HOAR presented the petition of Emily S. Forman and other citizens of Boston, Massachusetts, praying for such an amendment of the Constitution as will grant to women the right to vote; which was referred to the Committee on the Judiciary.

Mr. TELLER presented additional papers to accompany the bill (S. No. 1020) for the relief of B. F. Rockafellow; which were referred to the Committee on Claims.

Mr. GORDON, presented the petition of Rachael M. McDonald of Stilesborough, Bartow County, Georgia, praying to be compensated for two mules furnished the United States Army; which was referred to the Committee on Claims.

Mr. DAVIS, of Illinois, presented the petition of Mary Brickford, E. Smith, Belle Wright, N. Brickford, W. E. King, and others, citizens of the State of Illinois, County of Hancock, town of Plymouth, praying for the following amendment to the national Constitution:

ART. XVI. The right of suffrage in the United States shall be based on citizenship, and all citizens of the United States, native or naturalized, shall enjoy this right equally, without any distinction founded on sex.

The petition was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. WHYTE, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 109) to incorporate the Mount Pleasant Railroad Company of the District of Columbia, reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1494) to incorporate the Washington and Great Falls Railway Company, reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 186) to incorporate the Mount Pleasant and Potomac Side Railway Company, reported adversely thereon, and the bill was postponed indefinitely.

Mr. BUTLER, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1037) approving the building of the Union Railroad of the District of Columbia, reported adversely thereon, and the bill was postponed indefinitely.

Mr. ROLLINS, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1386) to incorporate the Potomac Union Railway Company of Washington, in the District of Columbia, reported adversely thereon, and the bill was postponed indefinitely.

Mr. CAMERON, of Wisconsin. I am instructed by the Committee on Claims to report adversely on the bill (S. No. 1579) for the relief of B. B. Connor. The Senator from Alabama, [Mr. PRYOR,] who is a member of the committee, desires to submit the views of the minority on the bill. I ask that the bill go upon the Calendar.

The VICE-PRESIDENT. The bill will be placed on the Calendar with the adverse report of the committee.

Mr. PRYOR. In the adverse report made by the Senator from Wisconsin the committee are not entirely agreed, so much so that the minority asks leave to submit a minority report. I ask that it be printed.

The VICE-PRESIDENT. The views of the minority will be printed, no objection being heard.

Mr. BAYARD, from the Committee on the Judiciary, to whom was referred the bill (S. No. 827) to facilitate the negotiation of bills of lading and other commercial instruments, and to punish fraud therein, reported adversely thereon, and the bill was postponed indefinitely.

Mr. FARLEY, from the Committee on Pensions, to whom was referred the bill (S. No. 1077) granting a pension to William J. Elgie, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 809) for the relief of Duncan M. V. Stuart, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 340) granting a pension to Thomas J. Anthony, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

BOUNDARY BETWEEN NEW YORK AND VERMONT.

Mr. CONKLING. I am instructed by the Committee on the Judiciary to report back favorably, without amendment, the bill (H. R. No. 2817) giving the consent of Congress to an agreement or compact entered into between the States of New York and Vermont respecting the boundary between said States. It is a very short bill. I ask that it be read, and I shall then make a request in regard to it.

The Chief Clerk read the bill.

Mr. CONKLING. Unless some Senator thinks there should be delay, I ask that the bill be considered now.

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

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PRINTING OFFICE EMPLOYÉS.

Mr. WHYTE. The Committee on Printing, to which was referred a petition of the employés of the Government Printing Office praying that they may be allowed compensation for legal holidays, have instructed me to report a joint resolution and to ask for it the favorable action of the Senate.

The joint resolution (S. R. No. 99) providing for payment of wages to employés in the Goverment Printing Office for legal holidays was read twice by its title.

Mr. WHYTE. I ask unanimous consent of the Senate to dispose of the joint resolution at this time.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution. It provides that the employés of the Government Printing Office are, from December 31, 1879, to be allowed the following legal holidays with pay: The 1st of January, the 22d of February, the 4th of July, the 25th of December, and such day as may be designated by the President of the United States as a day of public fast or thanksgiving. These employés are to be paid for these holidays only when the employés of the other Government departments shall be so paid. Nothing herein contained is to authorize any additional payment to such employés as receive annual salaries.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

REPORT ON FISH AND FISHERIES.

Mr. ANTHONY, from the Committee on Printing, to whom was referred a concurrent resolution authorizing the printing of 10,000 extra copies of the report of the Commissioner of Fish and Fisheries for the year 1879, reported a joint resolution as a substitute therefor.

The joint resolution (S. R. No. 100) to print extra copies of the report of the Commissioner of Fish and Fisheries for the year 1879 was read the first time by its title.

Mr. ANTHONY. I ask the present consideration of the joint resolution.

The joint resolution was read the second time at length, as follows:

*Resolved, &c.*, That there be printed 10,000 extra copies of the report of the Commissioner of Fish and Fisheries for the year 1879, of which 2,000 shall be for the use of the Senate, 4,000 for the use of the House of Representatives, and 1,500 copies for the use of the Commissioner of Fish and Fisheries, the illustrations to be made by the Public Printer under the direction of the Joint Committee on Public Printing, and 2,500 for sale by the Public Printer under such regulations as the Joint Committee on Printing may prescribe, at a price equal to the cost of publication and ten per cent. thereto thereon added.

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

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. WHYTE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1582) to amend chapter 5, title 53, of the Revised Statutes of the United States; which was read twice by its title, and referred to the Committee on Commerce.

Mr. BUTLER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1583) to change the name of the schooner-yacht Nettie to Nokomis; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Commerce.

Mr. BOOTH asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1584) granting a pension to Margaret Costello; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. LOGAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1585) for the relief of John Stewart; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. CONKLING. At the request of a citizen of New York I ask leave to introduce a bill.

By unanimous consent, leave was granted to introduce a bill (S. No. 1586) to regulate the fees of attorneys in pension cases; which was read twice by its title, and referred to the Committee on Pensions.

Mr. GARLAND asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1587) to secure the safe keeping of money paid into court; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. ALLISON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1588) to authorize the Postmaster-General to compensate the Chicago, Burlington and Quincy Railroad Company for facilitating the transportation of the overland mails under agreement; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

He also asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1589) to provide for the payment of the amount due the Burlington, Cedar Rapids and Northern Railway Company for transportation of United States mails; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. KERNAN (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1590) for the relief of Henry S. Van De Carr and Elsie M. Reynolds, administrators of the estate of Rensselaer Reynolds, deceased, and Gordon B. Reynolds; which was read twice by its title, and referred to the Committee on Patents.

Mr. TELLER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1591) to constitute the city of Denver, in the State of Colorado, a port of delivery; which was read twice by its title, and referred to the Committee on Commerce.

Mr. WILLIAMS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1592) to repeal so much of the sixth clause of section 3244 of the Revised Statutes of the United States as prohibits farmers and planters from selling leaf-tobacco at retail directly to consumers without the payment of a special tax, and to allow farmers and planters to sell leaf-tobacco of their own production to other persons than manufacturers of tobacco without special tax; which was read twice by its title, and referred to the Committee on Finance.

Mr. BECK (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1593) to authorize the Richmond and Southwestern Railway Company to build bridges across the Pamunky and Mattaponi Rivers; which was read twice by its title, and referred to the Committee on Commerce.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. COCKRELL, it was

*Ordered*, That E. P. Vollum be allowed to withdraw his papers from the files of the Senate.

STEPHEN A. M'CARTY.

Mr. CAMERON, of Pennsylvania. I ask unanimous consent of the Senate to take up Senate joint resolution No. 96.

Mr. HEREFORD. I desire the regular order.

Mr. CONKLING. This will take but a moment.

Mr. CAMERON, of Pennsylvania. It will only take two or three minutes, I think, to dispose of the joint resolution.

The VICE-PRESIDENT. The joint resolution will be reported and objection called for.

The Chief Clerk read the joint resolution, as follows:

*Resolved, &c.*, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to reappoint Stephen A. McCarty a lieutenant-commander in the Navy of the United States, to take present position at the foot of the list of officers of that grade.

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

Mr. COCKRELL. Is there a report?

The VICE-PRESIDENT. There is.

Mr. COCKRELL. Let it be read.

The VICE-PRESIDENT. The reading of the report is called for. It will be here in a moment.

Mr. CONKLING. The Senator from Pennsylvania can state the case, I presume.

Mr. CAMERON, of Pennsylvania. The report is long, and I prefer that the report should be read.

Mr. DAVIS, of West Virginia. I think we had better proceed with the regular order, and when the report is found we can take up the joint resolution.

The VICE-PRESIDENT. The report has been found.

The Chief Clerk proceeded to read the report.

Mr. ANTHONY. The Senator from New Jersey, [Mr. MCPHERSON,] the chairman of the Committee on Naval Affairs, is absent, and I know he wishes to be present when the joint resolution is acted upon. I hope it will be postponed.

Mr. CONKLING. Let the report be read.

Mr. ANTHONY. I have no objection to the report being read.

Mr. HEREFORD. That will only take up the time of the Senate.

Mr. CONKLING. It will have to be read some time. Let the report be read now.

The Chief Clerk resumed and concluded the reading of the report submitted by Mr. CAMERON, of Pennsylvania, March 23, as follows:

The Committee on Naval Affairs, to whom was referred the petition of Stephen A. McCarty, late lieutenant-commander, United States Navy, praying the passage of a law authorizing the President to restore him to his former position in the Navy, have duly examined and considered the same, and beg leave to make the following report:

This petition was before the Committee on Naval Affairs at the last Congress and they reported upon it adversely. This action your committee now think was not fully warranted by the facts of the case as they appear of record. On account of the great amount of business at the closing hours of the session the action of the committee was necessarily hasty, as is apparent from the fact that no printed statement accompanied the report at that time, and therefore the grounds upon which the adverse report was based do not appear. The case, in the opinion of this committee, is one which commends itself to the justice and leniency of Congress.

The petitioner, Stephen A. McCarty, is a citizen and resident of Pulaski, Oswego County, New York, and is about thirty-nine years of age. He entered the United States Navy as a midshipman in 1856. In 1862 he was promoted to a lieutenancy, and in 1866 was appointed a lieutenant-commander. He held this commission until 1874, at which time he had been in the service eighteen years, and, until within a brief period before, had discharged and fulfilled, to the entire satisfaction of the Department and the officers in immediate command, every official duty and requirement of his position. Unfortunately, while he was attached to the United States steamer Powhatan, he was said to have been under the influence of liquor on several occasions, for which offense he was tried by a court-martial and found guilty; but the members of the court, however, recommended him to the clemency of the Secretary, with but one exception, and in deference to that recommendation the sentence was remitted by the Secretary of the Navy.

Some months later he again took to drinking and charges were again preferred against him, pending the trial of which he resigned his commission. He gave his reasons for this action in a letter to the Secretary of the Navy, dated January 13, 1879, as follows:

"I resigned while a charge of intoxication was pending against me, and, although I was confident then, as I am now, that the specific charge alleged could not be sustained, still I was by that circumstance brought to face my actual condition. Fully realizing that the intemperate habits which I frankly and with deep regret confess I had contracted rendered me liable to similar difficulties sooner or later, I believed it to be of paramount importance to my future welfare to reform absolutely, and that I could more effectually and thoroughly accomplish this by leaving the Navy. My sole motive in resigning was to make myself more fit to hold my position, with a view of asking for restoration to the service when the temporary physical and mental disability had been removed."

Although the cause which led to his resignation is very much deprecated by your committee, still it does not appear from the records that he grossly neglected his duty, or that any palpable injury resulted to the service therefrom. When his eighteen years of faithful and efficient service in the Navy are taken into consideration—having served through all the dangers of the late war, taking part in the principal engagements of Admiral Farragut's fleet, and being wounded at the battle of Mobile—and the fact that up to two years of his resigning no report or complaint was ever made against him or to his discredit, your committee cannot but feel inclined to overlook the unfortunate circumstance of his drinking, (which after all seems to have been with him more of a misfortune than an inveterate habit or fault,) particularly as he has since his resignation entirely and completely reformed. This fact is borne out by the following testimonial from citizens of the town in which Mr. McCarty resides:

"*To the Senate and House of Representatives of the United States:*

"The petition of the undersigned citizens, inhabitants of the county of Oswego, New York, respectfully represents:

"That they are personally acquainted with Stephen A. McCarty, late a lieutenant-commander in the United States Navy, who for the last few years has been a resident of Pulaski, in the said county; that during the time of his residence here, for the last two years or more, his character and conduct in every respect have been correct and exemplary, and particularly in respect to his sobriety and firmness in habits of temperance. In view of his education and training in the Navy and his services as an officer, and his entire freedom and emancipation from the unfortunate

circumstances which induced his withdrawal, we earnestly recommend his restoration to the position for which he is so well fitted by education, training, and experience. We ask, therefore, that such act or resolution may be passed as will authorize his restoration to the service, for which he is so well qualified and competent in every respect.

"Pulaski, Oswego County, New York, January, 1879.

"W. B. DIXON,
"*Supervisor of the Town of Richland.*
"FRANK S. LORD, M. D.,
"*Late Sheriff of Oswego County.*
"D. A. KING,
"*Attorney and Counselor at Law.*
"JAMES M. FENTON,
"*Justice of the Peace.*
"JNO. B. WATSON,
"*Justice of the Peace.*
"NATHAN B. SMITH,
"*Attorney and Counselor at Law.*
"SEBASTIAN DUFFY,
"*Principal of Pulaski Academy.*
"L. R. MUZZY,
"*Editor and Proprietor Pulaski Democrat.*
"M. B. COMFORT,
"*Pastor Baptist Church, Pulaski.*
"ROBERT PAUL,
"*Rector of Saint James Church, Pulaski.*"

"I personally know each and every the gentlemen whose names are signed hereto, (on this half sheet,) and have for many years, and vouch for the high standing and respectability of each and every one of such signers. I unite with them in recommending that Mr. McCarty be reinstated in the Navy.

"W. H. BAKER."

The following two letters, from his superior officers, show his conduct while under their immediate command:

"COMMANDANT'S OFFICE,
"UNITED STATES NAVY-YARD, LEAGUE ISLAND, PA.,
"*December* 17, 1878.

"DEAR SIR: I received your note of 10th inst., and am glad to hear from you and that you have entirely reformed, and that for nearly three years you have been strictly temperate; and so long as you adhere to strictly temperate habits, you will triumph over the only barrier that I know of to your success in life.

"Aside from this objection, during the time you were under my command, on board the United States steamer Powhatan, I found you to be a very capable and useful officer. I am always glad to give a helping hand to deserving people; to encourage those who are determined to do right; and you have my earnest wishes for your success and prosperity.

"Very respectfully, yours,

"PEIRCE CROSBY.

"S. A. MCCARTY,
*Washington, D. C.*"

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"UNITED STATES NAVY-YARD, WASHINGTON,
"COMMANDANT'S OFFICE,
"*December* 6, 1878.

"SIR: In reply to your verbal request I have the pleasure of stating that while under my command as navigating officer of the United States steamer Shenandoah your conduct in every respect as officer and gentleman was such as to merit my approbation.

"Very respectfully, your obedient servant,

"JNO. C. FEBIGER,
"*Commodore United States Navy.*

"Mr. S. A. MCCARTY."

The Secretary of the Navy, in answer to a letter written to him by the former chairman of this committee, made the following reply, which gives a full history of the case:

"NAVY DEPARTMENT,
"*Washington January* 13, 1879.

"SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, inclosing the memorial of Stephen A. McCarty for the passage of an act or joint resolution authorizing the President to restore him to his position of lieutenant-commander in the Navy, and asking that the Naval Committee, to which the memorial has been referred, may be furnished with such information and the cause of his leaving the naval service as the records of the Department contain; also with any recommendation I may think proper to make.

"Stephen A. McCarty entered the Navy as a midshipman September 25, 1856; was promoted to a lieutenant August 1, 1862, and to a lieutenant-commander August 9, 1866, and resigned November 7, 1874.

"He was in the Navy upward of eighteen years; was at sea over ten years of that time; was on shore duty about three years, and on leave or waiting orders about five years.

"So far as the records show, his service was well performed and his general conduct and deportment good, until about September, 1872, when, while attached to the United States ship Powhatan, he was reported to have been under the influence of liquor on three or four separate occasions within a short period. Charges were preferred, and he was tried by court-martial September 30, 1872. The court found him guilty, but all the members, with a single exception, recommended him to clemency.

"The Secretary of the Navy, on the 24th of February, 1873, remitted the sentence, writing to him as follows:

"'The members of the court by which you were tried, with one exception, unite in earnestly recommending you to clemency, on the ground that the misconduct which has placed you in your present position was a "a temporary aberration from the very high professional reputation you have heretofore borne." You were guilty of grave infractions of discipline, but the recommendation of the members of the court, themselves officers of experience and high professional reputation, is entitled to great weight, and the Department would with the utmost reluctance for a first offense, and that involving no grave moral turpitude, deprive an officer of a high professional reputation of the fruits of years of uniformly good and exemplary conduct. I have concluded, therefore, to yield to the recommendation in your behalf and remit the sentence of the court.'

"In November, 1874, the commander-in-chief of the North Atlantic station preferred charges against Lieutenant-Commander McCarty, then executive officer of the Canandaigua, of drunkenness and neglect of duty, and brought him before a court-martial for trial. The Department finds from the record of these charges that while the ship was at anchor at New Orleans he became so much under the influence of liquor as to be unfit for the performance of his duty, and not in a fit condition to receive the commanding officer of the vessel on his return to the ship. After the court was organized and were about to proceed in the trial, Lieutenant-Commander McCarty tendered his resignation; and the commander-in-chief stating that he saw no objection to its acceptance, it was accepted, and his connection with the service ceased.

"There appears to have been nothing else that would have interfered with the further usefulness and future successful career of Lieutenant-Commander McCarty than his occasional overindulgence in intoxicating liquors, and these instances were only during the last two years of his service in the Navy. His reputation prior to that time was good for sobriety and for efficient and faithful discharge of duty. He possesses many traits of character which commend him to those in and out of the service.

"He now presents and places on file statements from citizens of high character and standing—associates and neighbors who have observed his conduct—as to his complete reformation, and that he has abstained from the use of any intoxicating liquors for two or three years past.

"He feels deeply the loss of a position which he had reached after so many years of faithful service, and is anxious to have the opportunity of proving himself as worthy of further trust and confidence.

"Under all the circumstances, the Department thinks that the prayer of the petitioner for relief might be granted. But in view of the claims of others in the service, and upon the principle that an officer who has sacrificed his position and rank by his own misconduct should not have them fully restored by legislation, I would suggest that the President be authorized to nominate and, by and with the advice and consent of the Senate, appoint him a lieutenant-commander in the Navy, but to take present position at the foot of the list of officers of that grade. He was No. 19 on the list of lieutenant-commanders when he resigned, and would have been about seventeen numbers from the foot of the list of commanders had he continued in service.

"I am, sir, very respectfully,

"R. W. THOMPSON,
"*Secretary of the Navy.*

"Hon. A. A. SARGENT.
"*Chairman of the Committee on Naval Affairs,*
"*United States Senate, Washington, D. C.*"

Your committee, therefore, taking all the attendant circumstances into consideration, his previous good reputation, his long and honorable career in the United States Navy, and his subsequent total reformation and good behavior, attested by his neighbors and fellow-citizens, concur in the recommendation of the Secretary of the Navy, and beg leave to report a joint resolution authorizing his reappointment as lieutenant-commander in the Navy, to take present position at the foot of the list of officers of that grade.

A joint resolution authorizing the President of the United States to reappoint Stephen A. McCarty a lieutenant-commander in the Navy.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to reappoint Stephen A. McCarty a lieutenant-commander in the Navy of the United States, to take present position at the foot of the list of officers of that grade.

Mr. ANTHONY. I have only to say that the chairman of the Committee on Naval Affairs desires to be present when this case is acted upon. I think in ordinary courtesy, considering his position especially, that his wish should be gratified.

Mr. CAMERON, of Pennsylvania. In reply to the Senator from Rhode Island I will state that the Committee on Naval Affairs by a majority authorized this favorable report to be made.

The VICE-PRESIDENT. Does the Senator from Rhode Island object to the further consideration of the joint resolution for the reason stated by him?

Mr. ANTHONY. Have I the power to object?

Mr. CONKLING. No; the joint resolution was taken up by unanimous consent.

Mr. ANTHONY. If I have the power to object, I do so.

The VICE-PRESIDENT. The joint resolution was taken up by unanimous consent.

Mr. ANTHONY. I move that the joint resolution be postponed until to-morrow.

Mr. CONKLING. That may throw it over a great while.

Mr. COCKRELL. I suppose that, under the circumstances, it will not be pressed.

Mr. CAMERON, of Pennsylvania. Under what circumstances does the Senator mean?

Mr. COCKRELL. I refer to the request stated by the Senator from Rhode Island, that the chairman of the Committee on Naval Affairs desires to be present when the joint resolution is considered; and I think if all were known that occurred in committee there were other requests in regard to the disposition of this case which should be made known.

Mr. CAMERON, of Pennsylvania. As I understand the statement of the Senator from Rhode Island, he does not state that the Senator from New Jersey, the chairman of the committee, desires to be present when the matter is considered; he simply states that that Senator is absent. He may be absent to-morrow; he may be absent next week; he may be absent at some other time. The Senate has heard the report, and I think it is just as competent to act upon the joint resolution now as it will be at any other time. Therefore I would very much prefer that the matter should be considered now.

Mr. CONKLING. This case has been pending in the Senate for several years and there are reasons, I think somewhat special, why action should be prompt. Yet I would not, for one, object to a postponement if any Senator had made the request that it be postponed that he might be present; but I do not understand that to be so at all. A report comes here regularly from the Naval Committee, a majority report, and one member of the committee, and that the chairman of the committee, is absent. If he had expressed a wish to be here upon this case, I think as a matter of courtesy and orderly proceeding it should be postponed for that purpose.

Mr. COCKRELL. I understood the Senator from Rhode Island to make the statement that the Senator from New Jersey desired to be here and desired him to present to the Senate, when the joint resolution came up, a request which he was authorized to make by the Committee on Naval Affairs as to whether the matter should be considered.

Mr. CONKLING. I understood the Senator from Rhode Island to call attention to the fact that the Senator from New Jersey is absent and to express the opinion of his own that that Senator would like to be present when the joint resolution is considered. I did not understand him to convey a request from the chairman of the committee at all; and unless there be a request of that sort, or some special reason, I hope that no Senator will object to considering the case now, after this somewhat long report has been read, and the Senate understands it as well as it is ever likely to do.

The VICE-PRESIDENT. Shall the further consideration of the joint resolution be postponed until to-morrow?

Mr. COCKRELL. I hope that the request of the Senator from New Jersey will be granted, and that the friends of the measure will not insist on putting it through now. I think it would be a great deal better that it should lie over informally until to-morrow.

Mr. CONKLING. I do not object to that for one. It may lie over informally to be called up when the absent Senator is here; but if put over on a motion it may never be reached again during the session.

Mr. ANTHONY. I shall object to the consideration of the joint resolution, so far as my objection will avail, in the absence of the chairman of the Committee on Naval Affairs, whether he is here to-morrow or not.

Mr. CONKLING. Does the Senator object to laying aside the resolution informally, to be called up when the Senator from New Jersey is here?

Mr. ANTHONY. Not at all.

Mr. CONKLING. Then I propose that.

The VICE-PRESIDENT. Is there objection to the suggestion that the joint resolution be laid aside informally, to be called up on the return of the chairman of the Committee on Naval Affairs?

The Chair hears no objection.

ORDER OF BUSINESS.

Mr. COCKRELL. I have been requested to call up a motion which was entered by me for the reconsideration of the resolution passed by the Senate on the 24th of March, in regard to an assistant librarian to the Senate library. I ask, if there be no objection, that the Senate now consider that question under the order of resolutions.

Mr. JONES, of Florida. I ask the Senator from Missouri what special necessity there is for departing from the regular order?

Mr. HEREFORD. I ask for the regular order.

The VICE-PRESIDENT. The regular order is the consideration of the Calendar of General Orders under the Anthony rule.

Mr. COCKRELL. I simply desire to say to the Senator from Florida that I called up this resolution once before and it could not be considered; and I was requested then by the Senator from Georgia [Mr. HILL] to let the matter remain for one day or a day or two, and I have allowed it to remain until now. The Senator from Georgia desires that it shall be considered. That is the only reason I have called it up, for I do not wish to be regarded as trying to defeat the resolution by a motion to reconsider.

Mr. HILL, of Georgia. It is a small matter and I think can be soon disposed of by a vote of the Senate.

JESSE F. PHARES.

The VICE-PRESIDENT. The regular order has been called for, which is the bill (S. No. 1185) granting a pension to Jesse F. Phares, the pending question being on the motion of the Senator from Missouri [Mr. COCKRELL] to postpone the bill indefinitely.

Mr. PLATT. Mr. President, I desire to state that since the last session of the Senate the Senator from Virginia, [Mr. WITHERS,] who is chairman of the Pension Committee, has been called home by a telegraphic dispatch announcing the sickness of a member of his family. I know that he desires to be heard on this bill. I do not wish to delay it except to give him an opportunity to be heard upon it. It has been made a test case, and the Senator from Virginia, as chairman of the committee, has charge of it. I would ask unanimous consent that it stand at the head of the list, not to be called up until the Senator from Virginia returns. I think that arrangement would be fair to every one.

Mr. HEREFORD. I would not oppose the motion the Senator from Connecticut has made ordinarily in the absence of the chairman of the committee, who is opposed to the bill, but the Senate will recollect that the chairman of the committee who is now absent was present when this bill was called up, and he made his speech and presented his views in opposition to the whole measure. The case has been fully laid before the Senate, and I shall object to this bill going over any further and hope we may get a vote on it this morning.

Mr. PLATT. Let me remind the Senator that a single objection, as I understand it, takes this bill over.

Mr. DAVIS, of West Virginia. Oh, no; it is the regular order, as I understand.

The VICE-PRESIDENT. One objection takes the bill over at any time prior to its passage.

Mr. PLATT. I desire to remind the Senator from West Virginia that a single objection takes this bill over.

The VICE-PRESIDENT. "At any stage of the proceedings," in the language of the rule.

Mr. PLATT. I do not wish to object to the consideration of the bill; but I do think it just to the chairman of the committee, who I know feels a deep interest in it, that he should have an opportunity to be present when it is further considered, and I trust the Senator from West Virginia will not object to the arrangement which I propose, because if we cannot have that arrangement I shall feel compelled to object to the further consideration of the bill. I think that the arrangement that it shall stand at the head of the list until the Senator from Virginia returns is fair to everybody. It keeps its place and will not long delay action on it.

Mr. HEREFORD. Though I am opposed to the further postponement of the bill, yet under the threat that the Senator has made, that he will make an objection to it notwithstanding it has been discussed for three days, I suppose I shall have to yield to the wish of the Senator; that is, as I understand it, that this bill shall lie over without prejudice, to be taken up in its regular order upon the return of the Senator from Virginia, the chairman of the Committee on Pensions.

The VICE-PRESIDENT. The Chair then understands the arrangement as follows: That this bill shall remain at the head of the Calendar until the return of the Senator from Virginia, the chairman of the Committee on Pensions. The Chair hears no objection to this arrangement. The Secretary will report the next bill on the Calendar.

SETTLERS ON OSAGE LANDS.

The next bill on the Calendar was the bill (H. R. No. 2326) for the relief of settlers upon Osage trust and diminished-reserve lands in Kansas, and for other purposes.

Mr. TELLER. There was a general understanding that this bill should remain without prejudice until the Senator from Kansas [Mr. PLUMB] should return.

The VICE-PRESIDENT. Shall the understanding be maintained? The Chair hears no objection. The bill will keep its place on the Calendar. The Secretary will report the next bill.

INTERNATIONAL SANITARY CONFERENCE.

The next business on the Calendar was the joint resolution (S. R. No. 73) authorizing the President of the United States to call an international sanitary conference, to meet at Washington, District of Columbia.

Mr. McMILLAN. I object to that.

The VICE-PRESIDENT. The joint resolution will be passed over.

AFFIDAVITS IN PRE-EMPTION CASES.

The next bill on the Calendar was the bill (S. No. 1247) to amend sections 2262 and 2301 of the Revised Statutes, in relation to the settler's affidavit in pre-emption and commuted homestead entries.

Mr. EDMUNDS. Let that go over, Mr. President.

The VICE-PRESIDENT. The bill is objected to.

Mr. JONES, of Florida. I appeal to the Senator from Vermont and beg to say to him that this is a very simple bill, recommended repeatedly by the Land Office, and if he will listen to me for less than five minutes I think I can persuade him to withdraw his objection and let it pass.

Mr. EDMUNDS. I will withdraw the objection for the time being.

The VICE-PRESIDENT. The objection is withdrawn temporarily.

Mr. JONES, of Florida. The object of the bill is to relieve pre-emption settlers of a great inconvenience that they now labor under in the distant States and Territories in consequence of the present state of the law, which requires this affidavit to be taken before the register or receiver.

The pre-emption law now is—

SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land district in which the land is situated that he has never had the benefit of any right of pre-emption under section 2259; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

This is a necessary condition to the entry of lands under the pre-emption law, and before a settler can be permitted to enter under that law he must make this affidavit. In my State in many cases a settler would have to travel hundreds of miles to reach the office of the register or receiver to make this affidavit. The object of this bill is to enable him to make this oath before a proper local officer, as in the case of homestead entries it, I believe, is now permitted to be done. In other words it unifies the law, for a law on the statute-book now is that a homestead settler may make the affidavit respecting the conditions to be performed by him before a county officer such as is provided for in this bill.

The next section to which it refers is that relating to the commutation of homesteads:

SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section 2289 from paying the minimum price for the quantity of land so entered, at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law, granting pre-emption rights.

That refers to the section which I have just read. Where the settler desires to commute his homestead by paying the minimum price for the land he may do so by making this affidavit that is specified in the section that I just read. The bill simply enables the settler to make the affidavit before the officers designated in any county of

the State, instead of requiring him to travel and appear before the register or receiver in person. The homestead law stands in that way at present. This proposes to make the pre-emption law the same. That is the whole purpose of the bill.

Mr. EDMUNDS. I am not able to see that the homestead law is in the way the Senator from Florida states it at present. The homestead law is:

SEC. 2294. In any case in which the applicant for the benefit of the homestead, and whose family or some member thereof is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land-office, it may be lawful for him to make the affidavit required by law before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver.

This provision as to the pre-emption laws leaves out entirely the conditions and necessities supposed to exist as to the homesteaders and makes it an absolute right in every case to take the proofs necessary to this subject before the clerk of the county court or of any court of record of the county or district in which the lands are situated, and if they are situated in an unorganized county, it may be made before any clerk, &c., in an adjacent county.

The necessity for having these affidavits taken before the register of the land office is a pretty obvious one; and that is to have, first, a personal identification of the actual claimant, and second, to guard against the frauds which so often arise in the taking of affidavits to be used before executive officers otherwise than by themselves—false witnesses, fictitious witnesses, fictitious claimants, an entire series of frauds that are thus kept out of sight, whereas if every claimant of a pre-emption benefit under this statute has to go to the chief office of the register, although in some cases it is inconvenient, the register knows whether that is the same man who has made some other affidavit or some other pre-emption claim or owns some other land in his district, because his records will show it.

Now, then, to put the thing at sea and to allow the special benefits provided by the statute to which these affidavits apply to persons who never put in an appearance at the land office at all, and upon affidavits taken before State authority in the counties where the lands are supposed to lie, or if in an unorganized county in some adjacent county, is in my opinion extremely dangerous to the just administration of the law.

But I shall not object to the consideration of the bill. If after what I have said the Senate passes it, it passes it on its own responsibility, not mine. I can stand it as long as the rest can.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. JONES, of Florida. I think that the present state of the law in respect to homestead entries, though I am not entirely sure, is as I said a while ago.

Mr. EDMUNDS. I have read section 2294 of the Revised Statutes.

Mr. JONES, of Florida. There is a subsequent statute to that.

Mr. EDMUNDS. I have not seen it if there is.

Mr. JONES, of Florida. This matter was called to the attention of Congress a year ago or more by the Commissioner of the General Land Office in his general report, and this very measure was recommended; and I will say that before drawing up the bill I consulted him about it. Reasoning from the operation of the law respecting homesteads, I did not think that any practical inconvenience or any great injustice could follow from it. Certainly it would be very convenient to the settler to enable him to make this affidavit, which is a condition-precedent to his right to enter the public lands, near at home, without traveling as he must otherwise do four hundred or five hundred miles, paying more than the value of the land in traveling in order to get one hundred and sixty acres of public land. That I think is a great detriment to the settlement of the public lands as well as to the interests of the general public.

Mr. TELLER. I find section 2291 has substantially the same provision with reference to homesteads that is contained in this bill. I do not think there can be any doubt if the Senator will look at it.

Mr. EDMUNDS. If it has, it is wrong.

Mr. TELLER. It may be wrong, but it is there nevertheless, and I do not know why we should apply one rule to homesteads and another to pre-emptions. Parties making mineral entries also have a right to make their affidavits before State officers, and are not compelled to go to the land office and make them before the registrar or receiver. As was said by the Senator from Florida, the great distance persons have to travel in a new country and the great expense thereby incurred should be considered; and sometimes it is almost impossible that they should go to the receiver's office. It seems to me that the bill is proper and ought to pass.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

### MESSAGE FROM THE HOUSE.

A message from the House of Representives, by Mr. T. F. KING, one of its clerks, announced that the House had concurred in the amendments of the Senate to the bill (H. R. No. 4736) to provide for a deficiency in the appropriations for the transportation of the mails on star routes for the fiscal year ending June 30, 1880.

### MEDICAL AND SURGICAL HISTORY OF THE WAR.

The next business on the Calendar was the joint resolution (S. R. No. 76) directing that 10,000 copies of the Medical and Surgical History of the War of the Rebellion be printed.

The VICE-PRESIDENT. This joint resolution was reported adversely from the Committee on Printing.

Mr. ANTHONY. I notice that the Senator from Florida, [Mr. CALL,] at whose instance the joint resolution was put on the Calendar, is in his seat, and I think if he will allow it to be taken up, and listen to a letter from General Barnes, the Surgeon-General, he will consent to its indefinite postponement, and will relieve the Calendar of it.

Mr. EDMUNDS. It is up; go on.

Mr. CALL. I was informed by the chairman of the committee that if the resolution was recommitted to the committee they might recommend the passage of the resolution some time about the close of the year, on account of the report of the Surgeon-General.

Mr. ANTHONY. Does the Senator consent to its indefinite postponement?

Mr. CALL. I should prefer that it be recommitted to the committee, hoping they will report favorably, limiting the time when it shall take effect.

Mr. ANTHONY. I ask the Secretary to read a letter from General Barnes on the subject.

Mr. CALL. I understood the objection of the committee was to getting the printing done until some period later in the year.

Mr. ANTHONY. No; that was not the objection.

Mr. WHYTE. The Senator from Florida refers to a conversation he had with the chairman of the Committee on Printing. He misunderstood the statement of the chairman of that committee if he supposed that he desired the resolution to be recommitted. The chairman informed the Senator from Florida that it would be almost impossible to complete the work at this time because the parties employed on the illustrations of the work are now finishing the last two volumes, and it would cost a great deal more and involve the postponement of the getting out of the last two volumes if they were turned away from that work and turned upon the work of reproducing the four volumes which have been already printed. I did not say anything about recommitting the resolution; I said if it was laid over, when the other two volumes were finished the probability was that these could be reprinted at that time.

Mr. CALL. Will the Senator indicate any time at which those two volumes are expected to be concluded?

Mr. WHYTE. No, sir; I cannot so state. I cannot designate the particular time when the other volumes will be finished. The work is going on, and it will not be a great while; but as for fixing the day, it is not possible for me to do so.

Mr. ANTHONY. The communication at the desk will explain that. I ask that it be read.

The VICE-PRESIDENT. The letter will be read.

The Chief Clerk read as follows:

WAR DEPARTMENT, SURGEON-GENERAL'S OFFICE,
*Washington, D. C., February 9, 1880.*

SIR: I have the honor to request your attention to a joint resolution (S. R. 76) introduced yesterday in the Senate, and referred to the Committee on Printing, directing the printing of 10,000 copies of the Medical and Surgical History of the War.

This work is now nearing its completion as rapidly as is consistent with accuracy; the passage of such a resolution would very seriously and injuriously retard this for years, as the artists now engaged upon the illustrations for the two last volumes—now in press—will have to suspend their work to reproduce the illustrations for the four volumes already published.

As you are aware, the distribution of the volumes already issued has in a great many instances proved irregular and unsatisfactory, persons who received the two first not receiving the two last volumes issued, and *vice versa*.

The original authorization to print was for an edition of 5,000. After the first two volumes of this edition were published the act of Congress, approved March 3, 1875, (Stat. at Large, volume 18, part 3, page 391,) increased the edition to 10,000. But for the delay and confusion occasioned by this the entire work would have been completed before now and the distribution have been more uniform.

It appears to me to be exceedingly desirable if another edition shall be hereafter authorized it shall not be until that now in hand is completed, and that the six volumes shall be issued together to secure their distribution in full sets of the three surgical or three medical volumes, or both medical and surgical.

It was my anticipation in the original plan of the work that by making the medical and surgical sections distinct and complete in themselves that distribution could be made of the medical section to practitioners of medicine, of the surgical section to those engaged in surgical practice, while all the volumes would go to libraries, colleges, or the most eminent authors and teachers in the profession.

Had this been done an edition of 10,000 copies would have amply supplied the demand, as, when completed, it will immediately be made the basis of systems of military medicine and surgery, and its vast treasures of information be reproduced in a less costly form for general use.

To many Senators and Members of Congress who have asked me "Why not another edition?" I have given the above reasons; and S. R. No. 76 was introduced without consultation with me or knowledge of the disastrous effect of such a measure.

From the inception of the work you have been its staunch supporter in your committee and the Senate, and will, I trust, protect it now.

I am, sir, very respectfully, your obedient servant,

JOS. K. BARNES,
*Surgeon-General.*

Hon. H. B. ANTHONY, *United States Senator.*

The VICE-PRESIDENT. The question is, Shall the further consideration of the joint resolution be indefinitely postponed?

The motion was agreed to.

### RETIRED LIST OF NON-COMMISSIONED OFFICERS.

The next bill on the Calendar was the bill (S. No. 1331) to authorize a retired list for non-commissioned officers of the United States Army who have served therein continuously, honorably, and faith-

fully for a period of thirty years or upward; which was considered as in Committee of the Whole.

Mr. MAXEY. I have a letter from the Adjutant-General on that subject, which I ask may be read.

The VICE-PRESIDENT. The letter will be read.

The Chief Clerk read as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, February* 28, 1880.

SIR: I have the honor to return herewith copy of Senate bill 1331, providing for the retirement of non-commissioned officers of the Army who have served a continuous period of thirty years and upward, and report, accompanying your letter of the 25th instant, wherein you request to be informed as to the number of non-commissioned officers now in the Army who could avail themselves of the provisions of the contemplated act, or to whom its compulsory section would apply, and in reply thereto to inform you that the number of non-commissioned officers of the Army now in service, who have served therein "continuously, honorably, and faithfully for thirty years," the last fifteen years thereof as non-commissioned officers, is twenty-six, and the number of those similarly conditioned who have served thirty-five years is sixteen, making an aggregate of forty-two men who would be affected should the bill become a law at this time.

I have the honor to be, sir, very respectfully, your obedient servant,

E. D. TOWNSEND,
*Adjutant-General.*

Hon. S. B. MAXEY,
*United States Senate.*

Mr. MAXEY. I am instructed by a unanimous vote of the Committee on Military Affairs to offer the following amendments:

In section 1, line 3, after the word "thirty," strike out "consecutive."
In section 2, line 2, after the word "thirty-five," strike out "consecutive."

Mr. SAULSBURY. I think this bill had better lie over. It is a proposition to increase the pension-rolls of this country, which I think are now sufficiently large. We had better think about this matter, and not hastily pass a bill to add to the pension list without consideration.

Mr. MAXEY. The Committee on Military Affairs had this matter under consideration, and after full and mature consideration came to the conclusion that it was an act of simple justice to place the non-commissioned officers of the class described in the bill on the same footing as to the privilege of being retired after long and faithful service, and as to retired pay, with commissioned officers who may be on the retired list. This bill requires a man to have served thirty years as an enlisted man, honorably and faithfully, and the last fifteen years thereof as a non-commissioned officer, before he can be placed on the retired list on application to the President, or thirty-five years of such service will entitle him, at the discretion of the President, to be placed on that list. It seemed to the committee that this bill would remove any just ground of complaint that the law makes an invidious discrimination in favor of commissioned officers, and would be a strong incentive to the private soldier to do well, work for non-commissioned rank, and by faithful service retain it, and thus the Army would become more efficient.

The committee further believed that a law such as contemplated by the bill would secure the best material for the Army, and therefore be a wise investment. It does seem to me that I have never known a measure that met the full approbation of nearly all the committee more than this. I ask that a letter of Colonel N. H. Davis, an inspector-general, an officer whose duty it is to look into these matters, and who has been well known to me for thirty-eight years as a capable man and faithful, be read. I shall also ask, before the vote is taken, that the report of the committee be read, which I think will show to the Senate the wisdom of the measure.

Mr. SAULSBURY. Very well.

The Chief Clerk read as follows:

KENNEBEC ARSENAL, AUGUSTA, MAINE,
*March* 13, 1880.

MY DEAR MAXEY: Arrived here to-day on an inspection trip and have just read your very *good* bill for the retirement of old, infirm, and worthy non-commissioned officers.

It is needless for me to tell *you* that we have a number of most excellent non-commissioned officers in the Army, who have served their country faithfully in field and garrison, on frontier and other service, whose long and honorable service justly entitles them to that consideration proposed by your bill.

I have two now in mind who are eighty-three and seventy-one years old, and have served fifty-one and forty-three years, respectively.

I sincerely hope the bill will pass without any opposition.

Yours sincerely,

N. H. DAVIS,
*Inspector-General.*

Hon. S. B. MAXEY,
*United States Senate.*

Mr. SAULSBURY. I have no doubt the Committee on Military Affairs honestly think there ought to be a retired list for these officers at the same proportionate rate of pay allowed other officers. I do not know but that it is due to them that they should be placed on the same footing. But we have already a pension-list which is very large, and there are no civilians, I believe, however long they may have served the country, except the judges of the Supreme Court, who are retired upon pay or half pay or who have any pension awarded to them.

Mr. MAXEY. Will not the Senator from Delaware allow the report to be read; and I think I can convince him that the committee is right?

Mr. SAULSBURY. I am willing to hear the report of the committee. I have no doubt the report expresses the view which the Senator from Texas, a member of that committee, has expressed, that these gentlemen ought in justice to be put upon the same footing as officers of a higher grade. But we ought to remember that there is a vast number of people in this country who have worked just as hard as these gentlemen, who are not upon the retired list, who are not drawing pay, who are receiving no bounty and no pension from the Government. There are hundreds of thousands of men who pay the taxes that are to be awarded to these gentlemen, out of which their salaries are to be made up, who are just as worthy men, who have rendered as efficient service to the Government by the duties they have performed; and the proposition now is to increase your pension-rolls, to tax this class of men who are laboring for the very money that is put into the Treasury to be paid to these men in the form of public bounty. For one, I am interested in other people besides military men. I honor them in their calling and in the services they render to the country; but there are civilians who have rendered as valuable services to the country as any military men in it.

Walk the streets of this capital, and what do you see? There is scarcely a monument raised to the memory of any man unless he was a military man. Gentlemen who have served in the Supreme Court, who have served in the various civil relations of the Government, have not been honored with monuments; but all through this city, wherever you go, there are military monuments erected, educating the youth of the country to believe that the only road to fame and distinction is by going to the field and killing their fellow-men. I have no objection to doing honor to the brave men who fight the battles of the country, but I do not believe that they are any better men than those who serve the Government in a civil capacity, or any better men than those who stay at home and work for the money out of which their bounties and pensions are paid.

For one, I shall record my vote against any proposition to increase the pension laws of this country.

Mr. BURNSIDE. Mr. President——

The VICE-PRESIDENT. The morning hour has expired, and the Senate proceeds to the consideration of its unfinished business.

## UTE INDIANS IN COLORADO.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1509) to accept and ratify the agreement submitted by the confederated bands of Ute Indians in Colorado, for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriations for carrying out the same.

Mr. MORGAN. Mr. President, the bill under consideration deserves attention by the Senate. It will probably result, if this bill should become a law, in a demand upon the Treasury of the United States which will fall very little short of $4,000,000. It will also result in the first construction that has been put upon the powers of the Government of the United States in reference to the Indian tribes generally since the passage of the law of March 3, 1871, which I understand to have worked an entire revolution in the relations of the Indian tribes to the Government and the people of the United States.

Mr. DAVIS, of West Virginia. Do I understand the Senator to say that this bill now pending will require about $4,000,000, if carried into effect?

Mr. MORGAN. I think so. It will require considerably over three millions, I think about four millions.

Mr. DAVIS, of West Virginia. I had no idea that it appropriated such a sum of money.

Mr. MORGAN. The results that are to flow from it I think will reach to quite four millions. So that, considered in a purely financial view, it is a bill of very great importance, and ought to have the deliberate and careful attention of the Senate. I have not felt particular interest in the details of the bill, and I have not been disposed to scrutinize them very closely because there seemed to be a very great urgency on the part of the Secretary of the Interior and the Government generally to have some disposition made of the affairs of the Ute Indians which will preserve the peace of that section of the country and will also settle some difficult and dangerous questions of a most delicate character. I am prepared to adopt almost any measure, recommended by the Government, that will furnish any satisfactory solution of this problem, if, in the adoption of such a measure, I do not find that we are obstructed by what I conceive to be very serious constitutional difficulties. I do not know, under the existing state of the law, whether the Committee on Indian Affairs or any other committee of the Senate could present to us a bill which would be entirely in harmony, at the same time, with the Constitution of the United States and some of the existing statutes relating to Indian affairs.

But the question is now presented for the first time, and must now be settled, whether or not, in our future dealings with Indian tribes, we are to be regulated by the treaty-making powers of the Government, or whether we are to be controlled by a statute which, as I understand it, has deprived every Indian nation or tribe within our territories of all power and authority to make a treaty. The question as it presents itself to the Senate to-day is simply whether we shall adopt a measure, as an act of legislation, which cuts off an Indian tribe from the benefits of its capacity to make a treaty with the Government of the United States, and which takes from the Senate its jurisdiction over treaties.

Before I proceed to lay before the Senate the provisions of this so-called agreement which I think are in conflict either with the Con-

stitution of the United States or with the laws of the United States, I will read the statute of 1871, section 2079 of the Revised Statutes:

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.

Up to the time of the passage of this general statute I do not know of a single instance in which the Government of the United States by an act of Congress undertook to propose and to consummate any agreement with an Indian tribe. Up to that time, under the sanction of repeated decisions of the Supreme Court of the United States in reference to the treaty-making capacity of the Indians, our dealings with them had been conducted solely under the treaty-making power. The Indians had the protection (and so had we) of a two-thirds vote in the Senate of the United States as a necessary condition-precedent to the ratification of any agreement with them in their tribal character. The Indians from the time of the foundation of the United States Government, during the period of the confederation, and even before that time, had been recognized by the government of Great Britain and by the States of the American Union under the articles of confederation and by the Constitution of the United States and the practice of the Government under that Constitution as being states, nations, or tribes that had the capacity for entering into treaty engagements with the Government of the United States.

It does not make any difference how much further these powers may be extended; it makes no difference how much more may have been included within the purview of the definitions of these powers; it makes no difference whether the Indians being thus treaty-making powers had also an attitude of independence toward the United States Government which made them foreign powers. These considerations are not important in their bearing upon the question as to the treaty-making capacity of the tribes or nations of Indians. It was not until the passage of this act of March 3, 1871, that this relation between the Indian tribes and the United States was altered. But that statute made a clean sweep of the whole subject. There is no tribe of Indians (it makes no difference what the treaty stipulations may be between that tribe and the United States) that is exempted from this declaration, "that no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty."

What, Mr. President, is the power to make a treaty? What sort of attitude does a government hold toward its own citizens or its own constituency, that enables it to make a treaty? It holds the attitude of sovereignty toward such people. It holds within its grasp the power to impose upon the minority of the tribe the will of the governing power, although they may, on their part, withhold their assent to its acts. It is a pure power of government, and nothing else than a power of government. Whatever nation, or tribe, or community, or State, claiming the capacity to enter into a treaty, the mere fact of the recognition of that capacity carries along with it the acknowledgement on our part that it is a governing power within the limits of its own jurisdiction. We have acknowledged that these tribes are governing powers within the limits of their own jurisdiction; not merely for the purpose of making treaties with us, but also for the purpose of dispensing the administration of law, according to their own ideas of justice, between their own people, without question or demur on the part of the Government of the United States. The authorized powers of Indian tribes or nations have had, and up to this day, so far as I know, still have and exercise the right to dispose of life, liberty, and property according to their own views of law, and that too without responsibility to any government within the Union of American States. In like manner they dispose of rights of property; they dispose of title by inheritance; they punish all classes of crimes from the greatest to the least; they exercise within their own territorial limits, and in virtue of their own rightful jurisdiction, (by our consent and without any objection on our part,) all the powers of government in reference to their own people. It was because we had conceded to them such full powers of government; it was because we had always dealt with them as distinct peoples; it was because we had always treated with them as communities having the power to dispose of vast areas of land, and also to receive donations or releases of land from us, that we have grown up into the condition that we occupied at the time that this statute of 1871 was passed. Now I desire to call the attention of the Senate to that statute in connection with the inquiry whether or not it is a constitutional enactment.

Taking all the treaties we have made with the Indian tribes—for we have made treaties with every Indian tribe within the territory of the United States recognizing, in a certain sense and to a certain extent, their independence—taking in view all of our own action in regard to each and all of the tribes that have been within the territorial boundaries of the United States since the organization of this Government have we now the constitutional power, by an act of Congress, to refuse further to recognize the binding obligation of these treaties whereby we recognize them as tribal governments? Have we the right to strike them down at a single blow?

Mr. President, I have no doubt about our constitutional power to do this; for, notwithstanding all the treaty obligations we have entered into with the Indian tribes, and notwithstanding (as in the case of the Cherokee Indians and many others) we have guaranteed to them, in terms that are unmistakable, perpetual existence in their present state and condition of power and authority over their own country and their own people, they are subject states or peoples; and there is a power (a constitutional power) in the Government of the United States rising above all of these treaty stipulations which makes it necessary in some cases, and justifiable in all cases, where we abide by the rules of honor in our dealings with them, to declare that they shall no longer have the tribal power and tribal authority that they once had; that in so far as the existence of their independent tribal capacity is in conflict with the general purposes and policies of this Government, they must give way; that we must prevail and predominate, and that they must yield to our superior power, and must obey the Constitution and laws of the United States.

I say again that I have no doubt as to the constitutionality of that law. It has been held by the Supreme Court of the United States in frequent instances, and particularly in an instance which refers to an Indian treaty (one of our treaties with the Cherokees which I believe were about the most solemn engagements which were ever made) that the laws of Congress could abrogate a treaty; that the Congress of the United States need not set up any excuse to justify its conduct; that it is a matter of supreme and arbitrary power on our part, in virtue of which we may absolutely destroy and abrogate any treaty or any part of a treaty with any Indian tribe in this country. It is because our Supreme Court has thus decided that an act of Congress can repeal and revoke a treaty, and that no considerations of justice or honor can be pleaded against such an act when Congress sees proper to make it, that I come to the conclusion, which I am incapable of avoiding, that the statute to which I refer is a constitutional law.

But for the treaty obligation that we entered into with these various tribes it could not, it seems to me, be denied that we should have had the power at any time to have declared that these people had no such tribal capacity as enabled them to make a treaty with the Government of the United States, and it is only because of our own recognition of this capacity; it is only because of our own dealings with them in this capacity, that an argument has ever arisen on this subject.

I hold that statute of March 3, 1871, is constitutional; and that the bill which is presented here is in the teeth of the statute. This bill sets out in its first section a treaty engagement. The first section of this bill discloses nothing else than a treaty with the Ute Indians, with certain amendments proposed thereto, to be submitted to the Ute tribe for ratification. To illustrate this I will read a part of the agreement between the confederated tribe of the Ute Indians and the Government of the United States. This agreement sets out as follows:

The chiefs and head-men of the confederated bands of the Utes, now present in Washington, hereby promise and agree to procure the surrender, to the United States, for trial and punishment, if found guilty, of those members of their nation, not yet in the custody of the United States, who were implicated in the murder of United States Indian Agent N. C. Meeker and the employés at the White River Agency on the 29th day of September, 1879, and in case they do not themselves succeed in apprehending the said parties, presumably guilty of the above-mentioned crime, that they will not in any manner obstruct, but faithfully aid, any officers of the United States, directed by the proper authorities, to apprehend such presumably guilty parties.

The said chiefs and head-men of the confederated bands of Utes also agree and promise to use their best endeavors with their people to procure their consent to cede to the United States all the territory of the present Ute reservation in Colorado, except as hereinafter provided for their settlement.

The Southern Utes agree to remove to and settle upon the unoccupied agricultural lands on the La Plata River, in Colorado and New Mexico, and such unoccupied agricultural lands as may be found in that vicinity.

The Uncompahgre Utes agree to remove to and settle upon agricultural lands on Grand River, near the mouth of the Gunnison River, in Colorado, and such other unoccupied agricultural lands as may be found in that vicinity and in the Territory of Utah.

This agreement, then, provides for allotments in severalty of lands to be made to the heads of families and to other persons, in the Indian Territory. The second part of the agreement (the second article I suppose it should be called) provides:

That so soon as the consent of the several tribes of the Ute Nation shall have been obtained to the provisions of this agreement, the President will cause to be distributed among them in cash the sum of $60,000 of annuities now due and provided for, and so much more as Congress may appropriate for that purpose.

Again:

Third. That in consideration of the cession of territory to be made by the said confederated bands of the Ute Nation, the United States, in addition to the annuities and sums for provisions and clothing stipulated and provided for in existing treaties and laws, agrees to set apart and hold, as a perpetual trust for the said Ute Indians, a sum of money, or its equivalent in bonds, which shall be sufficient to produce the sum of $50,000 per annum, which sum of $50,000 shall be distributed *per capita* among them annually forever.

Mr. COKE. I call the attention of the Senator to the fact that $1,250,000 is the capital sum which may be paid over at any time after twenty-five years, and I ask him to explain how it is that he says the consideration for the cession will cost the Government $4,000,000.

Mr. MORGAN. When I come to that part of the bill which relates to the appropriation of money, I will show how I think it is that we shall never get rid of this subject with an expenditure of less than $4,000,000. Of course I speak of bonds to be issued or bought as money.

The fourth article of the agreement provides for the removal of different bands of Utes to the respective portions of territory selected for them under the provisions of this agreement. Then comes the fifth article, as follows:

Fifth. All provisions of the treaty of March 2, 1868, and the act of Congress approved April 29, 1874, not altered by this agreement, shall continue in force, and the following words from article 3 of said act, namely, "The United States agrees to set apart and hold, as a perpetual trust for the Ute Indians, a sum of money or its equivalent in bonds, which shall be sufficient to produce the sum of $25,000 per annum, which sum of $25,000 per annum shall be disbursed or invested at the discretion of the President, or as he may direct, for the use and benefit of the Ute Indians forever," are hereby expressly reaffirmed.

The sixth article provides:

That the commissioners above mentioned shall ascertain what improvements have been made by any member or members of the Ute Nation upon any part of the reservation in Colorado to be ceded to the United States as above, and that payment in cash shall be made to the individuals having made and owning such improvements, upon a fair and liberal valuation of the same by the said commission, taking into consideration the labor bestowed upon the land.

This bill provides for certain amendments to the agreement, one of which requires the White River Ute Indians to provide certain annual compensation to certain named persons who have received injury from that band of Indians. Another provision is:

That three-fourths of the adult male members of said confederated bands shall agree to and sign said agreement, upon presentation of the same to them, in open council, in the manner hereinafter provided.

I have run over these different provisions of this bill for the purpose of bringing out this fact, that this is an agreement between the Government of the United States on the one part and the government of the Ute tribe of Indians on the other. If that proposition is conceded—that it is an agreement between two governments—then it must be conceded that whatever we do in reference to the consummation of this contract we must do under and in virtue of our own capacity as a treaty-making power. Merely because we have declared in a statute that hereafter the Indian tribes shall have no capacity to make treaties does not prevent us, it seems, or the Secretary of the Interior, from engaging in treaty-making with them.

How did this proposition ever come before the Congress of the United States? First, by an engagement entered into between certain chiefs and head-men of the Ute tribe of Indians—the representatives of a nation, a people, so described and so treated—and the Government of the United States, represented by the Secretary of the Interior, whereby they agreed to certain stipulations which were not to become binding from the moment of the agreement or binding upon the parties to the agreement, individually and personally; which were not to have the force and effect of a binding contract or agreement either upon the Government of the United States or upon any part of the Ute tribe until it had been submitted by commissioners, to be appointed by the Government of the United States, to the Ute tribe, in open council, and had received the actual signatures and sanction of three-fourths of the adult male members of that tribe.

Mr. President, before the passage of the act of March 3, 1871, there would have been no doubt, I think, upon the mind of any Senator here that a proposition of the sort presented in this bill coming to the Congress of the United States would be considered as being addressed solely to the treaty-making power of the Government, and that so far as the consummation of that contract is concerned it could not under our own Constitution be achieved or accomplished otherwise than by the exercise of the treaty-making power upon it.

Mr. ALLISON. Shall I disturb the Senator if I ask some questions on this point?

Mr. MORGAN. Certainly not.

Mr. ALLISON. I understand the Senator to have argued that the law of 1871 was a constitutional and proper law. That provides that all engagements or treaties then in force shall remain as though that law had not passed, and all the obligations under those treaties continue. Now, we have a treaty with the Ute tribe of Indians, made in 1868, by which we set apart to them a certain territory and by which we agreed that white men should not trespass on that territory, and that they should not have that territory alienated unless three-fourths of the adult male population should agree to it. Now, how can we treat or make an agreement with these Ute Indians if not in substantially the form here proposed? We have already agreed that they shall hold this property without disturbance unless they themselves agree to alienate it. I should be glad to have the Senator explain what form of agreement or what method he would adopt under his construction of the statute.

Mr. MORGAN. I think this bill should be recommitted in order that the Senator from Iowa may have a full opportunity of studying that very proposition. I do not think he has met that proposition in this bill.

Mr. ALLISON. If we have not, I should be very glad to have the light of the Senator from Alabama thrown on that very point. We have done the best we can in reference to this agreement, and believe that under the statute we have a right to make it. Now the Senator says we cannot make such an agreement. I want to know by what process we can secure from these Ute Indians the eleven million acres of land which our people desire to acquire?

Mr. MORGAN. I can very easily cite the Senator an instance in our own history of a process that was resorted to for the government of the people and for the disposal of all their rights, and yet it was said to be constitutional, and those people were the people of a State, my State, was subjected to military rule after they had been at war. They were subjected to that rule, it was said, because they had been at war, because they had violated their obligations to the people of the United States, and thereupon a constitution was submitted to them and they refused to adopt it, and it was adopted by Congress, and thereupon other steps were taken, and they were called measures of reconstruction to which we had to give our assent on the condition of our coming here to be represented upon either floor of Congress; and thereupon the Government of the United States proceeded in the exercise of what I have no doubt the Senator will concede to be a constitutional power to reconstruct us, and to impose these conditions and terms upon us.

Now it seems the Utes have been at war, or some of the Utes have been at war. The honorable Senator from Colorado [Mr. TELLER] insists that there were numbers of every one of the Ute bands in the attack upon Thornburgh on the White River, and that virtually all of the Ute tribe, whatever band they belonged to, were at war with the Government of the United States. I understand also that it is a principle of law, a principle of constitutional law, which has received its sanction in many notable instances in the history of the Government of the United States, that when war has existed between a State and the United States or between an Indian tribe and the United States and when the United States has become the conquering power, they have the right, independent of any treaty obligations or stipulations theretofore existing, to impose upon the conquered people such conditions as they see proper as the terms on which peace shall be established.

But I do not resort to that argument alone for the purpose of sustaining the position that I take here to-day, or for the purpose of answering the inquiry put to me by the honorable Senator from Iowa. I maintain that it has always been a principle of government, as between the United States and the Indian tribes, that notwithstanding we, by treaty, recognize their autonomy, their tribal authority within their own territory, and their power to regulate their own affairs in their own way in reference to their own people; notwithstanding we have given this sort of recognition to the Indian tribes, in many cases and along with it have recognized their treaty-making capacity also, they have not got as to the United States Government any higher power than that of making engagements with us; and that we can repeal, at any time that we choose, any part of a treaty, we can abrogate it whenever we see proper to do it. And whenever the public policy of the country indicates it to be a duty on our part to abrogate a treaty, it is our right and privilege to do so.

But it must not be inferred from what I have just now remarked that I believe we can go further than that and after the abrogation of the treaty destroy rights of property that had vested in individual people while the treaty was in force and under its provisions. There is a difference between breaking a treaty with a tribe, overriding a treaty, abrogating a treaty, (so far as it affects the tribe with whom you make it,) and affecting the rights of individuals composing the membership of that tribe. While I hold that that power is constitutional, and that we have a perfect right to say to every Indian tribe in the United States that hereafter you shall have no capacity to make a treaty of any kind; that you shall be subjected to the laws of the United States precisely as the white people and negroes and all other classes of people in the Territories are; yet it is our duty, and I do not know but it would be held by the courts to be our constitutional obligation also, to protect in every possible way every individual and every personal right of liberty or property that had arisen in favor of any individual under the provisions of such treaties.

The Senator from Iowa quotes that part of the language of the statute which relates to the ratification of existing treaties. I wish that it was a ratification. I would be pleased to-day if I could read from this statute an actual ratification of all rights that had inured to the Indians in virtue of all the treaty stipulations between the Government and them; but it says:

No obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.

No restriction upon us as to what we may do afterward about it; but the act does not invalidate or impair the treaties; and that is as far as Congress chose to go on that occasion. I suppose those words were inserted out of abundant caution.

The proposition that I undertake to state and to discuss in connection with the suggestion made by the honorable Senator from Iowa is simply this: that notwithstanding that provision in the treaty of 1868 with the Ute tribe of Indians which provides that no alteration shall be made in that treaty without the consent of three-fourths of the adult male members of that tribe, the Government of the United States has an entire right to abrogate that article of the treaty until it comes to the point of touching the individual, personal rights of some man who has acquired rights under it. Now, while we are on that subject I believe I had just as well call the attention of the honorable Senator to the fact that the committee seem to have overlooked two portions of that treaty negotiated with the Ute Indians. The Senator will find in the sixteenth article of the treaty, if he considers it something which ought to be observed and carried into effect a fatal objection, I think, to this bill.

ART. 16. No treaty for the cession of any portion or part of the reservation

herein described, which may be held in common, shall be of any validity or force as against the said Indians—

That means the tribe of course—

unless executed and signed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him, as provided in article 7 of this treaty.

Mr. ALLISON. On the contrary, as I understand, we have distinctly provided in this agreement for the protection of the rights of every Indian who has taken land in severalty.

Mr. MORGAN. If there is any provision of that sort, it has escaped my attention.

Mr. ALLISON. I will undertake to point out the provision. We expressly provide that where individual Indians have made improvements on lands those improvements shall be paid for.

Mr. MORGAN. Oh, yes; it says "paid for;" that is to say, you take improvements made and pay for them; but the treaty says you cannot do that——

Mr. COKE. The fact is that none of them have taken lands under that treaty.

Mr. MORGAN. I expected to hear that observation made. I do not know how the fact is.

Mr. ALLISON. None except Ouray, who has already signed the agreement.

Mr. MORGAN. He does not sign it as Ouray, but as chief of the tribe, as representative of the government, and not as an individual. No one could hold him personally on that contract, whether ratified or not ratified.

Mr. WILLIAMS. Will the Senator allow me to ask whether any Indian has got a patent?

Mr. MORGAN. No Indian has got a patent, I suppose, but the title by treaty is just as good as by patent. The title by treaty is a title by the supreme law of the land, and a patent is a mere evidence, a mere muniment of title, and is not the substance of title in any respect.

Mr. WILLIAMS. Let me say to the Senator that there is not a statute or treaty conveying to one of these Indians the fee-simple title to anything. He has a possessory right, and a possessory right only, by the treaty. It is provided that he shall be paid a liberal compensation for any individual improvements on the land.

Mr. MORGAN. This bill, Mr. President, if it becomes a law, to that extent repeals that treaty, breaks it down. I do not deny that we have the constitutional right to do it so far as the tribe of Indians is concerned, but I do think I have a right to deny it so far as the individual Indians are concerned, and not merely in reference to those who have made selections of land but in reference to those who may choose to make selections, because there is a provision in this treaty that every part of it, every clause in it, shall be a perpetual engagement between the Government of the United States and this Indian tribe; and under such perpetual engagement an Indian to-day might go to the authorized agent of the Government of the United States and demand a survey of his location and a certificate of his residence upon it under his claim based on this treaty, and who shall prevent him from the enjoyment of that? And after he has made his location, if no survey is made, who can deprive him of his land under the Constitution and laws of the United States? What judge who has sworn to obey the laws and the Constitution of the United States will remove that man from his reservation and turn him off and send him abroad to some other country that he does not want to go to in compliance with a treaty made by his tribe.

I recollect a case very well in which I happened to have some participation after I got to be a man of thirty or thirty-five years of age, having known a poor old Indian woman who was plaintiff in the action when I was a little boy, perhaps not more than six or seven years of age. Sally Ladiga, under the Creek treaty of 1832, claimed to be the head of a family, and as such to be entitled to a reservation under the treaty; very much like a reservation under this treaty, except that the lands there had been surveyed. She went to the certifying agent of the United States Government and carried her daughter Lethoe and her little adopted child Arkeechee and demanded her reservation, and he turned her aside. The Government of the United States put that land up at public sale under the statute and sold it, got the money for it, and issued a patent to the purchaser. Sally Ladiga brought suit in the State courts of Alabama, (and the case afterward came to the Supreme Court of the United States, and her title was confirmed,) she alleging that she had a right to that land because she was the head of a family and had made her demand for a certain selection pointed out to the agent. The Supreme Court of the United States sustained her title as against the patent of the United States Government and against the law under which it was sold, showing that those judges who have respect for the rights of people under treaty obligations usually find some way of executing, in favor even of Indians, those rights guaranteed to individuals in this country under our own Constitution and laws. The treaty says:

And no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him, as provided in article 7 of this treaty.

The Ute Indian has got all coming time, as long as he lives, to demand a survey and make a location upon the land, and to demand a certificate, and then he can hold possession of it against all comers. On that title that Indian, when thus located, could sustain an action of ejectment against any person claiming under a patent from the United States Government precisely as Sally Ladiga's title enabled her to sustain her right to the land in spite of the patent issued under an act of Congress.

This treaty, made by the Secretary of the Interior and Ouray, consummated and accomplished or to be accomplished between these two high-contracting powers, disregards the seventh article of the treaty of 1868, and deprives the Ute Indians in that Territory of the right to locate upon these lands, when it has been already conclusively provided in the treaty that the tribe shall have no power over that question whatever. The tribe can cede the right of possession of the lands held in common by the tribe, provided two-thirds of the Ute Indians shall subscribe a paper, after they have been informed duly of its contents, agreeing to such a cession. That is as far as the tribe can go.

Mr. PENDLETON. If it is agreeable to the Senator, I should like to ask him, only for the purpose of understanding his argument, whether he holds that after the assent of the tribe is given by the signature of three-fourths of the male adults, and after the passage of this law, yet there would exist these rights on the part of individual Indians to enter according to the provisions of the treaty of 1868 upon land and have it in severalty?

Mr. MORGAN. I think there would be; but a case has arisen in the Supreme Court of the United States, and has been there decided, which holds that where a person belonging to a tribe of Indians undertakes to show a state of facts which would protect his title against the act of his tribe, he is not permitted to question the authority of that act.

Mr. PENDLETON. I am not asking as to individual Indians who have acquired the right of possession up to this time and up to the time when this agreement shall be ratified by the Indians, if it ever shall be; but I am asking if the opinion of the Senator is that, after the ratification of the agreement and after the passage of this law, the Indians would still have the right to acquire lands under the provisions of the treaty of 1868?

Mr. MORGAN. I have no doubt they would have the moral right to do it; unquestionably a treaty right to it; but I do not believe they could enforce it in a court of justice for the reason that they would be held bound conclusively by the tribal agreement; and that is the injustice of the whole proceeding. You are binding men to give up property under a treaty to which they are not parties and when a previous treaty says they shall not be bound by it.

Mr. PENDLETON. But they have not taken advantage of the previous treaty, as I understand.

Mr. MORGAN. Neither has the Government of the United States ever given them an opportunity to take advantage of it. The Government of the United States has not opened its books of land entries in the Ute territory. It has not gone there for the purpose of making registration of these lands, as the respective individual Indians might claim them. The Government of the United States has been derelict on this subject. And now I hope the argument will not be made in the Senate of the United States, that because we furnished them with no opportunity to enter on the land, as we were obliged to do under the provisions of the treaty, therefore they should be required to have made a demand for personal location. It may be ten years, it is said, that the Indians have failed to make this demand; it might be fifty, and the longer the worse it will be, because it will only be the prolongation of a great wrong on the part of the Government of the United States to these Indians. It is the fault of the Government and not of the Indian if he has no opportunity to enter upon his lands as owner.

Mr. EATON. Will my friend permit me? In the instance which he quoted in Alabama, I suppose the Government had taken such steps that individual members of the tribe could locate, and therefore the woman that he spoke of as the head of a family gained her cause in the United States courts.

Mr. MORGAN. The United States Government had for the purpose what was called a certifying agent.

Mr. EATON. And here they provided none.

Mr. MORGAN. They have provided for agents, but the agents have not been provided with proper instructions or authority, so far as I know.

Mr. DAWES. If the Senator will allow me to get a little light in this colloquy without interrupting him too much, I should like to inquire how it is possible for the assent of any member of that tribe, except those who sign that paper, to be obtained under existing statutes?

Mr. MORGAN. I do not know of any statute under which it could be obtained.

Mr. DAWES. Does not the statute prohibit it? Does not the statute the Senator has cited prohibit the making of any treaty? Any individual can make an agreement, if he please, and the individuals who sign that agreement may be bound by it; but I understood the Senator from Ohio to put his question upon the ground that the assent of the tribe had been obtained to the agreement through their chiefs; in other words, that the chiefs representing a tribe had made a treaty with the United States, which I understand to be unlawful.

Mr. PENDLETON. No; the Senator misunderstood me. I do not claim that this contract or convention, or whatever it may be called,

can be of any binding force by reason of the signatures of the headmen, the chiefs of the tribe; but in the original treaty there is a provision that certain changes may be made if three-fourths of the adult male members of the tribe shall give their consent. I think that is no more in derogation of the law of 1871 than it would be to allow a corporation, an association of any kind, acting by a majority of its members or its board of directors, to give their assent.

Mr. DAWES. If the Senator from Alabama is not interrupted too much, let me ask how does the Senator from Ohio propose to get the assent of three-fourths of the tribe—by what process indicated in the bill?

Mr. PENDLETON. The only process by which it can be done is to see the members of the tribe and get their signatures, as the law and the treaty provide.

Mr. DAWES. How does the proposed bill provide?

Mr. PENDLETON. The proposed convention is that the commissioners to be appointed under it shall visit that Territory and secure the assent, if possible, of these people. If it is not given, the treaty or the convention falls. The commissioners are appointed for that purpose among others.

Mr. MORGAN. The questions with which I have been interrupted have led me a little way from the line of my argument, but I shall return to it. I took the ground that the treaty of November 6, 1868, secured certain rights to individual Indians in that Territory, and prohibited the Ute tribe from ever afterward disposing of those rights by a treaty; that there were certain other rights secured to the Indians in common, such as the common occupancy of a broad area of territory for hunting purposes; and that the treaty of 1868 provided that those rights in common might be disposed of by the consent of three-fourths of the adult male Indians belonging to the tribe.

The questions which have been asked me suggest the inquiry to my own mind, How are you going to deal with these people, since by a provision of law we are excluded from the right to enter upon any treaty engagements with them? In what attitude are they left by that provision of law? I admit that on the first view of the subject it is a difficult question to answer; but it seems to me that there can be but one solution of it, which is that, the tribal relations having been destroyed by an act of Congress, each individual Indian is left subject to the impress of the laws of Congress and the Constitution of the United States so far as they may affect his rights, his liberties, or his interests; that hereafter we cannnot treat with these people as tribes, we cannot consider them as tribes, but we must consider them as people, to say the least of it, whether citizens or not, within the jurisdiction of the United States, subject absolutely to the law-making power of this country, our ability to pass laws with reference to them being restrained only by the Constitution of the United States.

I do not understand that it was the intention of Congress in the passage of that law to destroy the tribal relations as between the Indians entirely. It broke down their treaty-making power; it broke down all idea of independence; it broke down all idea of separate tribal organization, except so far as the Congress of the United States in the government of the Indians might see proper to adopt tribal laws, tribal institutions, tribal relations, tribal traditions and customs as a means of governing those people.

I remember very well when the people of the State of Alabama, having a supreme court, a governor, and all the machinery of a civilized government, were held to be subject to military power, when the whole civil establishment of the State of Alabama was regarded as a mere means or agency within the reach and power of the Federal Government for the control of the people of that State. I understand that the relations which we occupy now to the Indian tribes bear some analogy to the state of case under which Alabama formerly existed, and that the Congress of the United States in denying that there is any legal tribal government in the Indian countries has done no more than it did in reference to Alabama when it denied that there was any legal State government in Alabama. There being, therefore, no legal tribal government there, no government possessing the powers of independence and the right to govern without our consent, it must necessarily result that the laws of the United States must be enforced there, and that the Government of the United States has the right to use all the tribal relations, traditions, usages, and laws of that people for the purpose of administering justice between them according to their own understanding of what justice is; and that that is the true situation to-day.

Now, what would be the result from this? It would be that when we start out to legislate in regard to these people we should not first invite Ouray and those men (some of whom I understand were involved in the very deepest dyes of criminality in reference to the outrages upon the Meeker family and others at the agency) to come here to enter into contracts with us, but we would say to them: "We have looked at your condition, we understand your wants and necessities; we are aware of our own powers and our own duties, and whatever laws we choose to enact with reference to you shall emanate solely from the authority of the United States and shall become laws without your consent." That is what I understand to be the situation, and that is what I understand to be the rightful method of legislation in regard to these and all other tribes of Indians.

But, Mr. President, do not understand me as intimating that while I would enforce the laws of the United States in this sense and in this manner upon the Indian tribes I would not respect every right to the last possible demand that they could justly make which had been secured to them heretofore by the treaties that we have solemnly entered into with them. I would adopt, for myself at least, that higher law which I consider to be the very best for governments and men:

> But where ye feel your honors grip,
> Let that aye be your border.

No Indian should ever have a right to complain of the Government that we had violated the obligation of a treaty; and as we have stricken down his power to treat with us we should consider ourselves still the more highly obligated to respect all the rights that he could claim under existing treaties.

In dealing with these Ute Indians I do not know what might be the best policy to be observed with reference to the preservation of that country from the war which the Secretary of the Interior thinks is threatened there, and will occur if this bill is not passed; but it occurs to me that the Committee on Indian Affairs should have brought in a bill here, predicated solely upon the power of the United States Government, prescribing to these Indians what they should do, where they should go, and how long they should stay, and that they should take their lands in severalty. If I found that under the obligations of this treaty there were men who had rights secured to them as individuals, rights that had already vested, whether in possession or not, I would respect all those rights, but I would undertake to enforce upon them, simply and purely by the authority of the Government of the United States, our will and pleasure as to what they should do. I believe that if the Government of the United States had exhibited toward those Indian tribes that sort of fixedness of purpose, that sort of spirit which would deal with them at once with justice and with firmness, we should not have had the difficulties that have occurred, and that we should not in the future be subjected to the difficulties that the Secretary of the Interior seems to see in every movement that is to the reverse of his own opinions and conclusions about the proper course to be pursued.

I desire to call attention to sections 4 and 7 of the substitute, which are not at all referred to in the agreement; they are supplemental to the agreement, and intended, I suppose, to carry it into effect, although there is no reference whatever made to it. Section 4 provides—

> That upon the completion of said allotments and the patenting of the lands to said allottees, each and every of the said Indians shall be subject to the provisions of section 1977 of the Revised Statutes and to the laws, both civil and criminal, of the State or Territory in which they may reside, with the right to sue and be sued in the courts thereof: *Provided*, That neither their lands nor personal property shall be subject to taxation or execution upon the judgment, order, or decree of any court for the period named in the above-recited agreement.

Here it is provided that each individual Indian is to become subject to the provisions of section 1977 of the Revised Statutes and to the laws, both civil and criminal, of the State or Territory in which he may reside, conditioned upon the event of receiving a patent confirming an allotment of land to him. It occurs to me that this is rather a peculiar way of applying the laws of the country to the Indians. A Ute Indian is taken from his present reservation; he is carried down to the La Plata River; he there makes his selection of land; he enters upon the business of agriculture; he does the best he can with it; he may be more or less prosperous. After awhile the Indian agent or the Government agent, or the commissioner at that point, sees proper to issue to him a title for his allotment, and thereupon that one solitary Ute Indian becomes liable thoroughly to the laws of the State or the Territory in which he may be found. All the rest of his band around him are still subject to the tribal laws. I understand that by this bill tribal relation is continued until the Indians, one by one, are thus segregated from the mass and individualized as citizens by reason of receiving land titles. If they are treated in that way, when is it that an Indian acquires this sort of citizenship? When does he leave his tribe? When does its authority over him cease, or in what condition is he from the time this proposed act is passed up to the time that he receives his allotment of land? I have heard a good deal about bad Indians, but I think an Indian thus treated would be the worst Indian in the world, because he would have no law over him, either tribal or otherwise, if he did not remain under his tribal laws, until he was transferred to the jurisdiction of the State or Territory by the fact of the issuance of a patent to him. I do not think that the Congress of the United States ought to prescribe a rule by which a man is to become a citizen of a Territory or State, and subject to its laws, to be dependent upon the mere question of his land titles, or upon the date when somebody will issue a patent to him for his land. It would be very much better to preserve some line of policy that we can stand by, not with reference to these Indians alone, but with reference to all Indians upon a question of this kind.

Section 7 provides—

> That the provisions of title 28 of the Revised Statutes shall extend over and be applicable to every allotment of land provided for in the foregoing agreement, and to the administration of the affairs of said Indians, so far as said provisions can be made applicable thereto.

Title 28 of the Revised Statutes contains a great number of provisions which have been worked out through very many laborious sessions of Congress, and have been dictated by the experience of the country from time to time, with reference to the management and control of the wild bands of Indians in the country, and, indeed,

all other bands that are semi-civilized, or that, like the Cherokees, are really a civilized people. All of this entire title is made applicable now to what? Not to the Ute Indians as a tribe——

Mr. COKE. Will the Senator allow me to interrupt him?

Mr. MORGAN. Yes, sir.

Mr. COKE. None of it is made applicable unless it is applicable.

Mr. MORGAN. "None of it is made applicable unless it is applicable." That means that none of it is applicable, and therefore none of it is made applicable. Who is to decide? It leaves the Indian in a very doubtful state of responsibility.

Mr. COKE. It leaves the Secretary of the Interior to determine whether or not any portion of the act is applicable, and, if so, what portion to those Indians under their new condition.

Mr. MORGAN. That is precisely what I understand it to mean, and that is the very objection I have got to it, for I do not understand that the Secretary of the Interior or any other officer of the United States Government has a right of individual and personal government over every individual Indian in the United States. It is giving to him more power than the Constitution warrants us in giving to him. It is leaving him with a roving commission, letters of marque and reprisal under which he can govern the Indians according to his own will and pleasure and despoil them according to his cupidity. I will read the seventh section again:

> That the provisions of title 28 of the Revised Statutes shall extend over and be applicable to every allotment of land provided for in the foregoing agreement, and to the administration of the affairs of said Indians, so far as said provisions can be made applicable thereto.

I think a Secretary of the Interior would not have much difficulty, if he desired to do it, in finding out that any one or all of these numerous sections of this title were applicable thereto; that is, to each Indian. Let us see how many there are. In title 28 there are over one hundred and twenty sections that are left thus entirely in doubt as to whether they are applicable or not, and their applicability is to be decided by the Secretary of the Interior in reference to every individual Indian, because we see that the provisions of this title are not extended over an area of country, not over a general community, but over each allotment of land. As fast as an Indian girl who is eighteen years of age and upward takes an eighty-acre tract of land she will become subject to the will and pleasure of the Interior Department, and as fast as the head of a family gets his quarter section, with his grazing lands added, he will become subject, while those who have not received the allotments will not be subject. An Indian who has not received his land would not be subject to the provisions of the law, while an Indian who had received his allotment would be subject, because the law would at once extend over that allotment, and we should have a law of the United States which now pervades the entire Indian tribe cut up into quarter sections and eighty-acre tracts. Like a bed-quilt it would be here a piece of one color and there a piece of another color. That is the condition that the law is to be left in, as I understand the seventh section of the bill.

Mr. WILLIAMS. Will the Senator allow me to interrupt him?

Mr. MORGAN. Yes, sir.

Mr. WILLIAMS. The commissioners are to be charged with the duty not only of removing the Indians, but the lands are all to be surveyed and allotted. They are to take the census of these Indians and allot to the head of a family, to a minor, or other person his particular portion of land, and the moment that is done it is closed up. As soon as the commissioners complete their work the Indians all come under the provisions of the law, and every individual of them, without a single exception, will have the protection of the law over him, and it is not to be continuous and progressive.

Mr. MORGAN. The only saving clause I can see in reference to the seventh section is that the Utes are not required to adopt it. I am satisfied if Congress should enact it they would never adopt it. The clauses of this treaty are made binding upon them without reference to that section. If may be that these Indians would have the allotments made to them within a reasonable period of time after they got down there, or at least after the commissioners have enjoyed their *otium cum dignitate* there at $10 a day with all expenses paid for a length of time quite suited to their convenience. The commissioners are not required to perform this work within any specified time at all, and they are to be paid very liberally for being engaged at their leisure in the discharge of official duties. I dare say they will enjoy a great deal of leisure under the provisions of this bill, so that after a while the allotment will be made and here we will have a part of the same territory over which about one hundred and thirty different acts of Congress will prevail, and in the vacant spaces about there will be no such law. The jurisdiction of the United States to enforce its laws upon any part of this Territory depends upon the allotment and is confined to the allotment, so that we will find, as the honorable Senator from Massachusetts remarked the other day, "little Alsatias" all through the Indian Territory over which there will be a certain peculiar jurisdiction of the United States Government, and over other portions there will be no jurisdiction at all, as I understand the measure proposed.

To come to the real fact of this case, this is nothing but a treaty with an act of Congress to carry it into effect, provided the Ute Indians will adopt it. If you should treat it as an act of Congress it would certainly be the most singular act of Congress that has ever been enacted by this body, because it would be an act of Congress to take effect when three-fourths of the Ute Indians give their consent to it. There is not one single provision in the bill except the appointment of the commissioners and the provision made for paying them their salaries that would take effect as matter of law until three-fourths of the Ute Indians consent thereto. I do not understand that this is the province of an act of Congress. I do not understand that we should subject our acts to the ratification and confirmation of the persons to whom they are to apply. I have heard of laws sometimes being submitted to the people of the States to be voted upon by them, and to go into effect after the people should have given their sanction to the laws through the ballot-box. I never did believe that it was a proper system of legislation, and I have much doubt about its constitutionality, for I think that when a law leaves this body and leaves the President of the United States, having passed through all the constitutional requirements with reference to its enactment, it goes out as a perfect and an entire law without reference to the question whether it should be afterward adopted and ratified by somebody. It was not the intent or purpose, I dare say, of the committee to make all the provisions of this measure in the nature of an enactment by the Congress of the United States, for if they had that intent and purpose they would have made the act final at the time it received the signature of the President, and never would have referred it to the Ute Indians to see whether they would adopt it. Hence I do not regard it as a proposition to enact a law. I regard this bill as being in part a proposition that we should ratify a treaty and in part an enactment to carry that treaty into effect, and to make such other provisions with reference to the treaty and to the Indians who are to be affected by it as will make the provisions of the statute and the treaty altogether effectual. It is a combination of the two, into which the committee have been driven. I know by the fact that they found, as they supposed, the Senate of the United States deprived by statute of its right of participation as a part of the treaty-making power.

Now, we have got this difficulty to get rid of one way or the other. We have got to take the ground that this is a treaty made with a party competent to contract with us, and that as such it must be referred to the Senate in executive session for ratification or amendment, or else we must take the ground that this is a statute from beginning to end, and a statute that is to be made effectual upon the ratification of three-fourths of the Ute tribes of Indians. It seems to me that one of these grounds is absolutely unavoidable, and I believe that in the existing state of legislation in the United States we cannot take either ground; for I repeat that I believe the act of the 3d of March, 1871, was an effectual act to deprive Indian tribes of their capacity to make treaties, and therefore no agreement or contract can come from them under the laws of the United States through the instrumentality or agency of any department of the Government which we are bound or have the right to consider as a treaty.

Believing that that law is constitutional, that the Indian tribes are thereby deprived of their treaty-making capacity, then we are thrown back simply upon our legislative powers and upon no other; and when we undertake to exert those powers we should exert them as a Congress, and not submit our enactments to the ratification of a band of Indians described by the honorable Senator from Colorado [Mr. TELLER] the other day as being the wildest and most savage tribe anywhere within the Territories of the United States.

I therefore believe that this subject ought to be recommitted. The Senate of the United States ought to take ground here to-day upon this question in the one direction or the other. The Senate ought either to say that this is a treaty, that the act which prohibits us to consider the Ute Indians as being no longer capacitated to make a treaty is void, and that we must refer this to the constitutional treaty-making power, or else the Senate ought to say this is no treaty but an act of Congress, and being such it is not in proper form; it contains provisions which it should not contain; it goes upon the idea that the Indians have the right to ratify and confirm our enactments or reject them at their will and pleasure, and remain where they are, in spite of the will of Congress to the contrary.

Mr. President, I have not found it necessary to read the many authorities which I had prepared myself with to-day, because none of the propositions of law to which I have adverted have been denied or questioned by any Senator upon the floor. I therefore content myself with the assumption that the propositions of law as I have stated them, and as they have come from the Supreme Court of the United States, have been correctly stated. If this be so, then it seems to me that there is but one duty left for us in regard to these Ute Indians, and that is to pass a law which in effect will carry into operation the rights of the Indians in harmony with the treaty of 1868. I would say this to them: Whereas they have the right under that treaty to engage in agricultural pursuits, and to locate themselves upon particular tracts of land; whereas that treaty contains great encouragement in that direction; whereas it is evident that that was one of the most important purposes of the treaty, that that was the leading object of that treaty and of all the stipulations that were made in it; whereas we have given you this opportunity to thus make selections of land for this purpose now you must make these selections. Your tribal relation is destroyed by an act of Congress. You are now subject to the laws of the United States precisely as if you had never belonged to a tribe. We have declared that you are no longer an independent nation or power either within our territorial limits, or to be treated as a foreign power. We have fixed your status.

You are subject to the laws of the United States precisely as all other people of the United States are subject to the laws. You must therefore carry this treaty into effect by the selection of these reservations. Locate yourselves upon the lands where you are, anywhere within the broad limits of this Territory, and after you have done that we will place ourselves in the stead of the government that we have destroyed by this act of Congress. We will assume its trusts and exercise its powers with reference to you. We will enact laws by which you are to be governed. We will, if you choose, employ your tribal traditions and laws and customs and agencies to administer what you call or consider justice between yourselves until we choose to supplant them with some better system. We will, in all things, take the government of your tribes. Having abolished your government, having destroyed the tribal capacity of your people, having dethroned your rulers, we will now assume ourselves the execution of all of these trusts, and you shall have to the last hair's breadth the full amount of your demands honestly and justly considered. But the value of your joint use and occupation of this great territory we will fund in bonds and give you the interest upon it. We will take the proceeds of the sales of these lands after you have been provided with a sufficient fund to help you to become self-supporting, and hand the balance over to you in perpetuity, giving you the proceeds of the very lands that you have owned in common under your treaties. If, as the Secretary of the Interior says, one square mile of your territory on which you now live may be worth the whole sum of money that we expect to pay you for it, if that be true under the treaty you are entitled to it, and you shall have it. Whatever rights your people have in all this territory, whatever profits may arise in their behalf under a liberal interpretation of the treaty, we, being trustees and standing in the place of these men whose authority we have dethroned, we will undertake to execute this trust to the last particular, and in every respect, and you shall have no right to complain of us.

It seems to me that it is easy enough, and that the door now stands wide open for the pursuit of a policy like this. It seems to me it would be far better to let the Indians understand that we have dethroned these rulers, that men like Ouray and many others among them who are mere tyrants and despots, and who have ruled these Indians against their will, and with an arbitrary and a cruel hand, have no longer this power to wreck and destroy them in reference to their property rights; for there are not in this whole world more absolute despotisms than exist between the rulers of the Indian tribes and the Indians themselves. There are thousands and tens of thousands of the Indians who, if they had dared to break loose from their rulers, would have become free thinkers and independent, honest laboring-men; but these men who have played lord and master over their tribes, whose will is a law to every individual Indian, who can impose by their own decrees any sentence even to death or banishment—these men do not choose to give up their power, and it is almost impossible to break their authority over the Indian tribes under existing circumstances. That act of Congress of March 3, 1871, which I consider to be a wholesome act, destroys and dethrones these tyrants and will allow the Indian people to come forward and exercise their right of individual manhood under the laws and Constitution of the United States and under the protection of our Government. It is a wise system, and it ought to be preserved.

I am in favor of leaving these Ute Indians just where they are, unless the people of Colorado are entirely satisfied that to leave them there will produce warfare and bloodshed. I do not believe that it will. I would leave them just where they are, and under the treaty rights that they have got there now, but I would pass laws to require them to take their individual reservations and selections and carry into effect that treaty, and then when I came to assume the administration of the question as to the value of the joint occupancy, the occupancy in common of all this territory, I would ascertain what its value is, and I would pay these people that value. I would do this by an act of Congress, and not by a treaty. I would have no more treaties with them. I would have no more treaty engagements with the Indian tribes whatsoever. Let that law stand and carry it into effect.

But the first thing that this measure proposes is to recognize the tribal relations, notwithstanding the act of Congress. The Secretary of the Interior enters into an engagement, a treaty, nothing else but a treaty, with Ouray and the head chiefs of the Ute tribe, notwithstanding he is prohibited by law from doing it, and then Ouray is paid a salary which is to continue now for three years under the treaty, a salary of a thousand dollars a year, and the bill prolongs the period for ten years longer, making it $13,000 instead of $3,000 that Ouray is to receive, and for what? For ruling these people; for being their head chief; for continuing to preserve his authority over this tribe in virtue of his chieftainship or his kingship over these people, imposed upon the Utes by an act of Congress, instead of carrying the law into effect and denying to him all authority over these people whatsoever, except so far as we may choose to admit it for the purpose of government among them. We are to put him in office by an act of Congress for ten years after the treaty itself has expired, for this measure contains the provision that this $1,000 salary shall be paid to him as the head chief of the nation ten years after the treaty has expired.

I have not got time nor have I the inclination to go through all the different provisions of the substitute and cite the many objections which incline my mind to vote against it, but I shall pay some attention to appropriations. Section 9 provides:

That for the purpose of carrying the provisions of this act into effect, the following sums, or so much thereof as may be necessary, be, and they are hereby, appropriated, out of any moneys in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of the Interior as follows, namely:

For the payment of the expenses of the commissioners herein provided, the sum of $25,000.

For the cost of removal and settlement of the Utes, surveying their lands, building houses, establishing schools, building mills and agency buildings, purchasing stock, agricultural implements, and so forth, as provided in said agreement and in this act, the sum of $350,000.

For the sum to be paid to said Ute Indians, *per capita*, in addition to the $60,000 now due and provided for, the sum of $15,000.

For the payment of the appraised value of individual improvements as provided herein, the sum of $20,000.

For the care and support of the Ute Indians in Colorado for the balance of the current fiscal year, the sum of $12,000.

I believe the Senator from Colorado said that the sum of $75,000 had already been expended.

Mr. TELLER. Seventy-eight thousand dollars.

Mr. MORGAN. That, with the sum necessary now at 4 per cent. per annum to raise $50,000 as the annuity fund for these Ute Indians, I believe, comprises the new appropriations that are made under this proposed law. We give up to the Indians, to each Indian in the tribe, of whatever age or sex, I believe, as much as eighty acres of land and to some a half section. That itself amounts to a very large quantity of land. They are to select their lands upon the arable, fertile bottoms of the Grand River, the La Plata River, and in the Uncompahgre Park, somewhere about the junction of the Gunnison River, I believe, with the Green or the La Plata, I forget the precise boundaries. We give them the same power, the same right in the new location to which they are to be transferred, that they possess now of individual settlement, and then we pay them a sum of money upon which, at 4 per cent., $50,000 per annum is to be received for the land that they leave.

When is this commission to end its labors? When are all its expenses to be paid? How much money can we safely say will be the least amount we will have to pay to carry out this treaty with the Ute Indians? I do not think that the sum will ever fall below $4,000,000. The likelihood is that it may run above that sum of money. New agency buildings are to be put up, new school-houses erected, teachers are to be employed, blacksmiths are to be employed, a large list of annual expenditures are to be made from year to year until the Utes come to be self-sustaining. When are these Utes to become self-sustaining as agriculturists in this country? The honorable Senator from Colorado [Mr. TELLER] told us the other day that scarcely a pound of provisions could be raised there upon an acre of land without irrigation. When are they going to irrigate those lands? What capacity or ability have they to irrigate these lands? If irrigation must come first and production afterward, how many years may we expect that the Ute Indians will be shouldered upon the bounty of the country as pensioners, and very expensive pensioners, indeed, they will be.

This observation may apply to the country that they now occupy. I do not know which of the two regions may be the better for agricultural purposes, or which may be better cultivated without irrigation, if either can be. We have got in the Ute Indians in the present location a hard set of people to deal with, I admit. The trouble is, however, as it appears from the statement made by the Secretary of the Interior, that you cannot prevent the miners from going among them; that when the miners go in there they have quarrels with the Indians who forage upon them; that depredations are committed upon the one party or the other. The Secretary of the Interior closes his observations on that subject with the very sage remark that it would be impossible to control the people of the West in regard to the occupation of those lands. If it is impossible to control the people of the West, as a matter of course, I suppose, the next possibility is to be resorted to, and that is to destroy the Indians or to carry them off to some place where they may be pensioned in perpetuity upon the Treasury of the nation, so that we shall never be able to rid ourselves of the burden.

Mr. President, I see very little hope in this measure for the improvement of the condition of the Indians, if that is what we are after. If we are expending this large amount of money to keep out of a war, or to conclude a war, perhaps it is cheap enough to do it. The Secretary of the Interior, in his remarks before the committee, said that he had stopped the war by arresting the army at the time it was progressing toward the agency on White River. Perhaps one of the best things we could do in this connection would be to put him in command of the forces that have anything to do with the control of the Indians in that country. It seems that his policy of not fighting the Indians while the Indians are destroying men who are going to the relief of the agents, and murdering people in the Territory, is a policy that he thinks not only very successful, but which ought to be very well paid for.

I have not been able to see that there is any injustice in the remarks made by the Senator from Colorado [Mr. TELLER] in regard to the entire course of dealing with this Indian tribe. It seems to me that the urgency of this question is to some extent intended to cover up faithless dealings on the part of the Government of the United States with the Ute tribe of Indians. Those people had some occasion for war. There was some delinquency on the part of the

Government of the United States. There was some wrong done to them; and it is doubtless supposed that the easiest way to get out of it is to pay out of it, and close the door to inquiry by removing the Indians from that country and make some entirely new provision for them.

I do not know as yet until I have heard further discussion upon this subject whether I shall make a motion to recommit the bill or not. I have the most profound respect for the Committee on Indian Affairs. I know that they have bestowed upon this subject a great deal of attention, and I hope that after a further consideration of the measure and after further discussion of it they will come to the conclusion that the proper course has not been pursued, whether we treat this subject as a treaty with the Utes or whether we treat it as merely an enactment of Congress, and that the committee will ask that the measure be restored to them in order that they may bring in some bill which is consistent with either one of two things, the Constitution of the United States or the enactments of Congress already upon the statute-books.

Mr. DAWES. Mr. President, the policy of one who has had so little knowledge of the Indian tribes as myself entering into this discussion at all may be considered doubtful. I confess to a great deal of difficulty in coming to a conclusion whether the measure before the Senate should be supported or not. I understand, and in some measure I hope I appreciate, the difficulties out of which it has grown and which it attempts to meet. The horrors committed by Indians upon the frontier I have no knowledge of except as I hear them recited by those who suffer them. I know I can very little understand the real feeling of our western people toward the Indians; perhaps I know as little of what is the real character of the Indians; but I have been unable to read the history of the Indian and his treatment by this Government without feeling that every attempt of late to deal with him and with the Indian question comes very far short of the necessities of the case.

Here are four thousand Indians in a reservation of twelve million acres of land, between whom and the white people in the State where they are there has sprung up an irreconcilable difficulty, culminating in violence and bloodshed; and the Government has attempted to deal with that question, overlooking it seems to me what is at the bottom of our trouble with the Indians. Out of all this work comes substantially the proposition that these four thousand Indians shall be taken from one reservation containing twelve million acres of land, or thereabout, and put into another in the same State consisting of about six hundred thousand acres. The Government gets the residue. The people of the State get these Indians removed to a new place in their State and crowded into a narrower compass. The gain is only that the difficulty is more aggravated, the chances of conflict are greater, and the necessities of renewing these agreements are increasing every day; and for all this advantage, as the Senator from Alabama [Mr. MORGAN] has said, we appropriate from the Treasury at the least $2,700,000, and, without any doubt in my mind, a sum in addition to it very near to the limit the Senator from Alabama has put upon this expenditure.

In the mean time the great Indian question remains unsettled; we have made no advance toward it; we have not even touched it; but we have aggravated it; and we are called upon by the exigencies of business here in this body to consider this great question and this large amount of expenditure and draught upon the Treasury under circumstances that almost forbid a due deliberation, if we had the information at our hands that would insure it.

We conclude all this work and this expenditure with a stipulation that we will support these Indians where they are or where they are to be in the new and narrow reservation, until the time shall come when they shall be able to support themselves. It so happens now that there are more births than deaths among the Indians upon these reservations. The dying-off process, which is so frequently resorted to by our friends in the West as a hoped-for relief from this question, I am told by General Sheridan and those who have charge of the Indian department in the West, lasts only a year or two, and it is followed by more than a restitution of the diminished number. It must follow in the nature of things. This dying-off process comes from exposure of the children and hardships to which they are subjected in their destitution and their savage life, to which they are not subjected in their new reservations under the care of the Government, and also to the effect upon their constitution which comes from change of climate and malarial diseases contracted under new circumstances and new exposures. Beyond that, outside of that, and after that has passed away, I am sorry to say to my friend from Kansas [Mr. INGALLS] there is little hope of relief from this Indian question in the manner which he has suggested.

Here four or five thousand Indians are to be supported by the United States until they can take care of themselves, in a little, narrow reservation, hemmed in by the mountains of Colorado, surrounded by aggressive and enterprising miners crowding in upon them, dependent upon the daily ration measured out to them as it is to the Army, and with no provision for any relief in cultivating the arts of peace or the ways of civilized life. Subject four thousand civilized and educated people from any part of this country to such treatment for any considerable number of years and they would be demoralized and relapse into barbarism. The very process by which in the main we treat two hundred and fifty thousand Indians, feeding them day by day with rations of beef and coffee and beans, and with the annual distribution of clothing, with the miserable pretense of some sort of attempt to teach them agriculture which only disgusts them with the whole thing, is fastening upon us the burden of maintaining a standing army in this country little short, in its demands upon the Treasury looking to that alone, of the expenditures of such an army.

Here we are making what appears upon its face to be a final arrangement with four thousand Indians, leaving them, I venture to say, in a worse condition, when crowded in this narrow space, than when they have the whole twelve million acres in which to roam. So long as they know that with each recurring day comes the ration that shall supply the demands of hunger, there is no inducement, there is no temptation to change for the better their condition. The Indian takes to his lodge on Monday morning the supply of the week and makes haste to devour it, and spends the remainder of the week in discontent and dissatisfaction with the Government that supplies it and with plots and plans against the hand that feeds him. Such is his nature, and that element in his nature alone is cultivated and encouraged and strengthened by the very manner in which he is treated by the policy of the Government.

Why sir, look into this bill. It provides for the distribution of $60,000 now due these Indians, a $60,000 debt of annuities that ought to have been paid to them before. We wake up now in the face of this trouble with the disposition to pay to them and distribute it *per capita* among them, $15 apiece. You might as well take fifteen beans for all the good $15 will do each of these Indians! Again, you provide in this bill for the setting apart of $1,250,000 that shall produce another $60,000 and that $60,000 you propose to distribute each year *per capita* among these Indians. You make no provision with it for their permanent improvement; you do not buy a plow with it; you do not even take the amateur farmer who lives upon the salary of $1,500 provided in the bill for so many other agencies; you do not give them even the light of his countenance, so that when an irrepressible impulse at civilization springs up unbidden in the breast of any Indian he may find this farmer ready to meet him half way and take him by the hand and lead him out upon the prairie and stake out for him his allotment of land, and teach this Indian, who never did a day's work in the world, how to turn his furrow, and follow him around the field three or four times until he becomes a practical farmer in the process of half an hour, and then leave him to pursue his onward course in the hope and expectation that from that hour he shall be not only self-supporting but a civilized citizen of the United States, clothed with all the privileges and immunities of any other citizen. His hands are blistered in this half-hour, he is tired of his work, the impulse fades away, he goes back to his lodge and is berated by his squaw for his degradation in working like a white man; and that is the last of all his spontaneous impulse to become a self-supporting Indian! You do not even do that with these Indians. You distribute *per capita* among them this sum, and you promise them that at the end of twenty-five years you will capitalize the principal and distribute that among them.

Mr. President, this is idle; this does not meet the exigencies of this case; it, in my opinion, aggravates them; and while it does get rid, perhaps for a year or two, of the trouble existing in Colorado, it only holds back an accumulating and increasing peril, which, sooner or later, after the expenditure of all this money, will come back upon us with renewed force and with renewed danger to the people around these Indians and to the Indians themselves. It is not beginning at the root of this evil; it is making no attempt, it seems to me, toward meeting the question, how we shall treat this Indian problem or any part of it. Aside from the civilized tribes, as they are called, in the Indian Territory, I suppose there are, as I have said before, about 250,000 more or less dependent Indians. We appropriate each year—seven millions, is it?

Mr. ALLISON. Five.

Mr. DAWES. Five millions a year, with nine or ten millions of trust funds in our charge, the annual receipts of which are also applied; and how do we expend it? What progress do we make in the solution of this question? The Senator from Iowa can correct me if I am mistaken; but I hardly think since he and I have been in public life it has been otherwise than true that each succeeding year has added to that expenditure, growing out in part of the fact which the Senator from Kansas has denied, or has seemed to doubt, that in numbers the Indians are increasing; growing out also of the fact that the very policy we have adopted in relation to them has aggravated and increased the burdens we have assumed. We have always treated with them, up to the statute which the Senator from Alabama has alluded to, as independent tribes, capable of negotiating with us and having some sort of right in the soil we found them in the occupation of, that we would purchase of them, and not extinguish by violence, as we perhaps might have done. But when we purchased it of them we purchased it of a savage race, having no knowledge of our language, without ability to treat or to understand what they were treating about; and neither the tribes themselves nor the people of the United States, till within a few years, ever stopped to consider the future of the Indian. We, on our side, have always treated with him, up to within these few years, on the idea that we would make the best possible bargain with him; and the Indian, on the other hand, having no thought for his morrow, considered only the color

of the trinkets which we put off on him for vast tracts of country, out of which great and independent States have sprung up in this Union. It is only when the question has forced itself upon us so that it was impossible for us to ignore it that we have stopped to consider in our treatment with the Indian what shall be done with him in the future; whether it is not incumbent upon us, who have taken away his possessions and his means of support, to make some provision for him if he makes none for himself in the future. And not a little has that question been pressed upon us in the form that he, whom we have thus treated, multiplying daily upon our hands, is a savage who knows no law or restraint but a chain; and the Indian himself has come to have some faint glimmering of what is before him, as the very walls of the continent have approached him on the one side and on the other, with apparent certain destruction awaiting him.

But we come to this question after long years of such treatment of the Indian that he has lost faith in us. He no longer, if he ever did, believes that we intend to keep our promises with him; he has been too often deceived, he has too often trusted only to find that engagements with him are kept while they are of advantage to us, and no longer; and when we approach him he suspects that some lurking advantage is to be gained over him in the future, which he cannot quite understand, least of all can he protect himself against.

The Senator from Colorado [Mr. TELLER] talked of the Indian's character, of his faithlessness, of the outrages he has committed upon the white people on the borders. I am not disposed to criticise the Senator. I do not know that the Senator or his State particularly is to be held accountable in any way for any infraction of good faith on our part toward these Indians.

Mr. TELLER. Will the Senator yield to me a moment while I make a statement? There has never been a Ute Indian killed by any citizen of Colorado. There has never been a Ute Indian killed by any white man in Colorado since the country was settled. We have invariably respected their rights; we have respected the obligations of the Government as made with them; and I believe that I may say here that pretty nearly the only white man in the United States who has attempted to enforce the treaties of the United States with them is my humble self. I followed this Secretary of the Interior from the time he came into office until the outbreak last summer, to have the money paid that the Senator has said was unjustly withheld, and I repeated over and over again to him that it was a cause of complaint and that it put our people in jeopardy that it was not paid, and I say here to-day that neither white man nor Indian can give any good reason why it was not paid.

Mr. DAWES. Why, Mr. President, I had it not in my mind to intimate that either the people of Colorado or the State itself or the Senator was to blame——

Mr. TELLER. I know; but I want to add one other statement, that since the country was settled at least fifty white men have been killed by these Indians; innumerable houses have been burned; innumerable farms on the edge of the reservation and off it have been destroyed; and yet the people of Colorado have never retaliated.

Mr. DAWES. That I think I would have said myself if the impatience of my friend from Colorado had not anticipated me. I will commence where I left off by saying that I do not know that the people of Colorado or the State is responsible for any of the breaches of faith on the part of the Government toward the Indians. The Senator cannot but know that such is the character of this savage that he visits the wrongs he receives from the strong upon the weak; such is his nature and such is the limit of his knowledge of men and of government that he only knows that it was white men who broke faith with him, and it is white men upon whom he visits his revenge. But the very State in which the outrage upon the peaceable agent at White River and his family and employés was inflicted by these savages, the very existence of the State itself, is a gross and palpable violation of the plighted faith of this Government, which in a solemn treaty with the Cherokee Nation pledged itself sacredly never to permit any territorial or State government to be erected upon their western border, but that the free, unobstructed passage and control and jurisdiction westward, as far as the jurisdiction of the United States should extend, should be forever kept for the Cherokees. And yet in violation of that treaty obligation the State of Colorado is erected right across that western boundary of the Cherokee Nation, in obedience to that law of growth and progress in civilization in this land stronger than all human laws and human treaties; but the Indian does not understand that.

Mr. TELLER. I should like to ask the Senator whether he thinks that the Ute Indians ever heard of that treaty, and if he does not know that when the treaty was made this very ground in controversy, every acre of it, was a part and parcel of the Republic of Mexico.

Mr. DAWES. I know this last statement and I think it likely the other is true; but I know that the treaties stipulated that the territory as far as the jurisdiction of the United States should thereafter extend should be kept open. And as to the Utes ever knowing about that treaty it is not necessary for the argument that I am making here that they should understand that treaty. They understand, and every Indian understands, that when the white man approaches him with treaties in his hand something is to be gained on the one side and something is surely to be lost on the other. No tribe of Indians ever entered into a treaty with the United States that did not result in putting fetters upon them. They have been lassoed into imprisonment and confinement within limits that the necessities of growth in this Government required, and no sooner have we made treaties than we have gone to work deliberately to violate them.

But it is not treaty obligations alone of which the Indian has to complain. Why, sir, the treatment of Indian agents, and the Army, and the whole Department with the Indian for long back is covered with blots and stains, and bad faith, and aggravations to the Indian and provocation to violence on his part. While we have been deliberating over this very measure in our Committee on Indian Affairs, a peaceable Indian chief, who never raised his hand in violence upon a white man, whose home had been ceded to him by words of grant on the part of the United States as solemn and effective as a warranty-deed, in consideration of his good behavior and peaceable deportment toward the United States—this is the language of the grant—who had been driven at the point of the bayonet from that home into the malaria of the Indian Territory, has there been enticed by false pretenses into the Indian agent's own house, an agent of this modern civilization, and there shot down upon the floor in cold and cowardly murder by the soldiers of the United States under the direction of an Indian agent!

Sir, the Northern Cheyennes, taken by the Army from their home and the graves of their fathers, among the cool mountain streams of the Northwest, down to the torrid jungles and malaria of the Indian Territory, there to fall before the ravages of disease, when they broke away and wandered through the wilds of Western Kansas seeking their old home, were taken by the armed soldiers of the United States and shut up in midwinter, in January, in a guard-house, when the thermometer was ten degrees below zero, without clothing to protect them from the inclemency of the weather. They were told by the officer whose official report I have here, "You shall have neither food nor drink nor fuel till you consent to go back to your doom in the Indian Territory," and there they were kept without either food or fuel or drink four or five days—the officer reports four, the Indians say it was seven—in what an officer calls "the freezing-out process;" and then when the chief was called out of the guard-room under pretense of a conference, armed soldiers were placed in side-rooms out of sight, and when he and his fellows came into a room for a peaceable conference they were seized and put in irons, and those in the guard-house breaking out with the resolution to die in flight for their homes rather than to die in the Indian Territory the victims of disease, were fired upon with shot and shell, and every male member of the band but those in irons and two others, with thirty women and children, were laid corpses in the process.

Sir, I have before me the process pursued toward men supposed to be guilty of the murder of a young man from Massachusetts upon a stage route in Arizona. When an officer of the Army called the Indians into council, having previously arranged with a half-breed that like Judas he should go among his brethren and betray the men he was willing to say were guilty, and when that process was gone through with, under the pretense of a council with friendly Indians, soldiers at a given signal shot them all dead.

Does anybody wonder when these instances multiply around us every day, when flags of truce, like that under which General Canby fell at the hands of the Modocs, are violated by our own soldiers when they treat with the Indians; when the whole history of the dispensing of the Indian annuities and of the Indian appropriations is one long history of plunder; when we make our promises with no apparent intention of keeping them, is it to be wondered at that the Indian question has come upon us with difficulties almost passing solution?

Sir, before we can do anything toward making something out of the Indian we must do justice to him. The process of extermination, I think, is substantially abandoned by our people. It has proved a failure at least, with all the advantages under which it has been tried and the fidelity with which it has been pursued, sparing no expense of Indian warfare or cruel treatment, transferring the Indian from place to place, taking him from the cold regions of the North to the almost inhospitable and uninhabitable regions of the Indian Territory, there to die by hundreds; still the truth stares us in the face, that there are more of them to-day than there were yesterday.

Take the Poncas, who lived upon a reservation the title to which was a grant, in so many words, from the United States, in which it was recited that it was in consideration of two things: first, of a like grant on the part of the Poncas to the United States, and next, of their long peaceable and quiet life and demeanor toward the United States. Take them and follow their band of eight hundred men, driven by soldiers into the Indian Territory, and falling down in the process and in the acclimation to four hundred and eighty-four or about that number; yet it is true that within the last year, since they have come to be acclimated and taken care of, there are more of them than there were when the year began. So it is true of them all. And, sir, that policy pursued so faithfully has got to be abandoned, and I thank God that it has.

Then we have to deal with these Indians by some other process. Another process is like that shadowed forth in the argument of the Senator from Alabama, that we shall violently break up their tribal relations and scatter them, wild and savage and uneducated, abroad in the community, subject to the laws and enjoying all the rights and privileges of citizens of the United States, having no other restraint

upon them than the feeble and ineffectual restraint that comes from bringing them into a court of justice to plead to an indictment they cannot understand for the violation of a law they do not know the meaning of.

Sir, the Senator from Colorado [Mr. TELLER] well described the strength of the cords which bind the Indians in their bands. I venture to say there is not power enough in the United States to violently and against their will rend those cords. They are the ties of family, and kindred, and blood, as strong in the savage as in the civilized man, and stronger, perhaps, in some respects. If there were no question of humanity in it, it is an impossibility. You cannot with an army larger in number than all the bands themselves rend asunder by violence those cords and attachments which bind them one to another in families, any more than you could invade the homes of the civilized, scatter them and think vainly that thereby you had broken asunder all the ties that bind man to his family and to his kindred.

You may give up, then, Mr. President, all attempts thus to disintegrate and separate from their clans and their tribes the two hundred and fifty thousand Indians you have upon your hands and are obliged to feed by daily rations and clothe as you do your soldiers. You can neither exterminate them, nor can you violently separate and scatter them in the community and expect that you can make citizens of them. If you did it you would have two hundred and fifty thousand people gathering in the Western States more than in the Eastern, for they would not trouble us, but you might just as well turn loose the inmates of an insane asylum and impose upon them the restraints of law and require at their hands obedience to the obligations of citizenship as to undertake by this process to make citizens self-supporting, obedient to the law of the land, of these Indians.

Then, sir, if you can neither exterminate them nor by the puny, ineffectual attempt at an enactment here at your desk, disintegrate and scatter them around through the forty-five millions of people we have here in this land, what next? Sir, you ought to improve them, make something of them, undertake to relieve yourselves of this burden which comes upon you as a just retribution for the long line of treatment in the past which finds no justification in any standard of justice or of right between the powerful and the weak. No one expects that you can make much out of the adult Indians. You cannot teach them much how to work and support themselves. Industrious habits do not come by the force of enactments. Industrious habits are the result of long years of training, beginning with early life. You have them, too, without the ability to speak our language, to understand those with whom they are obliged to treat daily in order to obtain the merest necessities of life. Take one of them, allot him in severalty, which seems now to be the panacea for all evils, one hundred and sixty acres of land, and surround him, as this bill and the other proposes, with the enterprising western pioneer who purchase the real estate, the one hundred and sixty acres on each side of him, and what then? He goes out to support himself. He cannot understand his neighbor. He only knows from sad experience, because he cannot forget that he never treats with that color without having the worst of it. How long would he live and support himself?

I had an interesting conversation a few days since with a chief of one of these tribes, as intellectual a man, as clear-headed, and as honest and truthful a man according to the Department and everybody else as any one could be, a man who realized the condition of the Indians, a man who made it a study as well as he could, of what, so far as his tribe was concerned, was the best solution of this question. I asked him if he could have for each male member of his tribe one hundred and sixty acres of land allotted in severalty with the condition that it could not be alienated for twenty-five years, what he would say to that. It was a great while before he could be made to comprehend what I meant, with an earnest desire to understand the full meaning of these words; and when at last he seemed fully to comprehend them, shaking his head, he said, "It would not do us any good; it might our children; but we do not understand your language; we do not know how to treat with white men; they always get the better of us; they would pluck us as you do a bird." Then I put the question in another form: "Suppose you were so allotted, and a good, honest Indian agent"—my friend from Illinois [Mr. DAVIS] almost laughs when I say that—"a good, honest Indian agent were put over you to keep off the white people and let you develop yourselves?" "We don't know how to work very well; we were never taught to work; if our children could be brought up to understand your language and to understand what comes of work, to understand that what they earned to-day is theirs, and they can hold it against the world, they could take these lands and they could take care of themselves and of us, but we cannot do it."

There is more philosophy in that Indian's statement of the question than all that has been developed in the Indian policy of the Government for the last quarter of a century. Take their children; above all take their girls into schools in which they may be taught the English language and English ways and English habits and ideas. They bring up the families; they take care of the children; from them the children learn to talk and learn to think and learn to act; and yet, in all the schools established in Indian agencies for the education of the Indian, the Indian girl is hardly thought of. Take the boy and make something of him; not keep him till he forgets his race and his parentage, but keep him until there shall be inspired in him a missionary spirit to go forth among those of his blood and attempt to make something of them. Appropriate this $125,000 which in this bill you pledge yourselves to distribute every year *per capita* around among these people, to the education each year of these four thousand Ute Indians, and by the time this experiment shall have failed and the Indian question, so far as Colorado is concerned, shall have come back upon us with increased force, you will have raised up among those Indians a restraining and at the same time an elevating influence that shall quicken in the whole tribe a desire to acquire, and with it shall come also the desire to protect and keep their daily earnings, and with that comes the necessity and the desire for peace, and with peace comes respect for law, and that is the simple natural process and the only one, it seems to me, Mr. President, which opens up to us with any hope of success.

It is a long and tedious process out of this difficulty; it is beset with embarrassments and discouragements on every side; but those who understand best and appreciate more fully than I do all these difficulties have themselves the strongest confidence in its ultimate success. Certainly, sir, these puny efforts on the part of the Government to deal with the Indian question, these homeopathic doses, are idle and are folly in the extreme. If I could see any good to come from this bill, recognizing as I do the imperative necessity of action in respect to these Utes, recognizing as I am free to do the earnest desire on the part of the Indian Department to do the best possible thing, I should like to support it. I know that with great propriety and with necessity the Department turns to Congress; for it is Congress, and Congress alone, that can solve this question; but I fear that by no such processes as those we are considering to-day, involving as they do (and which I do not think the Senate quite realize) an enormous expenditure of public moneys with so little in return, can the great result I desire be accomplished.

Mr. WHYTE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After sixteen minutes spent in executive session the doors were reopened, and (at four o'clock and thirty minutes p. m.) the Senate adjourned.

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## HOUSE OF REPRESENTATIVES.

### MONDAY, *April* 5, 1880.

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

The Journals of Friday and Saturday last were read and approved.

#### ORDER OF BUSINESS.

The SPEAKER. This being Monday, the first business in order is the call of States and Territories, beginning with the State of Alabama, for the introduction of bills and joint resolutions for printing and reference, not to come back on a motion to reconsider. Under this call resolutions and memorials of State and territorial Legislatures may be presented for reference. Resolutions calling for departmental information are also in order for reference, to be reported back within one week.

#### A. P. JACKSON AND OTHERS.

Mr. BERRY introduced a bill (H. R. No. 5547) for the relief of A. P. Jackson and others; which was read a first and second time, referred to the Committee on Private Land Claims, and ordered to be printed.

#### H. C. WILSON.

Mr. BERRY also introduced a bill (H. R. No. 5548) for the relief of H. C. Wilson; which was read a first and second time, referred to the Committee on Claims, and ordered to be printed.

#### JAMES DOWNEY.

Mr. PHELPS introduced a bill (H. R. No. 5549) granting a pension to James Downey, of Waterbury, in the State of Connecticut; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### CHARLES WATERHOUSE.

Mr. PHELPS also introduced a bill (H. R. No. 5550) for the relief of Charles Waterhouse, of Old Saybrook, in the State of Connecticut; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

#### LOCATING LAND SCRIP.

Mr. PRICE presented joint resolution and memorial of the General Assembly of the State of Iowa, in reference to locating land scrip in other States; which was referred to the Committee on the Public Lands.

#### JACOB R. M'FARREN.

Mr. ANDERSON introduced a bill (H. R. No. 5551) granting a pension to Jacob R. McFarren, of Russell, Russell County, Kansas; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

#### JAMES GANNON.

Mr. ANDERSON also introduced a bill (H. R. No. 5552) for the relief of James Gannon, of Leavenworth, Kansas; which was read a