

soldiers of the late war, for passage of the bill to establish a soldiers' home at Erie, Pennsylvania—to the Committee on Ways and Means.

By Mr. CALKINS: Papers relating to the claim of C. C. Humphreys, of Indiana—to the Committee on War Claims.

By Mr. CARPENTER: The petition of citizens of O'Brien County, Iowa, asking that the same encouragement be given to building railroad bridges between Iowa and Nebraska across the Missouri River above Omaha as below that city—to the Committee on Commerce.

By Mr. CURTIN: Papers relating to the pension claim of Mrs. Susan Bayard—to the Committee on Pensions.

By Mr. DIBRELL: Papers relating to the claim of Joseph Ruohs—to the Committee on War Claims.

By Mr. DUNNELL: The petition of the president of Wayland Seminary of Washington, District of Columbia, asking for aid and support of normal department—to the Committee on Appropriations.

By Mr. ERRETT: The petition of Captain Wikoff, Eleventh United States Infantry, relative to the bill for the reorganization of the infantry branch of the service—to the Committee on Military Affairs.

By Mr. FISHER: The petition of Captain Charles A. Wikoff, for the passage of bill for the reorganization of the infantry branch of the United States Army—to the same committee.

By Mr. GEORGE: The memorial of the Legislative Assembly of Oregon, and of 19 petitions of citizens of Oregon, for an appropriation for the improvement of the entrance of Yaquina Bay—severally to the Committee on Commerce.

Also, the petition of citizens of Southern Oregon, for an additional appropriation for works at mouth of Coquille River, in the State of Oregon—to the same committee.

Also, the petition of citizens of Oregon and Washington Territory, for the improvement of Lewis River, Washington Territory—to the same committee.

Also, the petition of the Astoria Chamber of Commerce, for the improvement of the mouth of Columbia River—to the same committee.

Also, the petition of citizens of Oregon, for survey and mapping of the mouth of the river at Siuslaw—to the same committee.

Also, petition of citizens of Oregon, for the improvement of Coos Bay—to the same committee.

Also, memorial of the Legislative Assembly of the State of Oregon, for the improvement of the mouth of the Columbia River, of the Alsea River, and for a harbor of refuge at Port Orford—to the same committee.

Also, memorial of the Legislative Assembly of the State of Oregon, the petition of the Chamber of Commerce of Astoria, Oregon, and of citizens of Oregon and Washington Territory, for completion of locks at the Cascades, Oregon—severally to the same committee.

By Mr. GIBSON: The petition of Charles Whitney and others engaged in the shipping business in New Orleans, against certain provisions of an act now pending in Congress relative to the introduction of contagious or infectious diseases into the United States—to the Select Committee on the Public Health.

By Mr. HARMER: The resolutions of the Board of Health of the City of Philadelphia, in favor of the passage of the bill to prevent the adulteration of food and drugs—to the same committee.

Also, the resolution of the Philadelphia Board of Trade, protesting against the renewal of patents on steam grain-shovels—to the Committee on Patents.

Also, memorial of importers and dealers in sugar at the port of New York, urging the passage of a bill for ad valorem duties on sugar—to the Committee on Ways and Means.

By Mr. HENDERSON: Papers relating to the pension claim of Alice J. Bennit—to the Committee on Invalid Pensions.

By Mr. HOUK: The petition of Henry Weaver, of Union County, Tennessee, for a pension—to the same committee.

Also, the petition of J. P. Edmunds, of Campbell County, and of the legal representatives of William C. Smith, deceased, of Union County, Tennessee, for relief—severally to the Committee on War Claims.

By Mr. KLOTZ: The petition of thirty-seven soldiers of the late war who served in Pennsylvania regiments, for the passage of the bill to establish a soldiers' home at Erie, Pennsylvania—to the Committee on Military Affairs.

By Mr. NORCROSS: The petition of Harriet H. Robinson and other members of the Moral Education Society, asking that the scope and functions of the National Board of Health may be more fully defined—to the Select Committee on the Public Health.

By Mr. O'NEILL: The resolution of the Philadelphia Maritime Exchange, favoring the passage of the act providing for a permanent organization of the Signal Service of the United States Army—to the Committee on Military Affairs.

By Mr. PAGE: The petitions of citizens of various sections of the country, relative to the improvement of Harlen River—severally to the Committee on Commerce.

By Mr. PHELPS: The memorial of the colored citizens of New Haven, Connecticut, in favor of the passage of the colored commission bill—to the Committee on Education and Labor.

Also, the resolutions adopted at a meeting of citizens of New Haven, Connecticut, relative to the imprisonment of American citizens in Great Britain—to the Committee on Foreign Affairs.

By Mr. RANDALL: The resolutions of the Board of Managers of the Philadelphia Maritime Exchange, for a more efficient organization of the United States Signal-Service—to the Committee on Military Affairs.

By Mr. SCOVILLE: The petition of vessel-owners navigating the western lakes, protesting against the extension of steam grain-shovel patent—to the Committee on Patents.

By Mr. SCRANTON: The memorial of the Board of Trade of Scranton, Pennsylvania, for the erection of a public building at that place—to the Committee on Public Buildings and Grounds.

By Mr. SPEER: The resolutions of the General Assembly of Georgia, urging Congress to extend aid to the several States for the advancement of education—to the Committee on Education and Labor.

Also, the resolutions of the General Assembly of Georgia, asking for the establishment of an assay office at Dahlonega, Georgia—to the Committee on Coinage, Weights, and Measures.

By Mr. SPOONER: The petition of citizens of Rhode Island, for the passage of the French spoliation claims bill—to the Committee on Foreign Affairs.

By Mr. P. B. THOMPSON: The petition of Moses Harper, for a pension—to the Committee on Invalid Pensions.

By Mr. YOUNG: The petitions of John J. Wadsworth and 53 others, citizens of Erie, Pennsylvania, of the Baltimore Corn and Flour Exchange, of the Philadelphia Maritime Exchange, of the Union Steamboat Company of Buffalo, New York, of the Western Transportation Company, of the Commercial Exchange of Philadelphia, of the Pennsylvania Railroad Company, of the Philadelphia Board of Trade, of vessel-owners of Cleveland, Ohio, and of the Board of Trade of Erie, Pennsylvania, remonstrating against the extension of the steam grain-shovel patent—severally to the Committee on Patents.

SENATE.

WEDNESDAY, April 5, 1882.

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

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

LEAVE OF ABSENCE.

Mr. SAUNDERS. My colleague [Mr. VAN WYCK] has been called away to attend to some important business in the West, and I wish to ask a leave of absence for him for two weeks.

The PRESIDENT *pro tempore*. Leave will be granted by unanimous consent.

PETITIONS AND MEMORIALS.

Mr. SHERMAN presented the petition of Electa W. Jacobs, of Mount Airy, Hamilton County, Ohio, praying to be allowed a pension on account of services rendered by her sons as soldiers in the late war; which was referred to the Committee on Pensions.

He also presented the petition of Enoch Jacobs, of Hamilton County, Ohio, praying compensation for services rendered the State Department at Montevideo, South America; which was referred to the Committee on Foreign Relations.

Mr. PLATT presented the petition of Philip Bantel, of New York City, praying for an extension of his patent for a chronometer; which was referred to the Committee on Patents.

Mr. VEST presented resolutions of the Merchants' Exchange of the City of Saint Louis, in favor of the passage of the bill for the construction of an interoceanic ship-railway over the Isthmus of Tehuantepec; which were ordered to lie on the table.

Mr. JONAS. I present a memorial received by telegram from various business exchanges in the city of New Orleans, which I request may be read.

The PRESIDENT *pro tempore*. The memorial will be read.

The memorial was read, and referred to the Committee on the Improvement of the Mississippi River and Tributaries, as follows:

NEW ORLEANS, LOUISIANA, April 4, 1882.

Hon. B. F. JONAS, *United States Senator, Washington, D. C.*:

Please present the following petition. Original by mail.

THOMAS L. AIREY, *President.*

To the honorable Senate and House of Representatives, Washington, D. C.:

The undersigned, representatives of the commercial interests of New Orleans, earnestly petition for favorable action on the levee appropriation bill now before Congress and the recommendations of the Mississippi River commission.

They are convinced that any outside scheme would afford no relief, but militate against the interests of the entire Mississippi Valley if permitted to divert attention from the prayers of this people for prompt and efficient action on the recommendations of the river commission.

The dire distress and enormous losses now being experienced by great numbers of our thriftest and most energetic fellow-citizens, and the complete obliteration for a time of a vast territory, embracing some of the richest and most fertile lands on the face of the globe, are a warning that now is not the time for experimental schemes, especially when such schemes are opposed by the best engineering talent of the country.

The Senators and Representatives from Louisiana are earnestly requested to present this petition and urge early and favorable action on our behalf.

THOMAS L. AIREY,

President New Orleans Cotton Exchange.

A. J. GOMILLA,

President New Orleans Produce Exchange.

R. L. HOWARD,

President Chamber of Commerce.

J. H. OGLESBY,

President Clearing-House Association.

T. S. BARTON,

President New Orleans Stock Exchange.

JAMES A. SHAKSPEAR, *Mayor.*

H. DUDLEY COLEMAN,

Acting President Mechanics, Dealers, and Lumbermen's Exchange.

Mr. SAULSBURY presented the petition of William M. Caldwell and others, citizens of Washington, District of Columbia, praying to be refunded certain sums of money paid by them as special assessment taxes on property; which was referred to the Committee on the District of Columbia.

Mr. MITCHELL. I present a petition for the relief of the estate of the late John W. Forney, of Philadelphia. The petition is drawn by his executors under directions contained in his last will and testament, with a view to securing from the Government the sum of money which he paid out of his private funds to make up a deficiency that arose in his accounts while he was Secretary of the Senate. The matter was examined into at the time by the Committee to Audit and Control the Contingent Expenses of the Senate, and their report appears to exculpate Mr. Forney entirely, the funds being wholly in charge of the Financial Clerk of the Senate in a safe under a combination lock, and the Financial Clerk testifying before the committee that he abstracted at one time \$20,000. The sum deficient was paid by Mr. Forney. Without myself expressing any opinion upon the question, I desire to call the attention of the Committee to Audit and Control the Contingent Expenses of the Senate specially to the case. I ask that the petition be referred to that committee.

The PRESIDENT *pro tempore*. The Chair supposes that it ought to go to the Committee on Claims.

Mr. MITCHELL. I consulted with a Senator of experience, and as the matter was examined into before by the committee I have named, he suggested that that would be the proper reference.

Mr. SHERMAN. The matter was formerly reported on by the Committee to Audit and Control the Contingent Expenses of the Senate. That committee had jurisdiction of the case and made a very elaborate report upon it.

Mr. TELLER. That was done when it was found that a deficiency existed?

Mr. SHERMAN. When they found the deficiency existing they examined into the matter and exculpated Mr. Forney in their report.

Mr. TELLER. But now it is brought before the Senate as a claim against the Government which the Government ought to pay.

The PRESIDENT *pro tempore*. It is a claim against the Government, evidently.

Mr. SHERMAN. I only suggested the fact that the committee named had jurisdiction of the case formerly.

Mr. TELLER. I think the petition should go to the Committee on Claims.

Mr. COCKRELL. Let it go to the Committee on Claims.

Mr. SHERMAN. Very well; I have no objection.

The PRESIDENT *pro tempore*. The petition will be referred to the Committee on Claims.

Mr. CAMERON, of Pennsylvania, presented a memorial of the board of trade of Scranton, Pennsylvania, in favor of the passage of the bill for the erection of a Government building in that city; which was referred to the Committee on Public Buildings and Grounds.

He also presented resolutions of the Philadelphia Maritime Exchange in favor of the permanent organization of the Signal Service; which was referred to the Committee on Military Affairs.

Mr. McMILLAN presented the petition of C. B. Norton, of Washington, District of Columbia, praying that Congress order the purchase of 2,000 copies of his work on American inventions in breech-loading small arms, heavy ordnance, &c.; which was referred to the Committee on Military Affairs.

ADMISSION OF DAKOTA.

Mr. SAUNDERS. Mr. President, a majority of the Committee on Territories, to which was recommended the bill (S. No. 1514) to enable the people of the Territory of Dakota to form a constitution and State government and for the admission of the State into the Union on an equal footing with the original States, and which was accompanied by a protest against admission of said State from certain parties who hold unpaid bonds issued by the county of Yankton, in said Territory, have instructed me to report back the bill without amendment and to recommend its passage. The majority of the committee having found nothing to change their views on the subject desire to readopt their report made to the Senate when the bill was first presented from the committee.

As to the protest which was referred to the committee, the majority of the committee are of the opinion that the case is one for the courts to settle rather than Congress. Indeed, they are so fully impressed with the belief that such matters belong properly to the courts that they deem it impolitic, if not unwise, for Congress to legislate or express an opinion on the subject.

In presenting the bill again to the Senate, it having been recommended, as it has lost its place on the Calendar, and in order to do justice to these people and to bring an important subject before the Senate at the proper time, I wish to give notice in making the report for the committee that on next Monday, the 10th of April, after the morning business shall have been disposed of, I shall move to take the bill from the Calendar, and press it at as early a day as possible to its passage.

Mr. VEST. As a member of the Committee on Territories, I desire to state that I did not concur in this report. I have been exceedingly unwell for two weeks past and unable to attend the meet-

ings of the committee. I am now preparing for myself a minority report, which I desire to submit to the Senate. I take it for granted that the chairman of the committee will not insist upon taking up the bill until a reasonable time, so that those of us in the minority who do not concur in the report may present our views in writing. I give notice now that I shall prepare a report as soon as my health and time will permit, and I desire to file it.

Mr. SAUNDERS. The Senator observed, probably, and if he did not at the time he will see by the RECORD, that I made the report as coming from a majority of the committee. It was understood that this was a majority report, and that the minority would have a right to present a minority report if they wished to do so. There is no disposition to prevent that. On the contrary, I had intended to make that statement, but did not. It is proper and right that that should be done, and I now state it.

Mr. VEST. I referred particularly to that portion of the Senator's remarks in regard to taking up this bill after the morning hour next Monday. I inferred, although I could not hear him distinctly, that on Monday next he would call up the bill, and I will endeavor to have the minority report ready at that time so far as I am concerned. If I have not the report ready, I shall ask the indulgence of the Senate for further time.

The PRESIDENT *pro tempore*. There is a number of notifications of other bills that will be called up and pressed by the time named, the notices having been given prior to the notice of the Senator from Nebraska.

Mr. FERRY. I would like to inquire of the Senator from Nebraska whether he desires on Monday next, after the morning business, to call up the bill. I suppose he meant after two o'clock, at the expiration of the morning hour.

Mr. SAUNDERS. I said after the morning business had been disposed of.

Mr. FERRY. The Senator understands that after the morning business is over we go to the Calendar under the Anthony rule and consume the time till two o'clock.

Mr. SAUNDERS. I mean after the close of what is called the morning hour, which is at two o'clock.

REPORTS OF COMMITTEES.

Mr. LAMAR, from the Committee on the Judiciary, to whom was referred the bill (S. No. 1168) to amend the several acts in relation to the division of the State of Mississippi into judicial districts, and further to amend the several acts in relation to the northern judicial district of the State of Mississippi, and to provide for the times and places of holding the United States district courts in said northern district, reported it with amendments.

Mr. TELLER, from the Committee on Claims, to whom was referred the bill (S. No. 422) for the relief of George W. Maher, reported it without amendment; and submitted a report thereon, which was ordered to be printed.

Mr. PUGH, from the Committee on Claims, to whom was referred the bill (S. No. 730) for the relief of Mrs. Louisa H. Hasell, reported it without amendment; and submitted a report thereon, which was ordered to be printed.

Mr. HAMPTON, from the Committee on Military Affairs, to whom was referred the bill (S. No. 1185) for the relief of Walter F. Halleck, reported adversely thereon, and the bill was postponed indefinitely.

Mr. FAIR, from the Committee on Claims, to whom was referred the bill (S. No. 534) for the relief of Overton Love and Wyatt Gilchrist, reported it without amendment; and submitted a report thereon, which was ordered to be printed.

Mr. SHERMAN. I am directed by the Committee on Finance, to whom was referred the bill (H. R. No. 3045) to authorize the Secretary of the Treasury to remit certain customs dues and custom-house charges to Consul-General Alfred E. Lee, to report it without amendment. If there is no objection, as it is a bill of but three or four lines, I should like to have it passed now.

Mr. COCKRELL. I cannot see why the Finance Committee shall every morning come in here and ask for the present consideration of its bills any more than any other committee.

The PRESIDENT *pro tempore*. Objection being made, the bill will be placed on the Calendar.

Mr. SHERMAN. In response to the remark of the Senator from Missouri, I will say that this bill does not come within the rule, but there are many bills reported from the Committee on Finance in which time is important.

Mr. COCKRELL. This is a private bill.

Mr. SHERMAN. It is a bill to remit duties on a certain service of plate which was presented to one of our officers abroad, and it is a question whether it shall remain in the custom-house.

Mr. COCKRELL. It will not hurt to delay it.

Mr. SHERMAN. It will not. I asked for the present consideration of the bill at the request of my colleague. Let it go on the Calendar.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar.

Mr. HOAR, from the Committee on Claims, to whom was referred the bill (S. No. 1182) for the relief of Isaac A. Meyer, 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 (H. R. No. 3206) for the relief of John A. Rea, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. CAMERON, of Wisconsin, from the Committee on Indian Affairs, to whom was referred the message of the President of the United States, communicating a draft of a bill to prevent depredations on Indian reservations, and the correspondence relating thereto, submitted a report thereon, accompanied by a bill (S. No. 1646) to amend section 5388 of the Revised Statutes of the United States in relation to timber depredations.

The bill was read twice by its title, and the report was ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the bill (S. No. 295) for the relief of Sallie A. Spence, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 800) for the relief of Lewis D. Allen, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. PENDLETON. I am directed by the Committee on Indian Affairs to report back the bill (S. No. 1256) for the relief of Cyrenus Beers or his personal representatives, and also the personal representatives of Vail & Robinson, and to ask to be discharged from its further consideration. It is possible that there may be a valid claim which lies at the foundation of this bill. As to that the committee desires to express no opinion, but to say that if there be any claim it should be investigated by the Committee on Claims.

The PRESIDENT *pro tempore*. Does the committee recommend that the bill be referred to the Committee on Claims?

Mr. PENDLETON. The Committee on Indian Affairs would suggest that.

The PRESIDENT *pro tempore*. The Committee on Indian Affairs will be discharged from the further consideration of the bill, and it will be referred to the Committee on Claims, if there be no objection.

Mr. JACKSON, from the Committee on Claims, to whom was referred the memorial of the State Bank of New Orleans, Louisiana, praying for such legislation as may be necessary to enable said bank to prosecute in the Court of Claims its claim for cotton taken by agents of the Treasury Department, submitted a report thereon, accompanied by a bill (S. No. 1647) for the relief of the State National Bank of Louisiana.

The bill was read twice by its title, and the report ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 369) for the relief of the officers and crew of the United States steamer Monitor who participated in the action with the rebel iron-clad Merrimac on the 9th day of March, 1862, reported it without amendment; and submitted a report thereon, which was ordered to be printed.

BILLS INTRODUCED.

Mr. MILLER, of California, asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1648) to execute certain treaty stipulations relating to Chinese; which was read twice by its title, and referred to the Committee on Foreign Relations.

Mr. LAMAR asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1649) for the relief of Priscilla W. Burwell, executrix; which was read twice by its title, and referred to the Committee on Claims.

Mr. PUGH (by request) asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1650) authorizing the Postmaster-General to purchase and adopt the Leavitt letter-canceling and post-marking machine; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. GROOME asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1651) for the relief of Antoine J. Corbesier; which was read twice by its title, and, with the accompanying petition, referred to the Committee on Naval Affairs.

Mr. CAMERON, of Pennsylvania, asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1652) granting the right of way for railroad purposes through the United States arsenal grounds at Bridesburgh, Pennsylvania, to connect the manufacturing establishments of Bridesburgh with the Pennsylvania Railroad Company's line of railroad; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. DAWES asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1653) granting a pension to Henry Thresher; which was read twice by its title, and, with the papers on file relating to the case, referred to the Committee on Pensions.

THE PENSION-ROLL.

Mr. WINDOM. I offer the following resolution, and ask for its present consideration:

Resolved, That the Secretary of the Interior be directed to inform the Senate the total number of pensioners upon the roll; the annual value of such roll, and the amount actually paid, including arrears, for the year ending with the payments made September 4, 1881; and also the number of pensioners and value of their pensions and amount paid during said year in each State and Congressional district.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. WINDOM. There can be no possible objection to the resolution unless it may be supposed that it will cause a good deal of labor in the Department. I want to say that under the admirable conduct of the Pension Office by Commissioner Dudley, all the facts I ask for are prepared, and it will cause no expenditure to transmit them to the Senate.

The resolution was agreed to.

UPPER COLUMBIA RIVER.

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

Resolved, That the Secretary of War be, and he hereby is, directed to report to the Senate of the United States any and all information in his possession respecting the navigable waters of the Upper Columbia River and its tributaries, and the resources of the country through which such navigable waters pass, and the character and cost of improvements required to render said Upper Columbia and its tributaries available for purposes of transportation, and particularly such information and data as has been collected upon said subjects by Lieutenant-Colonel T. W. Symons, chief engineer of the department of the Columbia.

RECIPROCAL TRADE WITH MEXICO.

Mr. MORGAN. I move that the Senate take up for consideration the resolution reported from the Committee on Foreign Relations in relation to reciprocity with Mexico.

The PRESIDENT *pro tempore*. That is on the Calendar and comes up without a motion.

The Senate proceeded to consider the concurrent resolution reported from the Committee on Foreign Relations March 30, 1882.

The resolution was reported from the Committee on Foreign Relations with an amendment in line 8, after the word "be," to strike out "regulated by a treaty of reciprocity mutually" and insert "increased and placed by mutual legislation upon a more reciprocal basis and such as will be equally;" and at the end of the resolution to add "and the President is requested to bring this subject to the attention of the Government of Mexico;" so as to make the resolution read:

Resolved by the Senate, the House of Representatives concurring, That the increasing commercial intercourse between the people of Mexico and of the United States, and the relations of friendship and good will between the two great republics now so happily existing and so gratifying to the people of both countries, make it proper that the trade and commerce of the two countries, whether on overland routes or by sea, in the ships owned by citizens of either country, should be increased and placed by mutual legislation upon a more reciprocal basis, and such as will be equally advantageous to both countries. And the President is requested to bring this subject to the attention of the government of Mexico.

Mr. MORGAN. I do not desire to submit any remarks on the resolution in addition to what I had the privilege of saying upon the subject of intercourse with Mexico in the discussion upon the tariff-commission bill. I will simply observe that the congress of Mexico is now in session, and I am led to believe that if this resolution is adopted by the two Houses of our Congress, and the President will communicate with the Government of Mexico upon the subject, the attention of the Mexican Congress will be drawn to the question by the President of the republic, and we shall at all events be able very soon to lay some foundation for a more advantageous intercourse between the two countries.

I merely desire to call the attention of the Senate to the necessity of action at this time upon it without attempting to explain any further, for I think it is unnecessary, the purpose of the resolution.

Mr. SHERMAN. If I correctly understand the resolution, I shall vote for it with great pleasure. I am in favor of a treaty of reciprocity with Mexico, provided it does not involve a discrimination in her favor in the rates of duty. I think the relations between Mexico and the United States ought to be made as intimate as possible.

Mr. MORGAN. I will say to the Senator from Ohio that the amendment proposed by the committee is designed expressly to confine the action of the two governments to legislative action, and not to treaty action, on the subject of tariffs; which I think is exactly right.

Mr. SHERMAN. With that understanding I am perfectly willing to agree to the resolution. I hope the President and the executive authorities will take notice of the fact that there is a great difference between a treaty of reciprocity in commercial relations, an advantageous treaty between the two countries, and a treaty which makes a discrimination in favor of any nation in the rate of duties, a matter to which I am always opposed.

Mr. MORRILL. There is no objection, I think, to the passage of the resolution in its present form. The fact is that we admit from Mexico a large share of our importations from that country almost free, or at a very small rate of duty, while they are taxing us very exorbitantly. I think the matter should be called to their attention. Then the great subject of the Free Zone, where smuggling is carried on against both countries, is one that ought to receive the attention of Mexico as well as of the United States, and some arrangement should be made by which smuggling may be effectually prevented.

Mr. INGALLS. I did not clearly understand the amendment, and I ask that the resolution as amended by the committee may be read again.

The Acting Secretary read the resolution as proposed to be amended.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment of the Committee on Foreign Relations.

The amendment was agreed to.

The resolution as amended was agreed to.

JOHN TAYLOR.

The PRESIDENT *pro tempore*. There being no more resolutions called for, bills on the Calendar will be considered under the Anthony rule.

The bill (S. No. 632) granting a pension to John Taylor was announced as first in order upon the Calendar; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Interior to place on the pension-roll the name of John Taylor, late of Battery M, Third New York Light Artillery, at the rate of \$12 per month, in lieu of the pension he is now receiving.

The bill was reported from the Committee on Pensions with an amendment to add at the end of the bill, after the word "receiving," the words "from and after the passage of this act."

The amendment was agreed to.

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

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

JESSE F. PHARES.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 915) granting a pension to Jesse F. Phares. It directs the Secretary of the Interior to place on the pension-roll the name of Jesse F. Phares, late a scout under General McClellan.

Mr. COCKRELL. Let the report in that case be read.

The PRESIDENT *pro tempore*. The report will be read.

The Principal Legislative Clerk read the following report, submitted by Mr. CAMDEN February 14, 1882:

The Committee on Pensions, to whom was referred the bill (S. No. 915) granting a pension to Jesse F. Phares, have carefully examined the same, and report:

That they find the facts of the case are fully stated in the report of the Committee on Pensions made to the Senate during the second session of the Forty-sixth Congress, (Report No. 228,) but that they do not agree with the conclusion arrived at in that report. It also appears that the Senate, at the same session, disagreed with the report of the committee, and passed the bill granting a pension to the claimant.

Your committee recommend the passage of the bill.

So much of the Senate report, in which the committee concur, as states the facts in this case is as follows:

"The facts in the case are few and clearly proven. At the outbreak of the rebellion the claimant was a resident of Randolph County, in the State of Virginia; that he entered the service of the Government about the month of June, 1861, as a scout, serving under Generals McClellan, Milroy, Kelly, and others, and by reason of his intimate knowledge of the country and his intelligence, zeal, and daring, rendering very valuable service to the Union cause. In April, 1863, the confederate general, Imboden, advanced upon the Union forces at Beverly, West Virginia, commanded by Colonel George R. Latham, commanding the Fifth West Virginia Cavalry. In the advance Phares, who was then on duty outside the Union pickets, was surprised by a party of confederate troops, and refusing to halt when ordered, was shot through the body, but retained his saddle until he reached the Union lines. The following are extracts from the affidavits of Colonel George R. Latham, Fifth Regiment West Virginia Cavalry, (Union,) and of Lieutenant-Colonel Elihu Hutton, Twentieth Regiment Virginia Cavalry, (confederate.)

"Colonel Latham says:

"On the 23d day of April, 1863, I was in command of the Federal forces stationed at Beverly, West Virginia, and said Phares, then scouting outside my picket, was cut off by a party of the enemy then advancing under General Imboden to attack me, and in endeavoring to dash past them was badly wounded by a musket-ball passing through his body—through the lungs—from the effects of which he is almost wholly disabled and is failing rapidly in strength and general health. Though so badly wounded he retained his saddle until he reached my pickets and gave the first intimation that I had of the advance of the enemy. I was compelled to evacuate Beverly and Phares fell into the hands of the enemy. He had at the time several thousand dollars' worth of goods and personal property, all of which was taken from him, leaving him and his family in very destitute and distressed circumstances, from which they have been unable to recover."

"Lieutenant-Colonel Hutton says:

"During the late civil war I was lieutenant-colonel of the Twentieth Regiment Virginia Cavalry (confederate service) and served principally on the West Virginia frontier, where it was well known who were acting as scouts and guides for the Federal forces in that vicinity, and said Jesse F. Phares was well known to be one of the most active and dangerous scouts and guides operating against us. His knowledge of the country was thorough; he was smart, daring, and vigilant and capable of great endurance. In consequence of the knowledge we possessed of this fact every possible exertion was made on our part to capture him, but without success until the 23d day of April, 1863, when General Imboden advanced upon the Federal forces then stationed at Beverly commanded by Colonel George R. Latham.

"In order to cut off all scouts that might be outside the Federal pickets, we sent by night a party of men through the woods to gain the road near the outside Federal picket post before daylight on the morning of April 23, 1863. About daylight said Phares, who was thus cut off, approached said party of men on horseback and was ordered to halt, but dashed forward and past the men, when he was fired upon by them, one ball taking effect, passing through his body—through the lungs—from the effects of which he is now almost wholly disabled. He retained his seat, however, until he reached the Federal picket and gave information of our advance.

"Beverly was evacuated the same day by the Federal forces and occupied by the confederates, and Phares fell into our hands.

"He was cared for by me personally about fifteen days, but a large amount of goods, general merchandise, groceries, &c., household furniture, and other personal property, to the value of several thousand dollars, fell into confederate hands and was used or destroyed by them, leaving him and his family in very destitute circumstances, in which condition, principally in consequence of his disability, they remain to this time. He has four children living, and one, his oldest, a daughter, died of consumption in 1870, induced by hardships and exposure, and his wife is worn down by care and labor.

"Said Phares is about forty-three years of age, and has been for several years failing rapidly in physical strength, in consequence of the wound above referred to."

"J. R. Blair, an examining surgeon for the Pension Office in the State of West Virginia, certifies, under date of December 24, 1879, that he has carefully examined Phares, and finds that his left hip was entered by a musket-ball, which passed upward through the region of the lower part of the left lung and out near the stomach. The effect of the wound is to weaken and partially paralyze the entire left side, and, in my judgment, produces at least a two-third disability, which will increase."

Mr. PLATT. Mr. President, I do not rise for the purpose of contesting the passage of this bill, for in view of the action of the Senate at a previous session I presume that would be useless; but I do wish to say that I do not concur in the report. It is a bill to pension a scout who was wounded. The Senate Committee on Pensions reported unfavorably upon the case last year, and the Senate, overruling the report of the committee, passed the bill; and I suppose we must accept that as the sentiment of the Senate.

Mr. COCKRELL. That was at a former Congress.

Mr. PLATT. It was at a former Congress. I desire to say, however, that I cannot give my vote to the pensioning of any scout. I admit that this man was a brave man; I admit that he was wounded; I admit that his family is in destitute circumstances, and that he is disabled; but there were hundreds and thousands of scouts who were either wounded or disabled, many of whom were captured, condemned, and executed as spies, none of whom, so far as I know, and none of the families of whom are enjoying any pension.

I do think it is all wrong to pass a special act pensioning a single individual scout and refuse to pass a general law on the subject. From the first pension law, in 1862, down to the present time Congress has had this subject before it and has neglected to pass any general law on the subject; and I do not think that we ought to pension scouts by special act.

Mr. COCKRELL. Mr. President, this bill was in the last Congress and was pretty thoroughly discussed. It was discussed by the Senator from Connecticut [Mr. PLATT] who has just taken his seat and by the Senator from Illinois [Mr. LOGAN] in opposition to its passage.

I simply desire to say that I cannot give my consent to the passage of the bill. The principle involved in it is wrong. No pensions have ever been promised to scouts or civil employes serving in a military capacity. The Government claims the right to take men and place them in the military and naval service at a price fixed by law. There is no voluntary choice about it; and the compensation provided by law is not the equivalent for the services rendered and the risks run. In this kind of employment, however, it is entirely different. Here the scout employed under the contract received a consideration which was the equivalent of the service and the dangers of the service, and what he received was full compensation, just as much as the amount of salary fixed by law and received by a Senator is the full equivalent of all the services he may render.

The scouts received from \$60 to \$100 per month under contract; the soldiers received from \$13 to \$15. This bill proposes to place them upon an equality. The scout went hither and thither; the soldiers had to go with the bulk of the Army and endure the hardships, the sufferings, and the privations. The principle is wrong which allows this scout who was receiving, as my recollection now is, \$100 a month for his service to be granted the pension which the private soldier who was disabled receives.

Mr. SEWELL. Will the Senator from Missouri allow me to ask him a question?

Mr. COCKRELL. Certainly; with pleasure.

Mr. SEWELL. What does the bill give this scout?

Mr. COCKRELL. It gives him a pension.

Mr. CAMDEN. According to his disability.

Mr. COCKRELL. It would be about eighteen dollars a month.

Mr. SEWELL. A pension as a private soldier?

Mr. COCKRELL. I suppose he would be pensioned as a private soldier.

Mr. SEWELL. That is what I wanted to arrive at.

Mr. COCKRELL. He would get now as a pension more than the soldiers in the Army received as their monthly pay during their service.

Mr. SEWELL. And he would receive it the same, according to his disability, as any other soldier gets now?

Mr. COCKRELL. Yes, sir.

Mr. SEWELL. That is all I wished to know.

Mr. COCKRELL. Now, one word more in regard to the report. It seems to me remarkable in view of the evidence as presented by it. The evidence shows a discrepancy which seems to have escaped the attention of the committee entirely. The evidence of Colonel Latham is this:

And in endeavoring to dash past them was badly wounded by a musket-ball passing through his body, through the lungs—

Through the lungs—

from the effects of which he is almost wholly disabled, and is failing rapidly in strength and general health.

Another officer says that Phares was wounded through the lungs. The doctor who made the examination was Dr. J. R. Blair, an examining surgeon for the Pension Office in the State of West Virginia, a constituent of my distinguished friend who made the report, [Mr. CAMDEN,] and as a matter of course a reliable and truthful gentleman. Dr. Blair certifies, under date of December 24, 1879:

That he has carefully examined Phares and finds "that his left hip was entered by a musket-ball, which passed upward through the region of the lower part of the left lung and out near the stomach."

I simply desired to have the report read and to state my objection to the principles which are involved in the bill. I shall vote "nay" on its passage.

Mr. CAMDEN. Mr. President, I hardly see the point of the state-

ment made by the Senator from Missouri when he says we are granting a pension to this scout over other cases of meritorious service by soldiers in the line of duty. Pensions are not granted because of any contract made by the Government with the soldier which places the Government under obligation to grant a pension. It has been the rule of the Committee on Pensions, as well as of Congress, to grant pensions for meritorious services and for wounds and disabilities received in the line of duty. This is a most extraordinary case. There is no essential difference between the service of a scout and that of a volunteer soldier in the ranks. The scout volunteered for the performance of an especial and very dangerous duty. In the line of that duty he received a wound, as stated by his commanding officer, through the lung. By the report of the examining surgeon the ball entered the hip, passed up through the lung and out at the stomach, and the evidence is clear and conclusive that this man, from the date of receiving that wound, has been disabled up to the present time, and he is not only in destitute circumstances but in very bad health. The particular merit of this claim is that notwithstanding the severe wound received by this scout at that time he continued to keep his seat in the saddle, and rode for two miles to give information to the United States troops in camp, who were unaware of the approach of the enemy in the neighborhood, and saved that army from destruction. The officer states in his report that if it had not been for the information given by this scout at the time the camp would have been surprised.

I submit, sir, that if Congress gives pensions for the purpose of recognizing meritorious service by a person in the military service of the United States, there can be no stronger case presented than this, and that the bill ought to receive the favorable consideration of Congress.

Mr. PLUMB. I move an amendment to the bill, to add:

But the amount of such pension shall not be greater than said Phares would be entitled to if he had been a private soldier.

Mr. CAMDEN. I have no objection to that.

Mr. DAVIS, of West Virginia. There is no objection to the amendment.

Mr. CAMDEN. It only makes plain what we intended.

Mr. HAWLEY. Mr. President, it is very ungracious to say an unkind word against a bill of this description, and yet it has happened a number of times that Congress has been surprised afterward by the result of some action as little considered as this is likely to be. If we pass a bill of this description, I do not see why we may not and ought not to take into consideration not alone the scouts, but the vast array of employes of the Quartermaster and Commissary Departments, all the officers and crews of the fleet of a thousand transports that General Meigs had employed; in short all civilians who were employed, around, near, and with the Army. I think it quite possible that the number of those would equal nearly the numbers of the Army.

I said there were a thousand transports. General Meigs told me himself he had a great fleet of a thousand in his employment at one time. I know of my own personal knowledge of a case where a transport was ordered to take some troops up a narrow stream in the South, and it was fired at by guerrillas all the way up; the captain, as gallant a man as if he had held a general's commission, was shot down upon the deck of his steamer, and several of his men were wounded. The captain left a family and some of those men left families. Will you pension those?

I have a constituent who was discharged after honorable service in the Army because of some degree of disability which unfitted him for the field. He was employed by the quartermaster as a clerk. It was a post in the enemy's country, and of course by the rules of war every man there, civilian or other, no matter what his employment or condition, was subject to military order in case of necessity according to the discretion of the commanding officer. This man was detailed to assist in firing a Fourth of July salute because he was an experienced cannoneer, though then a civilian. He went to his work very cheerfully, of course, and he lost his arm. That case was before Congress; I do not know that I can imagine a much stronger case; and yet a pension was refused to him, and upon this ground that we have not gone beyond those who, as the Senator from Missouri observed, were compelled virtually to go into the service of their country.

I simply desire to warn the Senate—and I suppose the Senate really knows it already—that this is but the beginning of a vast addition to the pension list, and it would be far better to consider and deliberately adopt a general bill admitting certain classes of civil employes than it would be to pass a single bill of this sort.

Mr. DAVIS, of West Virginia. Mr. President, it will be recollected by the Senate, as has been stated, that this case was thoroughly discussed, perhaps for a day, at the last Congress, with an adverse report, and the Senate passed the bill, after hearing the facts, by a decisive majority. Now it is admitted by both the Senators who have spoken against the bill—I mean the Senator from Connecticut and the Senator from Missouri—that all the facts stated in the report are fairly and correctly stated. For instance, the man was in the military service, volunteered. It will be recollected that this was very early in the war, in 1861, when McClellan was in West Virginia, before much enlistment took place. This gentleman, though a man of means, a merchant there, volunteered his services, and was with General

McClellan as a scout and otherwise in the western part of the State which I in part represent.

What else? This man was outside of the pickets, was at home safe; he could have remained there, but when he saw danger to the Union Army that was not far off he chose to take his horse and make an effort to get to them to inform them of the approach of the enemy, and in doing so he was shot. Though shot, he remained upon his horse and got into the town and gave notice to the Union forces. This man had considerable goods and was living very comfortably. From the fact that he had undertaken to bring the message in and was wounded, his entire household and store goods were taken possession of by the confederates, leaving him poor, and he has so remained from that day to this. His family is in destitute circumstances, and he is unable to work. It appears to me that if there is a meritorious case at all in any form this is the one.

Bear in mind that this man volunteered. He volunteered first to give General McClellan aid in showing him about the country, showing him the roads. He volunteered, when he knew that the Federal forces were in danger, to quit his home, mount his horse, and attempt to get to them when he was in safety if he had chosen to remain. It is as much a case of a volunteer doing what he believed to be his full duty as possibly could be made. I hope there will be no objection to the bill, for it ought to pass.

Mr. CALL. Mr. President, I voted for this bill before, and I wish to vote for it again. I think that there is no kind of reason in any objection to granting this pension. The Senator from Missouri does not state the law correctly or the reasoning upon which pensions are granted. To suppose that a pension is granted because of compulsory military service and that voluntary military service is not meritorious as compared with compulsory service, is certainly a proposition that has no kind of reason in it, and it is a bad example to set forth to the country.

Not only that, but it is not true that the military service of this country has been compulsory. By far the larger portion of it at all times has been voluntary military service. Neither is it true that the Government exercises the power, or has ever done so, of taking men against their consent and putting them into the service. There is such an organic power in our law; but there is also an organic power to accept voluntary military service, and that voluntary military service has always been accepted, and it is far more meritorious than compulsory military service.

I venture to say that the only ground in reason that gentlemen can find for granting a pension is meritorious military service in the line of duty accompanied by disability incurred. That depends upon the greater or less degree of danger to which a man has been exposed; and if he has incurred the consequences of danger, if he has voluntarily done when not bound to do it what a private soldier was required to do and has been wounded, why talk about any difference in principle or in reason when a man has voluntarily incurred peril for the public good and received the reward of that peril by actual disability?

For Senators to say "he was not compelled to do it, he did it voluntarily and that is a demerit," is, I humbly affirm, entirely unreasonable. Why, sir, this man voluntarily went in the face of the enemy and received a wound which disabled him for life. He adventured his life, and according to this report he gave the equivalent of his life in a permanent disability in order to do what a private soldier was compelled to do.

[Here the hammer fell.]

Mr. CAMDEN. I desire to call the attention of the Senator from Connecticut to the fact that the law does provide pensions for almost all the classes of cases mentioned by him a few moments ago.

The PRESIDENT *pro tempore*. The Senator from West Virginia is not in order.

Mr. CAMDEN. I am aware that I am out of order.

Mr. HARRISON. I hope consent will be given to the Senator from West Virginia to proceed.

The PRESIDENT *pro tempore*. The Chair does not believe the time can be extended unless a day's notice is given of a change of the rule.

Mr. PLATT. I move to amend the bill by adding at the end of it:

And said pension shall commence from the date of the passage of this act.

The PRESIDENT *pro tempore*. If that amendment has been offered since the Senator from West Virginia spoke before he can speak upon it.

Mr. CAMDEN. I only wanted to call attention to the law. In section 4693 of the Revised Statutes it is provided that the following persons shall be entitled to pensions:

Any master serving on a gun-boat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gun-boat or war-vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated, while in the line of duty, for procuring his subsistence by manual labor.

That does not include quartermaster's clerks, but it includes any person on a gun-boat or war-vessel or transport, I think. In addition to that, the law gives pensions to—

Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, &c.

It grants a pension to persons not enlisted as regular soldiers in the war.

Mr. HAWLEY. To a person serving on a gun-boat or war-vessel, not on a transport.

Mr. CAMDEN. Serving on a gun-boat or war-vessel. I wish, however, to call the attention of the Senate to the distinction made by the Committee on Pensions in reporting this case favorably, and that is that pensions are granted almost every day for distinguished and meritorious service. The pensions of distinguished officers are increased, or pensions are granted to the widows of distinguished officers for meritorious and distinguished service; and the committee report this bill favorably upon the ground that the service of this man was distinguished and meritorious, and ought to be recognized as such.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Kansas, [Mr. PLUMB.]

The amendment was agreed to.

Mr. PLATT. I move to add:

And shall commence from the passage of this act.

Mr. DAVIS, of West Virginia. Is that right? This man has been disabled, and probably unable to do any work whatever for a long time, and I hardly think it just to make the pension commence now.

Mr. INGALLS. It makes no difference whether these words are in or out. Under the ruling of the Department the pensions are only to be paid from the time the act is approved.

Mr. COCKRELL. And under the ruling of the committee that clause has been inserted continually.

Mr. TELLER. No, not lately. Since the Department has been ruling that it is not necessary we have reported our bills without it. It is simply lumbering up the bill for nothing.

Mr. PLATT. It certainly gives me an opportunity to say a word. The PRESIDENT *pro tempore*. Certainly; it gives the Senator an opportunity to speak five minutes.

Mr. PLATT. I think it cannot be claimed, it never has been seriously claimed, that this person is pensionable by law. The Pension Bureau rules that he is not. It was admitted here in the discussion of last year that he was not, and if the case is to pass it ought to stand upon its real merit, and that is that it is a case outside of the law and not within the law, because if it is within the law he can go to the Pension Office and get his pension. If this man is more entitled to recognition from Congress than other scouts who have been wounded or killed, by reason of the loss of property, then let Congress give him a specific sum by way of compensation; but do not start here now the principle of pensioning scouts, teamsters, those who served on transports, quartermasters' clerks, all civil employes of the Army.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Connecticut, [Mr. PLATT.]

The amendment was agreed to.

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

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

Mr. SAULSBURY. I know how very ungracious it is to raise any opposition to the passage of a bill granting a pension to any person who applies for it. I have seen too often the action of the Senate to doubt that this bill will pass, and almost every other proposition will pass that proposes to take money out of the public Treasury and give it to some private party.

There is no law that entitles this party to any pension. There never was any promise made by any law passed by Congress that scouts employed under a contract should be entitled to receive a pension if they should be wounded. We propose by the passage of this bill now to open the doors to another class of pensioners upon the public bounty. We have pensioned almost every person in the Army who by any possibility could be proved to have been slightly injured, and have given arrears of pensions, taking from the people of the country a vast amount of money, and we now propose by this bill to open the doors of the Treasury to another class of beneficiaries and give them a right to call upon Congress for donations of the public money.

Mr. CAMDEN. I wish to say to the Senator that this does not include a whole class, nor is even intended to make a law as to a class, but it takes a meritorious case from that class and pensions an individual.

Mr. SAULSBURY. It is to take one case from a class of persons and form a precedent which will come here to plague you. Every other man who occupied a similar position—and there may have been hundreds or thousands—will come here and plead the very precedent of this case as a claim on the public bounty, and you cannot discriminate with any degree of justice between persons occupying the same condition. If you pass this bill, every other man who was in service as a scout will come here and say, "I was a scout, and I received an injury in the public service; you have passed a bill giving Mr. Phares, of West Virginia, for similar service a pension, and I come now and claim that exact justice which should be meted out to all men entitles me to the same favor that this gentleman from West Virginia has received."

I do think it is time we should have some regard to the people who pay the taxes into the public Treasury. While many of these gentlemen have been living at their ease, there is another class of indi-

viduals who have been working from early morning till late at night to raise the money to put into the public Treasury that is thus donated. In the agricultural districts—

The PRESIDING OFFICER, (Mr. VOORHEES in the chair.) The Senator's time has expired under the rule.

Mr. SAULSBURY. I had no idea I had occupied five minutes.

The PRESIDING OFFICER. The question is, Shall the bill pass?

Mr. SAULSBURY. On that I ask for the yeas and nays. The yeas and nays were ordered; and being taken, resulted—yeas 24, nays 19; as follows:

YEAS—24.			
Bayard,	Fair,	Jonas,	Sawyer,
Blair,	Gorman,	Lamar,	Sherman,
Call,	Grover,	McPherson,	Slater,
Camden,	Harrison,	Mahone,	Teller,
Cameron of Wis.,	Ingalls,	Maxey,	Voorhees,
Davis of W. Va.,	Jackson,	Rollins,	Windom.

NAYS—19.			
Anthony,	Frye,	Hawley,	Pugh,
Beck,	Garland,	Johnston,	Saulsbury,
Cockrell,	Groome,	Mitchell,	Vest,
Coke,	Hampton,	Pendleton,	Walker.
Davis of Illinois,	Harris,	Platt,	

ABSENT—33.			
Aldrich,	Ferry,	Lapham,	Ransom,
Allison,	George,	Logan,	Saunders,
Brown,	Hale,	McDill,	Sewell,
Butler,	Hill of Colorado,	McMillan,	Vance,
Cameron of Pa.,	Hill of Georgia,	Miller of Cal.,	Van Wyck,
Conger,	Hoar,	Miller of N. Y.,	Williams.
Dawes,	Jones of Florida,	Morgan,	
Edmunds,	Jones of Nevada,	Morrill,	
Farley,	Kellogg,	Plumb,	

So the bill was passed.

JOHN THORNLEY.

The next bill on the Calendar was the bill (H. R. No. 1776) for the relief of Medical Director John Thornley, United States Navy, which was considered as in Committee of the Whole. It provides that Medical Director John Thornley, United States Navy, shall be considered as having been retired from active service as a surgeon and placed on the retired list of officers of the Navy June 1, 1861, on account of physical incapacity originating in the line of duty; and directs that the accounting officers of the Treasury allow him the rate of retired pay of the grade in which he was retired, prescribed by section 1588, Revised Statutes, for officers so retired; and further directs the accounting officers, in adjusting the account of John Thornley, to allow and pay to him the difference between the pay he has been allowed as a surgeon on the retired list since the passage of the act approved March 3, 1873, (section 1588, Revised Statutes,) and that to which he is entitled under that act as having been retired as a surgeon for incapacity originating in the line of duty.

Mr. COCKRELL. I should like to ask the Senator from Rhode Island how much compensation will this bill give to Dr. Thornley? Mr. ANTHONY. I am unable to answer. I believe it is some two thousand dollars, but I am not sure.

Mr. COCKRELL. This bill is a little different, as the Senator from Rhode Island will see, from the bill which was formerly pending in the Senate. It gives him pay back to 1861, if he is entitled to it and has not already received it.

Mr. ANTHONY. It is only intended to give him pay back to the time when the law was passed, making a difference between the allowance to those who were retired for disability incurred in the service and those who were retired for disability otherwise incurred.

Mr. COCKRELL. That may be, but the language of this bill is very particular:

That Medical Director John Thornley, United States Navy, be considered as having been retired from active service as a surgeon and placed on the retired list of officers of the Navy June 1, 1861, on account of physical incapacity originating in the line of duty.

Mr. VOORHEES. Allow me to say to the Senator from Missouri, however, that the law—

Mr. COCKRELL. Wait a moment. The bill proceeds:

And that the accounting officers of the Treasury be, and they are hereby, authorized and directed to allow him the rate of retired pay of the grade in which he was retired, prescribed by section 1588, Revised Statutes, for officers so retired.

Mr. VOORHEES. And that act was passed in March, 1873. That is the law that will operate on the amount of compensation since then.

Mr. COCKRELL. I have so understood the former bills, but the question is whether the use of this language does not take it back to 1861.

Mr. VOORHEES. No; it simply gives the compensation on the retired list fixed by the act of 1873. It begins then; it does not go back to 1861.

Mr. COCKRELL. I desire simply to read an opinion of the Attorney-General on this bill, and with that I shall be satisfied to cast my vote against it:

DEPARTMENT OF JUSTICE,
Washington, D. C., July 27, 1881.

Sir: Your letter of the 29th ultimo requests my opinion upon certain questions suggested by the Second Comptroller in his communication to you of the 7th ultimo, (which accompanied that letter,) arising in the matter of a claim made by Surgeon John Thornley, United States Navy, retired, for the difference between one-half of sea-pay and 75 per cent. thereof from March 3, 1873, to the present time.

It appears that Surgeon Thornley was retired under section 3 of the act of February 21, 1861, chapter 49. Previous thereto he was examined by a board of medical officers convened pursuant to an order of the Secretary of the Navy, dated May 24, 1861, and found totally disqualified for the performance of his duties; the board stating in their report, which bears date May 29, 1861, that in their opinion "his disability did not occur in the line of his duty."

By section 5 of the act of July 15, 1870, chapter 295, it was provided: "That from and after the 30th day of June, 1870, the pay of all officers of the Navy now on or hereafter placed on the retired list shall, when not on active duty, be equal to one-half of the highest pay" (*i. e.* sea-pay) "prescribed by this act for officers on the active list whose grade corresponds to the grade held by such officers respectively at the time of such retirement," &c. Subsequently, by the act of March 3, 1873, chapter 230, it was provided: "That those officers on the retired list, and those hereafter retired, who were or who may be retired after forty years' service, or on attaining the age of sixty-two years, in conformity with section 1 of the act December 21, 1861, and its amendments, dated June 25, 1864, or those who were or may be retired from incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, from sickness or exposure therein, shall, after the passage of this act, be entitled to 75 per cent. of the present sea-pay of the grade or rank which they held at the time of their retirement." These provisions (the former as modified by the latter) are embodied in section 1588, Revised Statutes.

Early in November, 1878, Surgeon Thornley made application for a further examination of his case, based on new evidence, tending, as he alleged, to show that the opinion of the board of medical officers in 1861, that his disability did not occur in the line of duty, was erroneous.

Thereupon the Secretary of the Navy ordered a board of medical officers to convene at the Navy Department on the 12th of same month, or as soon thereafter as practicable, and "examine such documentary evidence as may be offered by Dr. Thornley, and after a careful examination of all the evidence in the case to report to the Department whether in their opinion his disability did or did not originate in the line of duty." The finding of the board which convened pursuant to this order was that "the disability causing the retirement of Medical Director John Thornley, United States Navy, had its origin in the line of duty," &c.

This finding was, on January 1, 1879, approved by the Secretary of the Navy in the following terms: "In accordance with the within proceeding and finding, it is the opinion of the Department that Medical Director John Thornley was, at the time of his retirement, incapacitated on account of causes occasioned while in the line of duty, and he will be so regarded on the records of the Department from this date."

Surgeon Thornley has never received the higher rate of pay—*i. e.* 75 per cent. of sea-pay—provided by the act of March 3, 1873; also by section 1588, Revised Statutes.

The questions suggested by the Second Comptroller are these: "Whether the action of the Secretary of the Navy last above quoted is a valid decision in favor of Dr. Thornley; and, if it is such, from what date the claimant is entitled to receive the higher rate of pay."

[The President *pro tempore* rapped with his gavel.]

I move to strike out the last line of the bill.

The PRESIDENT *pro tempore*. The Senator from Missouri moves to strike out the last line of this bill.

Mr. VOORHEES. I do not care to cavil about the Senator's right to the floor, and I would be very glad to give unanimous consent to the Senator to go on, but I do not think it is exactly in accordance with the enforcement of this rule to evade it in this way. The motion now made is a mere evasion.

Mr. COCKRELL. I believe I have the floor on my motion.

The PRESIDENT *pro tempore*. Yes, sir. The Chair cannot decide what is an evasion.

Mr. COCKRELL. I can make another motion if necessary. I proceed with the reading of the Attorney-General's opinion:

The answer to these questions depends upon the result of a preliminary inquiry which arises here, namely, whether the action of the Secretary of the Navy, in 1878, in ordering a board to reinvestigate the case of Surgeon Thornley, then on the retired list, and to report upon the origin of his disability was authorized by law? As already stated, Surgeon Thornley was retired under section 3 of the act of February 21, 1861, chapter 49, which authorized the President "to place on a retired list any medical officer of the Navy who is now or may hereafter be proved to be permanently incapable, from physical or mental infirmity, of further service at sea," &c. Under this provision it was immaterial whether the infirmity of the officer originated in the line of duty or not. Whatever the origin of the infirmity might be, if he was thereby rendered permanently incapable of further service at sea, that was sufficient. Hence, so far as the *cause* for retirement thereunder is concerned, the statement in the report of the board of medical officers, of May 29, 1861, that Surgeon Thornley's disability "did not occur in the line of duty," must be deemed to be mere surplusage. An allegation of error in such statement, therefore, furnished no ground for re-examination of his case, if indeed a re-examination could have been had on any ground after his retirement.

Subsequent to the retirement of Surgeon Thornley, Congress, by the twenty-first, twenty-second, and twenty-third sections of the act of August 3, 1861, chapter 42, made new and enlarged provisions for the retirement of naval officers, both of the line and staff. These provisions superseded all others previously in force, but they had no application to officers already retired under former laws, except (in section 22) as to the pay of captains, commodores, and lieutenants then on the retired list. Section 23 provided for the constitution of a retiring board, which, on finding an officer incapacitated for active service, was required to "report whether in its judgment the incapacity result from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from any other incident of service; if so, and the President approve of such judgment, the disabled officer shall thereupon be placed upon the list of retired officers, according to the provisions (in section 22) of this act; but if such disability or incompetency proceeded from other causes, and the President concur in opinion with the board, the officers may be retired upon furlough pay, or he shall be wholly retired from the service, with one year's pay, at the discretion of the President." Here the statute divides the causes for retirement into two classes, making separate provision for each class. These classes are (1) where the incapacity results "from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from any other incident of service;" (2) where the disability or incompetency proceeds "from other causes."

The provisions of the act of August 3, 1861, just adverted to, are reproduced in the Revised Statutes, in section 1448 to 1455, inclusive.

It is to be observed that officers who had already been put on the retired list under previous laws do not come within those provisions; that the retiring board constituted under the latter is not authorized to inquire into the nature and origin of the disabilities of such officers, but only into cases of officers on the active list which are referred thereto for examination. Nor am I able to find any provision of law which authorizes the case of an officer who was retired under the act of September 21, 1861, by reason of being "permanently incapable, from physical or mental infirmity, of further service at sea," and who remains on the retired list by virtue

of such retirement, to be reinvestigated by a board with a view to determine whether his incapacity resulted "from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from any other incident of service," &c.

[The President *pro tempore* rapped with his gavel.]

Mr. VOORHEES. Will the Senator from Missouri make another motion?

Mr. COCKRELL. I shall make another motion to strike out the enacting clause.

Mr. VOORHEES. And does the Senator desire to go on upon that motion?

Mr. COCKRELL. I have only a few pages more to read.

Mr. VOORHEES. I only wanted to know the Senator's mode of procedure.

Mr. COCKRELL. I propose to read the opinion of the Attorney-General, or object to the present consideration of the case and defeat it this morning. I want only to read the opinion.

Mr. VOORHEES. I have not the slightest objection. I said a while ago that I would give unanimous consent to have the Senator proceed, but I want to know how many times the five-minute rule can be evaded?

Mr. COCKRELL. I have only four more pages to read. I move to strike out the enacting clause of the bill so as to come within the purview of the rule.

The PRESIDENT *pro tempore*. There is one motion pending now, and on that the Senator has spoken.

Mr. COCKRELL. I submit as a point of order that there can be two amendments pending at once.

The PRESIDENT *pro tempore*. The two motions are inconsistent with each other.

Mr. ANTHONY. The Senator can withdraw the amendment on which he has been speaking and offer a new one.

Mr. COCKRELL. Then, if the Chair holds that my motions are inconsistent, I withdraw the first amendment and substitute the last.

The PRESIDENT *pro tempore*. The Senator has five minutes more on that motion.

Mr. COCKRELL. Yes, sir. I proceed with the opinion:

A reinvestigation in such case, without authority of Congress, even if the fact thereby found were that the infirmity resulted from some one or more of the last mentioned causes, could not be made the basis of any change in regard to the cause of the officer's retirement, nor confer upon him any rights to which he would not otherwise be entitled.

By the acts of July 15, 1870, and March 3, 1873, cited above, regulating the pay of retired officers, the provisions of which, as hereinbefore stated, are embodied in section 1588, Revised Statutes, two rates of pay are established, namely, seventy-five per cent. of sea-pay, and one-half of sea-pay. The former rate applies to (see section 1588) all officers of the Navy (1) "who have been retired after forty-five years' service after reaching the age of sixteen years"—these officers were retired under section 1 of the act of December 21, 1861, chapter 1, amended by the act of June 25, 1864, chapter 152; (2) "or who have been or may be retired after forty years' service, upon their own application to the President"—retirement in such case was formally provided for by section 21 of the act of August 3, 1861, and is now by section 1443, Revised Statutes; (3) "or on attaining the age of sixty-two years"—retirement in this case was formally provided for by section 1 of the act of December 21, 1861, and is now by section 1444, Revised Statutes; (4) "or on account of incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure therein," under section 23 of the act of August 3, 1861, section 1453, Revised Statutes.

The latter rate is applicable to "all other officers on the retired list"—terms which are undoubtedly broad enough to comprehend those who were retired under the act of February 21, 1861, as being "permanently incapable, from physical or mental infirmity, of further service at sea." In reference to the last-mentioned act, I have already remarked that it was not material to inquire whether the infirmity of the officer originated in the line of duty or not. Such inquiry cannot now be deemed material in the case of an officer retired thereunder, from the fact that, by subsequent legislation, provision has been made for two different rates of pay, of which the higher rate applies to officers who were retired under later acts, for specific causes, including (*inter alia*) wounds or injuries received in the line of duty, while the lower rate applies to all other retired officers not embraced in that class. If the cause for retirement under the act of February 21, 1861, (*i. e.*, permanent incapability from physical or mental infirmity, of further service at sea,) does not place the officer among those who are entitled to the higher rate, nothing can be done by Executive action to put him there without the aid of further legislation. Upon the whole I am of opinion that the Secretary of the Navy, in 1878, was not authorized by law to submit the case of Surgeon Thornley to a medical board for re-examination as to the origin of the disability for which he was retired, and that the Secretary's decision, based on the report of that board, is without any legal effect as regards the cause for retirement in the case of that officer or his right to pay.

I am, sir, very respectfully,

WAYNE MACVEAGH,
Attorney-General.

Hon. WILLIAM H. HUNT, Secretary of the Navy.

This opinion of the Attorney-General clearly shows that under the law and under the action of "the late lamented President," as the distinguished Senator from Kansas [Mr. INGALLS] said, this officer is not entitled to this pay. It is a mere gratuity. I simply desired to read this opinion and to express my disapproval of the bill.

Mr. VOORHEES. Now, Mr. President, I think I understand this case very well. It seems that in 1861 Dr. Thornley, then an old man and broken down in the service, was retired from the active list of the Navy. At that time it made no difference as to his pay whether he was retired because of disability incurred in the service or disability generally incurred. He was retired and placed upon half pay under the law as it then stood.

The Senate will observe that in March, 1873, an act was passed which did make it a question of moment whether the disability was incurred in the service or not, for Congress said by that act, which I

have in my hand, that if the disability was incurred in the line of duty he should have 75 per cent. instead of 50 per cent. of active-duty pay. That is all there is in this case, the difference between 75 per cent. and 50 per cent. He was retired in 1861 at 50 per cent., and it is true the board at that time said the disability for which he was retired did not occur in the line of duty, but it made no difference and that finding the Attorney-General has since said was mere surplusage, it being a matter of no importance. Dr. Thornley did not know that that was inserted in the record until it became a matter of importance for him to inquire into that after the enactment of 1873 was passed. Then knowing the fact that there was a law on the statute-book which gave him 25 per cent. more in case he was disabled in the line of duty, he made his application under that law. Dr. Dean, medical inspector of the Navy, makes this statement in 1879:

WASHINGTON, D. C., January 8, 1879.

I hereby certify that I was the assistant to the Bureau of Medicine in the Navy Department when, in the latter part of the year 1873, Medical Director John Thornley, being on the retired list, made application to the Secretary of the Navy to be allowed three-fourths of duty pay, as he claimed that his disability had occurred in the line of duty, and pressed this claim in a becoming manner until he found it in vain to pursue it further at that time.

RICHARD C. DEAN,
Medical Inspector, U. S. N.

Showing that he set up this claim as soon as the law was passed, which gave him or any one else for disability incurred in the line of duty an addition of 25 per cent. pay. Upon this claim, preferred by Dr. Thornley at that time, the Secretary of the Navy convened a board to determine as to the very important point whether, in fact, he had been disabled in the line of duty or not. It was then for the first time a matter of importance to be inquired into. When this board was convened by the late Secretary of the Navy the finding was, all the facts connected with the disability then first coming before a competent board, as follows:

The opinion of the board of May 29, 1861, of which a copy is herewith appended and marked N, regarding the disability of Dr. Thornley, and that it was not an incident of the service, seems to have been founded upon insufficient evidence.

The conclusion that we now reach is formed after being in full possession of all the facts and documents, and we therefore derive the opinion, the disability causing the retirement of Medical Director John Thornley, United States Navy, had its origin in the line of duty, while attached to the United States steamship Supply, in the harbor of San Francisco, in 1851.

P. LANSDALE,
Medical Director.
RICHARD C. DEAN,
Inspector and Member.
B. F. GIBBS,
Medical Inspector and Member.

This is incorporated in the report of the committee, and has influenced the finding in favor of the facts; first, that this man received his disability, for which he was retired, in the line of duty, and hence under the act of March, 1873, he has the right to the additional 25 per cent.; that is, to be retired on 75 per cent. of full pay rather than 50 per cent. In an indorsement of the report of this board the late Secretary of the Navy, Mr. Thompson—[the President *pro tempore* rapped with his gavel.] I will move to strike out any word that is in the bill, say the last word or the first, whichever will allow me to take two or three minutes further.

The PRESIDENT *pro tempore*. The Senator will decide that for himself.

Mr. VOORHEES. I will say the last word.

The PRESIDENT *pro tempore*. The pending motion is to strike out the enacting clause; that includes all the rest of the bill; and a motion to strike out the last word or the last line would not be in order.

Mr. COCKRELL. I withdraw the motion to strike out the enacting clause.

Mr. VOORHEES. I am very much obliged to the Senator from Missouri. I say with the utmost courtesy and kindness to the Senator from Missouri that I had not the slightest wish to embarrass him in his speech.

The PRESIDENT *pro tempore*. The Senate must decide whether they will allow the five-minute rule to be evaded or not.

Mr. VOORHEES. The Senator from Missouri having withdrawn his motion to strike out the enacting clause, I move to strike out the last word of the bill or the last section. Then I desire to state what the committee's report says:

In an endorsement of the report—

The PRESIDENT *pro tempore*. There ought to be an amendment pending to allow the Senator to speak.

Mr. VOORHEES. I have moved to amend the bill by striking out the last section.

The PRESIDENT *pro tempore*. There is but one section in the bill.

Mr. VOORHEES. I put the motion in that form in deference to the Chair.

Mr. COCKRELL. I move to strike out between the words—

The PRESIDENT *pro tempore*. The Senator from Indiana has the floor.

Mr. VOORHEES. I move to postpone the bill, and I do it in order to say a word, as it is a motion I do not expect to vote for myself.

The late Secretary of the Navy, Mr. Thompson, indorsed this finding of the board as follows:

In accordance with the within proceedings and findings, it is the opinion of the Department that Medical Director John Thornley was at the time of this retire-

ment incapacitated on account of causes occasioned while in the line of duty, and he will be so regarded on the records of the Department from this date.

The report proceeds to state that—

Among the proofs before this board, which have been shown to the committee, appear the statements of Captain William T. Truxton, United States Navy, Jefferson Maury, and C. H. Kennedy, all of whom were officers on duty with Dr. Thornley when the disability occurred, showing it to have been the result of sickness contracted in the line of his duty while attending an officer of the United States steamer Warren in a severe attack of illness. The report also shows Dr. Thornley's habits to have been excellent, and his character and efficiency as an officer are attested by letters from Admiral Porter and many other officers.

This is not a case of relieving a man against intemperate habits, it is simply a question of whether his disability which caused him to break down physically was incurred while in the line of duty, and if so he is entitled to 75 per cent. of duty pay instead of 50 per cent. I think a case was never more clearly made out. The relief he seeks is very simple. I will say to the Senator from Texas, [Mr. MAXEY,] who inquires of me, that he had retired in 1861, before there was any law in the statute-book giving an increase of retired pay on account of disability incurred in the line of duty. The act of 1873 made that increase, and then he applied for it, and then he made proof before a board, satisfactorily to everybody, that he had incurred the disability in the line of duty, and he simply asks that 25 per cent. in addition to the 50 per cent. may be allowed him.

Mr. MAXEY. He would have had it if his retirement had taken place after the law passed.

Mr. VOORHEES. As the Senator from Texas well says, if he had been retired after the act of 1873 was passed, instead of before it, and made the proof he did before the medical board that these injuries had been incurred in the line of duty, he would *ex necessitate* have been placed on the retired list at 75 per cent. of the full pay.

Mr. ANTHONY. I had intended to say something upon this bill, but I see the hour has nearly expired. I will say with regard to the opinion which has been read by the Senator from Missouri, that while I respectfully differ from its law, it has no application at all to this bill. This bill admits that Dr. Thornley is not entitled under the law to this additional pay; if he was entitled to it he would not come here. We pass pension bills every day. Suppose when a pension bill comes up here the Senator from Missouri should get up and read a long opinion that the man was not entitled to it under the law, the reply would be that we were making a law for it. So I accept the law the Senator from Missouri has read, but I say that it is because that is the law that this bill is introduced.

Dr. Thornley was brought before a board at a time when it made no difference what was the cause of disability, whether incurred in the line of duty or otherwise. Then that board had no authority to examine into the question of whether the disability was incurred in the line of duty. It was an assumption on the part of that board, it was surplusage, as was said in the opinion read by the Senator from Missouri, and no examination was made of that question. He was not before the board to show that the disability was incurred in the line of duty. There was not a word of testimony or any witness examined on the subject.

When the law was passed which made a difference in the pay of all officers hereafter retired or already retired, then he immediately made application for a board to examine the question which had been decided without examination and without authority, and the new board decided that his disability was incurred in the line of duty, and it was incurred mainly in taking charge of an officer who died of the *delirium tremens*, and therefore saved the Senate the trouble of reinstating him against the vote of the Senator from Missouri and myself.

But, Mr. President, I see that the hand of the clock is pointing to the hour, and I will not detain the Senate.

The PRESIDENT *pro tempore*. The question is on the indefinite postponement of the bill.

Mr. VOORHEES. I withdraw that motion.

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

PHOEBE C. DOXSIE.

The bill (S. No. 43) granting a pension to Phœbe C. Doxsie was considered as in Committee of the Whole. It provides for placing on the pension-roll the name of Phœbe C. Doxsie, widow of the late James W. Doxsie, first lieutenant of Company G, Twenty-seventh Regiment Michigan Infantry.

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

THOMAS PATTON.

The bill (S. No. 601) granting a pension to Thomas Patton was considered as in Committee of the Whole.

The bill was reported from the Committee on Pensions with an amendment, in line 4, after the words "directed to," to strike out "place on" and insert "restore to," and in line 9, at the end of the bill, to add:

At the rate of \$4 per month until the passage of this act, and to continue hereafter at such rate as may be required by the ordinary examinations.

So as to make the bill read:

That the Secretary of the Interior be, and he is hereby, authorized and directed to restore to the pension-roll, subject to the provisions and limitations of the pension laws, the name of Thomas Patton, late a private in Company B, One hundred and forty-second Regiment New York Volunteers, said pension to commence from

the date he was dropped from the pension-roll at the rate of \$4 per month until the passage of this act, and to continue hereafter at such rate as may be required by the ordinary examinations.

The amendment was agreed to.

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

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

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had passed a joint resolution (H. R. No. 185) granting the use of tents at the soldiers' reunion to be held at Belle Plaine, Iowa, in the month of September or October, 1882, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bill and joint resolution; and they were thereupon signed by the President *pro tempore*:

A bill (S. No. 667) to authorize the Secretary of War to sell the military barracks and the lands upon which they are located in the city of Savannah, Georgia; and

A joint resolution (S. R. No. 37) authorizing the Secretary of War to supply artillery and camp equipage to the soldiers and sailors' reunion at Topeka, Kansas.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had on this day approved and signed the following acts:

An act (S. No. 383) to amend section 4458 of the Revised Statutes of the United States, relating to license fees of officers of steam-vessels;

An act (S. No. 1510) for the relief of John H. Schabinger, guardian of Susan McKnatt and Martha McKnatt, minor daughters of James McKnatt, deceased;

An act (S. No. 1594) to facilitate the payment of dividends to the creditors of the Freedman's Savings and Trust Company; and

An act (S. No. 42) for the relief of George G. Snyder.

ORDER OF BUSINESS.

The PRESIDENT *pro tempore*. The hour of two o'clock having arrived, the Chair lays before the Senate the unfinished business.

Mr. FARLEY. I move to take from the table the President's message vetoing the Chinese bill.

Mr. HOAR. I object to the motion; it is out of order.

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

Mr. FARLEY. I now make the motion to take from the table the President's message vetoing the Chinese bill, laying aside the present unfinished business without prejudice.

Mr. HOAR. I object to the motion as out of order.

Mr. FARLEY. I understand that it has been the rule of the Senate to consider a President's veto message as a privileged question, and I make it on that ground.

The PRESIDENT *pro tempore*. It is in the power of a majority of the Senate to take up the bill that has been vetoed.

Mr. HOAR. I object that the motion is out of order under the rule, which is that when a measure is pending only certain enumerated motions are in order. You certainly cannot move to take from the table another matter—

Mr. INGALLS. The motions are specified in Rule 43.

Mr. BAYARD. I submit to the Senate that we are bound to proceed with the consideration of this measure which has been returned to the Senate, as the House originating it, without the approval of the President of the United States, and accompanied by his objections in writing. This is in the fullest constitutional sense the unfinished business of this body. Congress proceeded to pass the bill; they did so by a constitutional majority of each House; it was presented to the President for his signature, and after the expiration of nine days it was returned with his objections to the Senate; that was yesterday. In order to provide for the performance of our constitutional duty and to give time therefor, which is to spread upon the Journal of the Senate the message and the bill, the bill and the message were laid upon the table, and subsequently ordered to be printed. They have been printed, and are before the Senate now.

Mr. HOAR. I am very sorry to interrupt the Senator from Delaware, but I desire to rise to a question of order. My point of order is this, that upon the pending business the Senator from Kansas [Mr. INGALLS] had the floor at the adjournment of the Senate yesterday and was making an unfinished speech, and by the usages and rules of the Senate he is entitled to complete his remarks on the pending measure before he can be taken from the floor for any other purpose. There will be opportunity enough, of course, to test the sense of the Senate and a majority of the Senate can decide at the proper time what it will proceed with; but it never was heard, I venture to say, that a Senator was taken from the floor in the midst of a speech where the Senate adjourned by his courtesy alone that he might finish in the morning.

Mr. HARRIS. May I ask the Senator from Massachusetts what is the pending business?

Mr. HOAR. The pending business technically, of course, is the Presidential count bill. I am aware of that.

Mr. HARRIS. Then, Mr. President—

Mr. HOAR. I see the point of the Senator's question, and now I hope he will allow me to address myself to both the Senators. Do the Senators themselves think that the question whether this motion shall be put now or fifteen minutes hence—for of course it will be in the power of any Senator to move to lay aside the pending measure when the Senator from Kansas gets through—is important enough to violate (whether they have the technical right to do it or not) the usage of the Senate which is founded upon courtesy?

The Senate unanimously agreed that the pending measure might be laid aside to take up a measure in which the Senators from Texas and Arkansas had a special interest, and I allowed that to be done to my considerable personal detriment. That was pending yesterday under that unanimous consent, and the Senator from Kansas was addressing the Senate, and thereupon he was asked at five o'clock whether he preferred to complete his remarks then or to allow the Senate to adjourn and complete them in the morning to—

Mr. HARRIS. May I ask the Senator—

Mr. HOAR. Let me complete the narrative. I think the Senator from Kansas desired or intimated that he preferred to complete his remarks last night, but to accommodate the Senate he gave up his right to the floor, which he controls by all the courtesies and usages when the Senate meets in the morning. Now, I would ask my friend from Tennessee if anything in his view is gained by taking this vetoed bill up fifteen minutes sooner to compensate the breach of an arrangement like that?

Mr. HARRIS. I understood the Senator from Massachusetts to rise to a question of order, and by force of a question of order to take the Senator from Delaware off the floor. I should like to know of the Senator from Massachusetts if his appeal in behalf of the Senator from Kansas is a part of his question of order?

Mr. HOAR. No, sir; it is not. It is very clear that after I had made my question of order I made this appeal also.

Mr. HARRIS. The Presidential count bill is the thing before the Senate, and it can be only informally laid aside by unanimous consent to take up the bill on which the Senator from Kansas is entitled to the floor.

Mr. HOAR. That is perfectly true.

Mr. BAYARD. My friend from Massachusetts has not up to this time in my hearing stated his point of order, and I consider therefore that it is as well for me to finish the statement I was making of the condition of the business before the Senate.

Mr. HOAR. My point of order was that the Senator from Kansas was entitled to the floor.

Mr. BAYARD. I did not propose to argue the merits. I believe I am as responsive to a claim of personal courtesy as anybody in the Senate, but I was speaking to the business of the Senate at the present time.

I do not deny the power of the Senate to arrange its business in its own way, and to take up whatever it sees fit, but I wish to submit whether or not there is a duty upon the Senate under the Constitution, expressly declared, to treat this question of the consideration of the Presidential veto of an act of Congress as a question involving precedence. I do not use the word "privileged," I mean a question involving precedence. The measure met the assent of both Houses by a constitutional majority in each; it has not met the approval of the President; it has come back here with his objections stated in writing; we have spread them upon the Journal; and the question is now what is our duty in the regular order of proceeding? The Constitution provides:

If he [the President] approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal—

Which has been done—
and proceed to reconsider it.

Now, I ask whether or not under that provision the rules of the Senate or a simple agreement of the Senate are to be preferred? It strikes me that the proceeding is obligatory, that it is our duty to proceed to the consideration of this veto message.

The PRESIDENT *pro tempore*. Does the Senator from Massachusetts raise the point of order that the Senator from Kansas is entitled to the floor?

Mr. HOAR. No, sir; I do not. What is the pending question?

The PRESIDENT *pro tempore*. The pending question is the Presidential count bill. The Chair understood the Senator from California [Mr. FARLEY] to make two motions together, which was not in order. One was to lay aside this bill and the other was to take up the veto message of the President. The proper motion to make is a motion to lay aside all pending orders.

Mr. HARRIS. Then I will make a motion to postpone the farther consideration of the unfinished business, the Presidential count bill, until to-morrow; and then the Senator from California can make his motion, if that motion shall carry, to proceed to the consideration of the veto message.

The PRESIDENT *pro tempore*. That is in order. The Senator from Tennessee moves to postpone the unfinished business, which is the Presidential count bill, until to-morrow.

The question being put, a division was called for.

Mr. BAYARD. Before the question is taken I should like to ask the Senators from California who are especially charged with this measure and whose homes are to-day, as I understand, the theater of very considerable excitement over this question, what is their wish upon this subject, and what is their measure of their duty upon this subject? Whatever they shall themselves propose I shall feel compelled to abide by. As a question of personal courtesy to my friend from Kansas, no person in the Senate would be more desirous to accommodate him than I; but I ask the Senators from California to indicate what their desire is.

Mr. FARLEY. I have no hesitation in saying that I think it is the unanimous sentiment, so far as our people are concerned, that there should be immediate action on the veto message. My colleague has introduced a bill this morning, without knowing what would be the result of the action on the veto message, and we are anxious to have legislation on this subject. My information from home is that there is very great excitement among the people. Violence may break out to-day in San Francisco. I want to take action on this bill now, and I therefore shall move, after this other motion is through, to take it up.

Mr. SHERMAN. Mr. President, there is no doubt that it is the duty of the Senate to proceed to consider the veto message as soon as practicable. It is a matter simply of good judgment as to time and opportunity. On this side of the House there is no disposition at all to delay action on this question. We wish to let things take their ordinary course. We are not to be impelled to take up this particular bill because certain citizens may threaten violence in any part of the United States. That is not the way to induce the Senate to act on a question of this kind. It seems to me the better way is, with due deference to other Senators, to allow the Indian railroad bill to be disposed of, which, I suppose, will take but a short time. I am told also that the Presidential count bill will take but a short time, that there is no controversy about it, all parties agreeing on the terms and forms of the Presidential count. Then we can properly take up the Chinese bill; and when the matter comes up I intend to submit a motion to refer that bill to the Committee on Foreign Relations. I believe that the committee can now, enlightened as they are by the message of the President and by the documents he has communicated, report a bill which will practically secure the objects of all parties in the Senate.

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

Mr. SHERMAN. I do not like to have a discussion interrupted by questions continually, but I will answer. I never refuse such a request, though I dislike that mode of carrying on a debate in the Senate.

Mr. FARLEY. What information could the Committee on Foreign Relations obtain from having this veto message referred to that committee? They had all the information before the committee acted originally that the President has given in his message, and it was very thoroughly considered; and if, as the Senator has said, that side of the Chamber has no disposition to retard action on the message, what point is to be gained by referring this bill to the Committee on Foreign Relations?

Mr. SHERMAN. I might, if I wanted to retort, ask what point is there in forcing action upon this bill at once?

Mr. FARLEY. To see whether we can pass the bill or not. I do not know but what we can pass the bill over the President's veto.

Mr. SHERMAN. I do not care to answer questions backward and forward; it is an unusual mode. It seems to me the proper mode, and the regular mode is, to take up this bill at a time when it can be considered. That some measure might be properly passed, and ought to be passed in regard to the Chinese question, there is no difference of opinion, either with the President of the United States, or with the Senate, or the House of Representatives. The question is, Will you violate a treaty? The President thinks you have violated the treaty in this bill. There is no desire to violate the treaty on the part of any one. It seems to me, therefore, it is better to let the Committee on Foreign Relations, which has jurisdiction of the subject, take it up and report a bill, which, I believe, can be passed by the general assent of both parties in this House, that will meet the objections made by the President of the United States.

But to recur to the question now before us, if we should postpone these two pending bills it will not expedite matters in the slightest degree, because then the debate will spring up on the question of reference. I submit, therefore, that we had better go on with and dispose of the two measures that are pending before the Senate, and then take up this question under the Constitution and act upon it as we think right on the matter of reference first, and then, if that motion is defeated, upon the question of concurring in the passage of the bill, notwithstanding the objections of the President.

Mr. FARLEY. Mr. President, all that I have to say is that I am willing to come to a vote upon this question. It seems to me that it is rather unprecedented to postpone the consideration of a measure of this character at this time, which has precedence, as I understand, over other business pending in the Senate. It is a privileged question, and why Senators on the other side of the Chamber desire to postpone action on this bill I do not see. You cannot tell until the vote is taken but what we shall pass the bill over the President's veto; no Senator can tell that; and why postpone the consideration of this measure now, and then talk about having it referred for con-

sideration to the Committee on Foreign Relations? I see nothing to be gained by postponing the consideration of the veto message. That puts it out of the way. If we cannot pass the bill over the President's veto, it ends it and opens the door for other bills to be introduced.

My colleague this morning, without objection on the part of the Senate—though with his action I do not agree—introduced a bill not knowing but that this bill might yet become a law. No Senator can tell until the vote is taken. I say the introduction of my colleague's bill was premature, in my judgment, because until the vote is taken you cannot tell but what this bill will become a law notwithstanding the President's objections; and I urge it at this time, or shall do so when the motion to postpone the other bills made by the Senator from Tennessee is put. We can dispose of this measure in twenty minutes, in my opinion; certainly it need not take over half an hour, and being a privileged question I shall insist upon its disposition.

Mr. DAWES. Mr. President, I for one am quite as willing to vote at one time as at another on this question, and I do not desire any postponement of it myself; but there is one thing to which I wish to call the attention of the Senate, and that is that the pending order has been laid aside a week now for the accommodation of Senators who had measures that they must attend to and for the appropriation bills until it has come to be necessary for the Senator who has that pending order in charge to leave town for a few days. I submit that it is hardly courteous to him after he has yielded the floor to other Senators who had measures that it would accommodate them to bring before the Senate day after day, the Indian appropriation bill having occupied three or four days unexpectedly and the measure considered after that taking more time than any one could have expected, to now interpose this measure. My colleague is necessarily called away on Friday, and it seems to me that it is due to him and to the courtesy he has extended to other Senators and their measures that he should have an opportunity to dispose of the pending measure before he leaves the city. I have not conferred with him in making this suggestion. The Senator from Texas knows the inconvenience it has been, to accommodate those who have the railroad bill in charge as well as the appropriation bills, that the regular order has been informally laid aside from day to day, a measure admitted by every one to be of vital importance, which ought to be considered by the Senate.

Now, whether this Chinese bill shall be considered to-day or tomorrow does not seem to me to make any difference with the measure itself. So far as I am concerned, and so far as I know that any Senator on this floor is concerned, there is no disposition, no desire to postpone the consideration of the message because of the message itself or the subject-matter of the message a single hour, but that it may be considered just as well after the regular order shall have been disposed of as now seems to me to be very apparent.

Mr. INGALLS. Mr. President, when the Senate adjourned last night I was speaking to an amendment that I had offered to the Indian Territory railroad bill. Under the usages that prevail, I supposed I should have been entitled to resume this morning at the expiration of the morning hour; and while I am obliged to the Senator from Massachusetts [Mr. HOAR] for calling attention to the fact, yet I did not fail to insist upon my rights because I was not aware of them, but because at that time I did not see fit to assert them; and my reason is this: I am convinced that the question arising upon the return of the Chinese bill with the objections of the Executive is one of high privilege; it is one that is to be controlled by considerations not arising out of the rules of the Senate, but upon the express declaration of the Constitution, which is superior to the rules, and is the ultimate law of the land. The declaration is that when a bill is returned without the assent of the President it shall go with his objections to the House in which it originated, that, his objections having been spread at large upon the Journal, that House shall proceed to reconsider the same. The word "reconsider" of course is not used in the ordinary parliamentary sense, but it is a declaration that the House shall proceed to consider the bill again, for the purpose of deciding whether or not it will pass it over the objections of the Executive.

My opinion is, considering this high constitutional direction as a matter affecting the dignity of the Executive and the position of the House in which the bill originated, that it is the duty of this body to proceed to consider that bill with the Executive objections; and I am ready to proceed to that duty now.

I shall oppose, whenever it is offered, the motion of the Senator from Ohio to commit this bill, because, if it be recommitted, no good can result. The Senator says that if it be recommitted, with the information derived from the message of the President, the committee can probably prepare a new bill that will avoid those objections; that they can plow around the stump and avoid the difficult places. That is not the question. This measure cannot be disposed of by a new bill submitted by the committee. The Constitution recognizes no such method of disposing of a bill to which there has been a constitutional objection interposed by the Executive. The committee may report whatever bill they please in whatever language they please upon this subject; but if we discharge the duty imposed upon us by the Constitution, the question that we are to deal with now is, Shall this bill pass, the objections of the President to the contrary notwithstanding? It may be done after debate or without debate; it may be done before reference or after reference; but the subject can only be disposed of

by a vote by yeas and nays to be entered upon the Journal upon the precise question, in the terms defined by the Constitution itself.

Mr. MAXEY. Mr. President, the bill for the Presidential count, the regular order of business, was at my request informally laid aside by the Senator from Massachusetts [Mr. HOAR] in order that the bill granting the right of way for a railroad through the Indian Territory might be taken up and considered. We have had that up now for two days, and there can be no question, in my mind, that we can secure a vote on it this evening. I know of nothing which should prevent the Senate proceeding in the due and orderly course of business and finishing that bill; I know of nothing which should compel us to lay aside that in order to take up this. We have had no time to consider the veto message; we have only just had it printed. It is in the sense of the Constitution now under consideration by the Senate. The very object which we had in view in having the President's message printed was that we might proceed to consider it, and this morning for the first time the message came to us in print, so that we could consider it.

I am as much as anybody opposed to any delay in the settlement of the Chinese matter; I am as much in favor of acting on it as the Senator from California or anybody else; but I know of no reason why the Senator from Kansas should be taken from the floor and why that business which is nearly completed should be taken away from the Senate, postponed, and something else take its place. It does not seem that there is any reason given here to sustain that. We are theoretically, at least, considering the veto message, because we have had it printed for that purpose.

I myself prefer to carry out the agreement made with the Senator from Massachusetts. It may be purely personal with me. I made an agreement with the Senator from Massachusetts, and I endeavor always to carry out my obligations, to get this bill through as quickly as I could, and I have been doing my very best to do it in order to get it out of the way, because he has told me he wanted to leave on Friday, and I wanted him to have an opportunity to call up his bill. The bill now before the Senate is vital to my State, and I therefore feel a deep interest in having the vote taken on it, as I think it can be this evening, and disposed of.

Mr. HARRIS. I beg to call the attention of the Senator from Texas to the fact that the arrangement by which the bill in his charge has been under consideration for two or three days is not an arrangement between him and the Senator from Massachusetts. It was by the unanimous consent of the Senate renewed every morning; it will have to be renewed again this morning by unanimous consent. He cannot get to the consideration of his bill without postponing the consideration of the unfinished business, or the unanimous consent of the Senate.

Mr. MAXEY. The Senator will pardon me for a moment. I understand that that is so, of course, but I also understand that the Senator from Massachusetts, without any contest with me in regard to that matter, agreed to lay aside his bill. Of course that had to be ratified by the Senate before action could be had on the bill to which I have alluded.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Tennessee to postpone the consideration of the Presidential count bill until to-morrow.

Mr. HOAR and Mr. HARRIS called for the yeas and nays.

The yeas and nays were ordered and taken.

Mr. ROLLINS, (when his name was called.) I am paired with the Senator from Florida, [Mr. JONES.] If he were present I should vote "nay."

Mr. SAUNDERS, (when his name was called.) I am paired—on all questions of politics at any rate—with the Senator from Kentucky, [Mr. WILLIAMS.] I do not know whether this is political or not. If not, I vote "nay."

The PRESIDENT *pro tempore*. Does the Senator vote? He must decide.

Mr. SAUNDERS. If it is not a political question, and I understand it is not, I vote "nay."

The roll-call was concluded.

Mr. RANSOM. I am paired with the Senator from Illinois [Mr. LOGAN] upon the Chinese question; and as this seems to be a branch of it, I shall not vote. I should vote "yea," if at liberty to do so.

Mr. JONAS, (after having voted in the affirmative.) I am paired with the Senator from Iowa [Mr. ALLISON] on the consideration of the veto message. As this seems to be connected with that question, I ask leave to withdraw my vote.

The PRESIDENT *pro tempore*. The Senator from Louisiana withdraws his vote.

Mr. KELLOGG. I am paired with the Senator from North Carolina, [Mr. VANCE.] He would vote "yea" if present.

Mr. PUGH, (after having voted in the negative.) I desire to say that I voted "nay" because I am a member of the Committee on Privileges and Elections that reported the Presidential count bill, and I did not desire to displace that bill; but if the Senator from Massachusetts, the chairman of the committee, who has charge of that bill, is willing that I should vote as I please, without reference to my duty as a member of that committee, I will change my vote.

The PRESIDENT *pro tempore*. The Senator must decide that for himself.

Mr. PUGH. Then I vote "yea."

The result was announced—yeas 29, nays 25; as follows:

YEAS—29.

Bayard,	Farley,	Johnston,	Pugh,
Beck,	Garland,	Jones of Nevada,	Slater,
Call,	Gorman,	Lamar,	Vest,
Camden,	Groome,	McPherson,	Voorhees,
Cameron of Wis.,	Grover,	Maxey,	Walker.
Cockrell,	Hampton,	Miller of Cal.,	
Coke,	Harris,	Morgan,	
Fair,	Jackson,	Pendleton,	

NAYS—25.

Aldrich,	Harrison,	Miller of N. Y.,	Sewell,
Anthony,	Hawley,	Mitchell,	Sherman,
Blair,	Hill of Colorado,	Morrill,	Teller,
Cameron of Pa.,	Hoar,	Platt,	Windom.
Davis of Illinois,	Ingalls,	Plumb,	
Dawes,	McMillan,	Saunders,	
Frye,	Mahone,	Sawyer,	

ABSENT—22.

Allison,	Ferry,	Kellogg,	Saulsbury,
Brown,	George,	Lapham,	Vance,
Butler,	Hale,	Logan,	Van Wyck,
Conger,	Hill of Georgia,	McDill,	Williams.
Davis of W. Va.,	Jonas,	Ransom,	
Edmunds,	Jones of Florida,	Rollins,	

So the motion was agreed to.

The PRESIDENT *pro tempore*. The Presidential count bill is postponed until to-morrow.

CHINESE IMMIGRATION—VETO MESSAGE.

Mr. FARLEY. I now move to take up the President's message of yesterday.

The PRESIDENT *pro tempore*. The Senator from California moves to take up Senate bill No. 71, returned by the President with his objections. The Chair supposes that is what the Senator means.

Mr. FARLEY. Yes, sir; that is my motion.

The PRESIDENT *pro tempore*. The Senator from California moves to take up for reconsideration Senate bill No. 71, returned by the President of the United States with his objections.

The motion was agreed to.

Mr. SHERMAN. Now, I submit again the motion to refer to the Committee on Foreign Relations.

The PRESIDENT *pro tempore*. The Senator from Ohio moves to refer the bill to the Committee on Foreign Relations. Is it with the message of the President of the United States, or the bill alone?

Mr. SHERMAN. The bill with the message and accompanying documents.

Mr. MORGAN. Upon that motion I make the point that the motion to refer is not in order. The Constitution of the United States requires that the Senate shall proceed now to consider the veto message and to reconsider the bill notwithstanding the objections of the President of the United States, and we have not the right to do anything else than that with the subject now before the Senate. It is our duty under the Constitution, made mandatory upon us, obligatory upon us, to proceed now to the consideration of that business without any reference to any committee or any intervention through any other power or body than the Senate of the United States.

I do not know why the Senator from Ohio desires this bill to be referred to that committee of which I have the honor to be a member. He has not so far disclosed his reasons; therefore I have no right to assume what they are. But that committee certainly cannot consider this bill in its present shape. This bill has passed both Houses of Congress; it is not now open to amendment in the Senate or anywhere else. If any Senator should rise here for the purpose of offering an amendment to this bill it would be against the rules of order, and so it would be if the Committee on Foreign Relations were to propose or introduce an amendment to the bill or a substitute for it, for the Constitution requires us to vote on this bill, not upon any amendment to it or any proposition to change it or to modify it in any respect at all. Therefore the Committee on Foreign Relations, if it should take this bill in charge under the order of the Senate, could do nothing more than report back its opinion of the Presidential message.

Mr. SHERMAN. I gave way to the Senator on a question of order. I desire myself to discuss the motion.

Mr. MORGAN. I stated that I was making the question of order.

Mr. SHERMAN. If a question of order is made, I should like to have a decision of the question.

Mr. MORGAN. Does the Senator claim the floor?

Mr. SHERMAN. I had the floor, and gave way to a question of order.

Mr. MORGAN. If the Senator wishes to press his motion I will withdraw the question of order until he makes his explanation.

Mr. SHERMAN. No; I should like to have the question of order decided.

Mr. MORGAN. I withdraw the question of order until the Senator from Ohio shall have had a full opportunity to explain the reasons why he desires this bill to go before the committee. I do not make the question of order until the Senator from Ohio has had full opportunity to explain the reasons that induce him to ask the Senate to refer the bill to the Committee on Foreign Relations.

Mr. SHERMAN. I have not the slightest objection to the Senator from Alabama making the question of order. I suppose it has been

settled probably in half the cases where veto messages have come to the Senate or the House that the best way to consider a bill is in committee, and when we are called upon to reconsider it, the best way, then, to consider it is in committee. It has been done time out of mind. A motion of this kind has been made both in the Senate and House. In some cases where the Senate or the House has been very much opposed to the veto, it has been disregarded, and it has not even been considered at all. If there is any doubt on the question of order I should like to have that decided in the first place before I say anything. I suppose there are innumerable precedents.

The PRESIDENT *pro tempore*. If this was an original question the Chair would decide that the point of order was well taken, because, in the opinion of the Chair, the bill is to be voted upon by the Senate on the objections of the President of the United States, and any objections that a committee can add to supplement them are not to enter into the matter at all. It is upon the objections of the President that the Senate acts. That is what the Constitution says. Upon the objections of the President being submitted, the question is, Shall this bill be repassed notwithstanding the objections of the President? Referring them to a committee to get the opinion of the committee with additional objections was not what the Constitution required, in the opinion of the Chair. But the Chair has looked through the precedents both in the House and Senate, and they are too numerous to be overlooked. Bills vetoed by the President have been referred to committees; they have stayed there and never been reported back in some instances. Bills have been vetoed time and again and left in the hands of committees, without the committees ever reporting on them, and the constitutional duty of the Senate and House has not been discharged for there has been no vote taken upon them. That has been repeatedly done. So, too, vetoed bills have been laid on the table and left there. This having been so often done, the Chair holds that the point of order is not well taken.

Mr. MORGAN. Inasmuch as the Chair has passed it as his judgment that the precedents are not sustained by constitutional law, but that the true construction is according to the point made by me, I most respectfully take an appeal from the decision of the Chair.

Mr. SHERMAN. Now, let us have the vote on the appeal.

Mr. HOAR. On that question I call for the yeas and nays.

Mr. GARLAND. The question we have under consideration, Mr. President, is laid down by the authorities as being one of high privilege. It is said, in the work of Cushing on the Law and Practice of Legislative Assemblies, section 2385:

A motion to proceed to the consideration of the vetoed bill will take precedence of motions to proceed with other bills, on the ground that the provisions of the Constitution are entitled to precedence over the rules of the House.

And we find in Paschal's Annotated Constitution the following:

The Speaker said, "the motion to proceed to the consideration of a vetoed bill, with the objections of the President, is a privileged question under the Constitution." And the Houses sustained the Speaker by vote. (Congressional Globe, 2 sess. 27 Cong., p. 905; 2 sess. 28 Cong., p. 396; Barclay's Dig., p. 215.)

And in view of these authorities as to the privilege of this question, I voted a few moments since to proceed to its consideration although it would displace the railroad bill through the Indian country, in which I feel a deep interest. Indeed, as the Senator from Kansas [Mr. INGALLS] said, it is a constitutional mandate to proceed with it.

Now, as to the question of order on the motion to refer, at the first impression I thought myself the motion of the Senator from Ohio to refer was not in order, but I find following the authorities that the motion to refer is in order and has been sustained by numerous precedents.

Cushing says, (section 2382:)

The message, as it contains the objections of the Executive to the bill, makes, properly speaking, a part of the communication, and ordinarily belongs regularly with the bill, but it may be separately considered, if thought proper, and may be printed or referred without the bill; and in the House of Representatives of Congress it has been decided that if a motion is made to refer the message separately, and the previous question is thereupon moved, the main question is on the motion to refer.

Authorities are also collected by Paschal to the same effect.

Sec. 367. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, &c. When the bill is returned with the President's objections, it is usual to have the message immediately read, (Journals, 1 sess., 28 Cong., pp. 1081, 1084; 1 sess., 29 Cong., 1209, 1214; 2 sess., 33 Cong., pp. 397, 411; 1 sess., 34 Cong., p. 1429.) and for the House to proceed to the consideration of the bill. (Ib.) or to postpone its reconsideration. (House Journal, 1 sess., 21 Cong., p. 742.) And the message and bill may be referred to the appropriate committee, and postponed until the next session of the same Congress, as in the case of Best and Wallace, (42 Cong., 2 sess., Senate Journal,) which were referred and reported at the third session.—H. R. Rep. No. 42.

A motion shall not be taken where less than a quorum is present. (1 sess., 33 Cong., House Journal, p. 1341.)

A veto message and bill may be referred, or the message alone, and the bill laid on the table. (Journal, 2 sess., 27 Cong., pp. 1253-1257; Globe the same day, p. 1218.)

Under the Constitution we proceed to reconsider it, and a reference would be one means of reconsidering. Therefore the motion to refer seems to be in order, although I was not of this impression when the question was first suggested.

The PRESIDENT *pro tempore*. The question is upon the appeal taken by the Senator from Alabama from the decision of the Chair.

Mr. BAYARD. That is debatable.

The PRESIDENT *pro tempore*. It is debatable.

Mr. BAYARD. I believe the authorities read by the Senator from Arkansas are applicable to this case; but it is obvious that this is no case for reference.

Mr. SHERMAN. I submit to my friend that is the very subject I want to discuss.

The PRESIDENT *pro tempore*. That is upon the merits. The Senator from Ohio was speaking upon the merits when an appeal was taken from the decision of the Chair.

Mr. BAYARD. That may be, but I never before have heard in this body that the debate must be entirely germane. It is not to the merits of the question, it is to the merits of the reference that I speak.

Mr. SHERMAN. Upon that question I had the floor, and I took my seat at once upon an appeal being taken.

Mr. BAYARD. It matters very little whether what I have to say on this subject is said just now or whether it comes up on the question of reference, should the Senate decide, in accordance with what I understand to be the ruling of the Chair, that a motion to refer is now in order. From that decision an appeal has been taken. When that appeal has been decided, if the Chair shall be sustained, then the Chair would put the motion to refer, and when he puts the motion to refer I propose to say something why it ought not to be referred. It is a mere question therefore of the time and order of speaking.

The PRESIDENT *pro tempore*. The Chair will state the question. The point of order was raised by the Senator from Alabama [Mr. MORGAN] that the motion to refer was not in order. The Chair decided that it was in order. Upon that an appeal was taken. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

Mr. MORGAN. Senators all around me ask me to withdraw the appeal. Inasmuch as the Chair has stated its decided dissent from the correctness of my position I ventured to have the opinion of the Senate upon the question, not as it might affect this question, but as it might affect the practice hereafter. There seems to be, however, an urgency here for arriving at the end of the question of reconsideration, and inasmuch as the appeal which I have taken would likely occupy some time, I will seek some other occasion on which to raise the question, if it shall ever arise, taking at this moment of time, however, the liberty of expressing my present dissent to the idea that Congress can do anything else under the Constitution than to proceed to the consideration of this question, and that it must be done in the House where the bill originated, and must be done upon the call of the yeas and nays, and cannot be done as I submit by the intervention of a committee.

The PRESIDENT *pro tempore*. Does the Senator withdraw the appeal?

Mr. MORGAN. I withdraw my appeal.

The PRESIDENT *pro tempore*. The appeal having been withdrawn, the question is on the motion to refer the bill, with the accompanying message and papers, to the Committee on Foreign Relations.

Mr. SHERMAN. Mr. President, in my judgment this is the kind of a bill above all others that ought to be referred. There is but little dispute that some provision of law should be made to restrain the importation of the class of Chinese laborers into this country which has been flowing into it for the last fifteen or twenty years. We are told that these Chinamen come here without wife, without children, without desire for a home, without any expectation to stay here, but to return again, dead or alive, to the land of their birth. They are not a desirable population; they are not the kind of immigrants which have been useful to our country heretofore, who have been invited and received with welcome from the foundation of the Government. The Chinese are peculiar in every respect. It is found that these people, immigrating mainly to the Pacific coast, have created discontent among laboring men, and they are not good citizens in any sense except that they are industrious and frugal.

Under these circumstances some wise limitation upon the immigration of Chinese to this country would be voted for heartily by members of all political parties, of both Houses, with scarcely any distinction. But under pretense of regulating the importation of Chinese laborers Congress passed a bill which prohibits Chinese immigration for twenty years. If such a bill had been proposed in either House of Congress twenty years ago it would have been the death warrant of the man who offered it. In order to cure an evil which we admit we passed a Chinese bill, a bill based upon a policy peculiar to China, that of the exclusion of all the world from the Chinese soil. In other words, we abandoned the American principle of inviting people from all lands to come to us and participate with us in developing a great country and we have adopted the old public policy of the Chinese, which is to exclude the people of all other lands from their soil.

So sudden and so great a revolution in the policy of our Government should not be adopted without caution and care. In my judgment, and in this I concur in the opinion of the President, there is no occasion for such legislation. If the evil complained of is that a vicious population, without home, without family or children, are brought here under labor contracts, we can pass laws to prevent such laborers from coming. We have now secured the right and consent of the Chinese Government to regulate and limit immigra-

tion, but not to prohibit it. There was no difference of opinion between the authorities in China and the authorities of this country when the treaty was negotiated; but the same Chinese who willingly subscribed to the treaty now claim that this bill violates the treaty, and that the mode and manner proposed is unreasonable and inconsistent with the letter and spirit of the treaty.

I ask Senators whether these objections are not sufficient to induce us to pause and to consider them. Why not send the objections to the Committee on Foreign Relations and let them see whether a law could not be framed that will be free from the objections. What haste is there? Are there any Chinamen now coming to this country? The only haste I know of is the incipient threat made by the Senator from California [Mr. FARLEY] that fires may occur, that murders may be committed, or that outrages may be perpetrated in California because, forsooth, the President of the United States submits to the Senate his objections to this bill.

Mr. FARLEY. The Senator does me injustice when he says that I said anything of the sort in reference to the action of the President. I said there was great excitement in my State over the supposed veto before they knew anything about the veto having been given.

Mr. SHERMAN. The Senator said there were threats of burning, &c.

Mr. FARLEY. No, sir; I said threats of violence.

Mr. SHERMAN. I thought the Senator said threats of burning.

Mr. FARLEY. Of course, threats of violence may exist to-day in any State, even in the State of Massachusetts.

Mr. SHERMAN. Undoubtedly the Senator's suggestion was an indication that the people of the Pacific coast felt so anxious about this matter that they would resort to acts of violence, and I think my friend said acts of burning; but that is neither here nor there.

We are not to be herded into this legislation. Here is a bill intended to carry out an object in which we all concur. It is made, as it is alleged, in conformity with a treaty concluded between two friendly powers, by China, the oldest civilization, and America, among the youngest, although not the youngest.

What are those objections? They are stated in a few words in a memorandum sent by the Chinese minister to the President, or perhaps to the Secretary of State, and published in this document, and in my judgment every one of them forms a reason why this reference should be made, and why a bill on this subject should be framed to meet the objections proposed, without violating any of the terms or provisions of the treaty or the fundamental principles of American civilization. What are those objections? If Senators will look at page 33 they will find a condensed statement of the objections to this treaty communicated by the Chinese minister, which in perspicuity and soundness could not well be excelled by any of our officers. Let us see what they are:

I. The time fixed in the bill, namely, twenty years, is "unreasonable." The language of article 1 that "laborers shall not be absolutely prohibited from coming to the United States," and that the "suspension shall be reasonable," as well as the negotiations, indicate that a brief period was intended. The total prohibition of the immigration of Chinese laborers into the United States for twenty years would, in my opinion, be unreasonable, and a violation of the meaning and intent of the treaty.

I ask Senators if that objection is not well taken? What does twenty years mean? Nothing in the life-time of the Chinese Empire; nothing, I trust, in the life-time of the American Republic; but twenty years in the life-time of man is a whole generation. If you suspend for twenty years a right or a duty or an obligation, you suspend it during the whole length of the power of this generation of man. Here under a treaty which expressly states that you shall not prohibit immigration, which says you can only regulate, limit, and control or suspend for a reasonable time, you make a suspension of twenty years under provisions of peculiar hardship during the whole life-time of this generation. The people of California in five years from this time may perhaps want to modify this treaty. They may find that it is useful for them to have a class of skilled laborers from China; but that cannot be done unless Congress is called upon to change the law.

The Chinese authorities tell us that this is not in conformity with the treaty. The President tells you that, in his judgment, it is not in conformity with the treaty. The Senate was evenly divided on that subject. On the question whether the suspension of immigration should be ten or twenty years I was paired with my colleague, when a single vote would have reduced the suspension to ten years.

On the first proposition stated by the Chinese minister you have the concurrence of one-half the Senate; you have the opinion of the President of the United States; you have a very large vote in the House of Representatives, all against this term of twenty years' suspension. We should consider that this provision is based upon a treaty yielded cheerfully to us by the Chinese Government at a time when we were under treaty obligation to allow the subjects of China to come here as freely as the people of any other nation or any other country. Upon your representation to them that this embarrassed you, that it created trouble in a portion of the country, they made with you, at your request, a new treaty, by which you expressly stipulated that you would not prohibit this immigration, but would only regulate it and limit it. Then they went on, according to the papers shown here in this document, and stated to you what they meant by that, what they meant to agree to by the words of the treaty; that

is, that you must fix the number that should come; that no more should come in any one year in future than had come in the past; that in the aggregate it should not exceed a fixed number that you might name.

They illustrate what they meant by the power to limit and suspend in the very negotiation of the treaty, and they tell us now that this substantial prohibition for twenty years under peculiar circumstances is not a reasonable exercise of the powers granted by that treaty. So the President says; so one-half of the Senate say; so reason teaches us. If a foreign nation would construe a treaty made under similar circumstances against us in the same unfriendly way we would denounce it in unmeasured terms.

I say, therefore, that the President does state a good reason why this bill ought to be reconsidered, and it should be reconsidered in the only effective way to reconsider a bill here, by reference to the appropriate committee to look over the matter, to talk it over, and then see if they cannot modify this provision. But that is not all. Remember what I read to you is the statement of the Chinese minister, based upon this bill, communicated to us by the President of the United States. He states as the second proposition:

II. The inclusion of "skilled labor" in the bill is an addition to the words and intent of the treaty. It will operate with harshness upon a class of Chinese merchants entitled to admission to the United States under the terms of the treaty. The shoe merchants and cigar merchants of China manufacture the goods they sell at their places of business, and to shut out the "skilled labor" they need would practically shut them out as well, since it would prevent them from carrying on their business in this country. The laundryman who keeps his shop and has a small capital with which to prosecute his trade cannot in any just sense be included in the class of "laborers," and the merchant tailor comes in the same category.

Here is a treaty yielded to us by China for our benefit, not for theirs—they do not claim anything from it—by which they agree that the importation of Chinese laborers shall be suspended for a time in this country. Then you make the word "laborers" embrace a class of people that in no country in the world are classed by the term "laborers." A merchant who manufactures and sells his own wares, a mechanic, a blacksmith, the shoemaker at his last who manufactures shoes that he sells himself, the hatter, described by Benjamin Franklin, who makes hats to sell, are included in the term "skilled labor," but are not included in the general phraseology used in the treaty of a laborer, whose work is done by hand without handicraft. But you extend the meaning of the term "laborers," the class that the people of California complain of, so as to include all mechanics, blacksmiths, artisans, merchants, dealers, men who require capital as well as mere labor.

I ask if that is a fair construction of the treaty? Is it right? I say it is not, and that some provision ought to be made which would enable Chinamen who are skilled men to come; Chinamen who have a family and have a home and children, educated as many of them are, and we know that some of them are educated as highly as the most refined in our favored land. Why should they be excluded? When they wish to come here as skilled artisans and laborers, wonderfully skillful in certain branches of manufacture, and contribute their labor and mingle with others, why should they not come? All the reasons against coolly immigration cease when you speak of these men. The immigrants that we want to exclude are those men who have no wives, children, or homes, who are mere pauper laborers, who are worse than pauper laborers, who are contract laborers, coolies, a class of men who tend to degrade all labor, who can live so cheaply that no men, white or black, can compete with them. That is the mischief to be guarded against; that is the object to be sought; but now, because we have by the kindness of the Chinese Government made a treaty which enables us to limit the importation of laborers into this country, we declare that all Chinese shall be considered laborers except, forsooth, those described in the thirteenth section of the bill. All men are laborers practically by the construction given in the bill, except the following:

SEC. 15. That this act shall not apply to diplomatic and other officers of the Chinese Government traveling upon the business of that government, whose credentials in the usual form shall be taken as equivalent to the passport in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese.

Then the bill provides further:

SEC. 17. That the words "Chinese laborers," wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

There is a provision which excludes a merchant, who is a laborer in one sense of the term, a mechanic, an artisan, the highest form of skilled labor, yea, a philosopher, a scientist. All these are laborers, either skilled or unskilled laborers. Nobody is to be admitted here to carry on his business except diplomatic agents and their body servants. We have a few of them here now.

It seems to me that is a great stretching of a handsome yielding by the Chinese Government to us to enable us to carry out our policy. With the strong Anglo-Saxon grip, as they have given us the privilege, we have usurped something more than the privilege they have given us, we have excluded all Chinamen, so that this measure is absolutely an exclusion of the Chinese from America, as the law in force in China in the time of Marco Polo was for the exclusion of all barbarians from China. In other words, we have adopted the law of China and applied it to the Chinese while they have recently yielded

the enforcement of their laws of exclusion as against us and permit our citizens to come and go at pleasure through their country.

I now come to the third reason given by the Chinese minister why this is not a reasonable exercise of the power granted in the treaty.

Mr. MILLER, of California. Will the Senator allow me to inform him that section 5 of the bill provides that the officers of the Government of China shall give permission by passport to Chinese to come to this country?

Mr. SHERMAN. I intended to come to that in the next clause. Let me read the third paragraph of this memorandum, which relates to the passport system:

III. The clauses of the bill relating to registration and passports are a vexatious discrimination against Chinese residents and immigrants, when article 2 provides explicitly that they shall be entitled to all the privileges conceded to the subjects of the most favored nation. The execution of these provisions of the bill will cause irritation, and, in case of the loss of the passport or certificate of registration, Chinese residents entitled to remain may be forcibly expelled from the country.

Here the Chinese set forth, as the third ground of their complaint, that we have applied to them all the old system of passports and registration which are so familiar in European countries. Although we have a treaty with them which puts them upon the right of the most favored nation, yet we now propose by this bill to enact as against the Chinese a system of passports that is now being abandoned by almost every European nation except probably Russia.

The fifth section of the bill, to which my friend called my attention, but to which I intended to refer for another reason, goes on and sets out what the passports shall contain. I venture to say that the stipulations and requirements of the passport system contained in section 5 of the bill are more onerous or burdensome than any ever devised or invented in any of the Italian states. The provision requires a more particular description of the person, and is more onerous in all its terms than the passport required in any European country. I do not want to see adopted in this country the system of passports. I remember once when I traveled in Europe and was called upon for the first time to show my passport. It was to an American like a humiliation. When they examined me, examined my height, &c., with the eye to see whether I conformed to the description in the passport, there was a sense of humiliation; and yet now for the first time in this country we are to apply against the Chinese the system of passports.

The Senators from California liken this to registration, and say that this provision was put in for the benefit of the Chinese. I do not see why it has been put in for the benefit of the Chinese. The Chinese complain of it. Why not leave the question open without a passport or registration? If a Chinaman says he is one of those who were here before this proposed law took effect, let him stand upon the proof that he can furnish upon that question. It is said that the Chinaman will lie. So sometimes other people will lie; but is it not better for us to drop this system of passports rather than to adopt it merely to keep out the Chinese coolie laborers? It seems to me it would be just and right to do so.

The fourth reason given by the Chinese minister is as follows:

IV. If the bill becomes a law, it will leave the impression in China that its government strangely misunderstood the character of the treaty or that the Congress has violated some of its provisions, and this will tend to prejudice the intelligent classes against the United States Government and people, whom they now greatly admire and respect.

That is, the Chinese say, "If you pass such a bill as this, our people will feel that you cheated us in making that treaty or that you have violated your treaty with us." Do you want the Chinese to say that of us? Yet that is what is said here in polite language, that the people of China and the Government of China will feel that they have been taken advantage of, that we have not complied with our contract, or have misconstrued it, or have not construed it as they did; that they have construed it in a different way. I trust that this language will be made so plain that even a Chinaman can understand it, and the precise mode and manner of the exclusion or limitation of Chinese laborers will be ascertained. Then there is another proposition in this memorandum:

V. There is no provision in the bill for the transit across the United States of Chinese subjects now residing in foreign countries. Large numbers of Chinese live in Cuba, Peru, and other countries, who cannot return home without crossing the territory of the United States, or touching at San Francisco. To deny this privilege it seems to me is in violation of international law and the comity of nations, and if the bill becomes a law it will, in this respect, result in great hardship to many thousands of innocent Chinese in foreign countries.

Now, that is true. In all of South America and in the West India Islands there are more or less Chinese. In some cases they are invited there, and they return to their own country. They cannot get back except by going through San Francisco. San Francisco is the great shipping point of the Pacific Ocean, destined some day, I have no doubt, to be the queen of the whole vast region of the Pacific, a region of wonderful resources. No man can get from South America to China except he goes by way of San Francisco; and yet a Chinese laborer, a Chinese mandarin, an intelligent Chinaman, cannot go from South America or the West India Islands through San Francisco to China without having his passport, and there is no provision in the bill for his passport in such a case, no provision to enable him to go back to China, or to enable him to return through San Francisco to a South American port.

The immediate effect upon a people like the Chinese, who are jeal-

ous, will be that we will lose our trade with them; we will lose their respect, and they now respect us. Up to this time the conduct of the United States toward Japan and China has been in the highest degree chivalric and proper, with the single exception alone of our participation in the plunder which now constitutes the Japanese indemnity fund. Generally, we have treated them much more kindly than England, France, or any other European nation. They therefore respect us. They adopted one of our citizens as their ambassador; they made treaties with us; and the United States have done more than all other nations combined to break down that isolation of Japan and China which prevailed for centuries and centuries. And now we are to be the first nation to shrink from them!

I am told that in England, in Australia, and in other countries where Chinamen go, they have severe police laws to prevent the inferior class of Chinese laborers from landing there, but they enforce them through the aid of their custom-house officers without giving great trouble; and respectable Chinese may come and go just like any other people. Is it wise for us to go far beyond even the policy of England or France or Germany in this respect by excluding the whole Chinese nation by a bill passed in a hurry?

Sir, this bill, I am bound to say, is the result of passion and feeling. I do not say that passion and feeling do not spring from a just and true foundation. I have no doubt the people of California and the Pacific coast have suffered from the evils that have grown out of Chinese immigration, but they are sensible American citizens, and they ought to feel that in passing laws for them we ought to pass such laws as will not disgrace our statute-books and set a bad example in respect to other nations. While we should do for our brethren in California all that could be expected from us to protect them from what they regard now as a great and growing evil, why should we do it in such a way as to violate the fundamental principles of the American policy which has distinguished us from the American Revolution to this hour?

If we must exclude Chinese laborers of a certain character let us do it by a wise bill carefully framed, not going one step beyond the avowed purpose of the bill, and preserving as far as we can, with this exception, the general principle that this land of ours is a home, a refuge for the oppressed of all lands, where people may flee from kings and emperors, from unwise laws and harsh taxes, from military rule and caste domination; and they come here and on our broad fields build themselves a home. If there must be an exception as against the Chinese coolies, let that exception be confined to a reasonable limitation, and let it not be extended so as to include a nation that is composed of nearly one-half the whole human race.

Mr. President, I say again that the bill ought to be referred. It ought to be considered without passion. The committee might very properly take up the objections stated in these papers and compare them, and perfect a bill and bring it back to us without a formal vote by the Senate on the veto message. I could show that vetoed bills have been sent to committees, and they have been thus buried. I do not propose that this bill shall be buried. I propose that the advice given to us by the President, the objection that he has given us in this little document, shall be fairly considered by our committee; that it shall act upon that information, and report a bill for which we may all vote, one that can be enforced with the consent of China, and at the same time maintaining our respect for the institutions and experience of our country, which have always been liberal to foreigners without regard to race, religion, or color.

Mr. GARLAND. I should like before submitting some remarks to know exactly the form of the motion of the Senator from Ohio to refer.

The PRESIDING OFFICER, (Mr. MORRILL in the chair.) The motion is to refer to the Committee on Foreign Relations the bill and message and documents.

Mr. GARLAND. The bill and message and documents?

Mr. SHERMAN. Yes, sir.

Mr. GARLAND. When the vote is taken I shall ask for a division of the question. I have no objection for one to referring the message to the Committee on Foreign Relations, but I object to referring the bill, and I will now proceed briefly to give my reasons for that objection.

The authorities I referred to a few moments ago upon the question of order raised by the Senator from Alabama, but subsequently withdrawn by him, hold explicitly that the bill can be referred with the message or without it, or the message can be referred with or without the bill, and both steps have been taken by one House or the other, and probably by both Houses of Congress, at various times.

But I am at a loss to know what the committee would do with this bill. The constitutional question presented is, Shall the bill pass notwithstanding the veto? The committee could not report back the bill with amendments; they could not report it back in anywise modified. We cannot get rid of the question, Shall this bill pass? It is a question of high constitutional privilege, as the authorities state, and as such we have displaced important business with it.

The purpose of a reference is always to get some information that we have not already in relation to the subject-matter. If in this message of the President there is anything new, if there is anything that was not stated in the lengthy debate upon this subject in this body and the other, I have not been able to discover it after a patient listening to its reading and also a patient reading of it since it was

read at the desk yesterday. I say, with all due respect, that I do not believe any new light can be thrown on this subject by the Committee on Foreign Relations. I believe if the entire people of the Pacific coast were here in person in the place of the able representatives they have upon this floor, they could not give us any more information on the subject of this bill. If the Senate see proper to change their allegiance in respect to this bill in view of the suggestions made by the President, it is not necessary to have the bill before the committee to do that. The flood of light contained in the message is but simply reopened and thrown upon the Senate; but it passed from the Senate some two or three weeks ago, and we had it here in full in every way—the passport system alluded to by the Senator from Ohio, [Mr. SHERMAN,] the twenty-years clause, and all that. The senior Senator from Massachusetts made a great and able speech, attacking the bill in the very center; other Senators made speeches, attacking it in its main features and in its collateral branches; so that there is nothing new in the message. The Senator from Ohio himself, I believe, made a speech giving his views upon it before the bill passed from the Senate.

For one, with this light which is given us both in the debate and by reading the message, I have not seen any good reason yet for changing my opinion in reference to the subject-matter. I am satisfied for one that the committee cannot give me any more light upon this subject; but if the committee see proper to take the message and frame some other bill, that is their privilege; it is their right, and the message may very properly go to that committee; but we must in due respect come to a vote some time or other on the question, "Shall the bill pass notwithstanding the veto?" As it is a high constitutional privileged question in the Senate, we should come to that vote as early as possible after we have the proper debate here upon it.

The only purpose which can be served by referring the bill to the committee (I do not say it is intentional) is to bury it, as the Senator from Ohio has said he has known bills of this character after being vetoed to be buried in committee. My view upon the parliamentary law and upon the status of the bill now before the Senate and the country is that we should come to a vote on the question whether the bill shall pass, and refer the message of the President to the committee and let them do with it what they see proper.

Mr. MORGAN. Mr. President, I have no objection to the reference of the message to the Committee on Foreign Relations, unless we have a constitutional duty to perform in regard to the message after we have acted upon it in the Senate. The Constitution says:

If after such reconsideration two-thirds of that House shall agree to pass the bill it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law.

What objections? The objections sent with the bill by the President of the United States to the Senate. After we had referred the message containing those objections to the Committee on Foreign Relations we should have to recall that reference before we could send the bill to the House of Representatives, in the event that two-thirds of the Senate upon the call of the yeas and nays should agree to repass the bill. We might send a transcript of the message, I grant you, but I do not know that that would be a compliance with the Constitution. There can be no good reason for sending the message to the Committee on Foreign Relations except for their information, and the reference of the message under such circumstances would be a very useless work.

This bill has a certain status in the Senate to-day. What is that? It was ordered to a third reading, and after it was so ordered the bill was read the third time, when the question was put upon the passage of the bill, and the bill was passed by a majority of the Senate. That is the record of the status of the bill in this body. When the President under his constitutional right has returned the bill to the Senate, the question that is presented to us is, Shall the bill pass notwithstanding the objections of the President? Suppose, before we act upon the question of reconsideration in the Senate of the United States, we refer the bill to the Committee on Foreign Relations, in what plight does that committee take the bill, a bill which has passed the Senate and which has never been reconsidered by the Senate, a bill which has been ordered to a third reading by the Senate and has never been reconsidered in reference to that order by the action of the Senate? Rule 26, prescribed for the action of the Senate, provides that—

When a bill or resolution shall have been ordered to be read a third time, it shall not be in order to propose amendments unless by unanimous consent, but it shall at all times be in order, before the final passage of any bill or resolution, to move its commitment; and when the bill or resolution shall again be reported from the committee, it shall be placed on the Calendar, and when again considered by the Senate, it shall be as in Committee of the Whole.

If the bill were pending in the Senate to-day upon the question of a reconsideration of the vote by which it was finally passed, we should have to go back behind the vote by which it was ordered to a third reading before any amendment could possibly be offered to it under the rules of the Senate. How is the committee to regard this question? You send the bill to the committee in its present shape, a bill passed by the Senate of the United States, and the final action on passing the bill into a law is intercepted by the veto of the President of the United States, and the committee is required to reconsider the vote upon the question whether the bill shall become

a law before the exercise of a new description of power in the Senate, a power to consist of at least two-thirds of the Senators present forming a quorum, who are to determine whether the President's objections are valid and whether the bill shall be defeated or whether the Senate shall pass it, notwithstanding the objections.

I submit to Senators, is it possible that the Committee on Foreign Relations can take the bill in its present shape and report it back to this body with an amendment, when the rule of the Senate prohibits any amendment to a bill in its final stage, either in the Senate or by committee, until the Senate has ordered that the vote ordering the bill to a third reading shall be reconsidered? It is a parliamentary impossibility. The committee therefore could make no impression upon the bill except to return it in the precise shape in which it was sent to them by the Senate.

The whole object and purpose of the reference of the bill to the Committee on Foreign Relations is to relieve the President from the necessity we are under of either affirming or disaffirming his action by our vote upon a call of the yeas and nays. In the final vote that we shall take upon the bill we cannot waive the yeas and nays. It is our duty under the Constitution to take the vote by yeas and nays in that form. The Constitution declares that we shall proceed to reconsider it and take the vote by yeas and nays. Suppose the bill comes back from the Committee on Foreign Relations to the Senate with an amendment to it, as was suggested by the Senator from Arkansas, are we compelled to take the yeas and nays upon the bill as amended? By no means.

We, therefore, undertake to evade a constitutional duty and in fact to reconsider the bill on a motion to refer to the Committee on Foreign Relations. The Constitution of the United States prescribes that this reconsideration of the bill shall be in a specified form of procedure. We evade that by referring the bill to a committee for its investigation, which may be done by a majority vote simply of the Senate, which vote must amount in effect to the reconsideration of the bill; otherwise the committee can take no action upon it.

Therefore, there can be but one purpose in the motion to refer to the committee, and that is to avoid all action on the part of the Senate of the United States by which they may express their approval or their disapproval of the objections which the President has urged against the passage of such a law. The Senate of the United States is called upon not merely to abdicate but to abandon the plain constitutional injunction, that we shall reconsider the bill in a certain form prescribed to us, by slipping around, or as the Senator from Kansas [Mr. INGALLS] said to-day, plowing around the stump, and sending this matter to a committee of the Senate by a vote which evades entirely all committal of the Senate upon the proposition as presented to us under the Constitution.

I do not care now to discuss the merits of the Chinese bill; it would perhaps be entirely an unnecessary consumption of time. I did not participate in the debate before the Senate when the bill was considered here. When a similar bill was before the Senate in the last Congress I then stated my views upon the subject. I was so impressed with the necessity of the passage of some measure of this kind that at that time I was willing to vote, and did vote, for the passage of a Chinese bill, although it was said to be in direct violation of the treaty we then had with the Chinese Government. I believed in the power of Congress to repeal so much of that treaty as stood in the way of the civilization of the people of the United States; hence I went with my vote to that extent, conceding that it was necessary to repeal it, that it was our duty to do it, in order to preserve the people of the Pacific coast against being smothered out by a lower order of civilization.

We are informed here, however, that the Chinese minister has interposed objections, and the President of the United States sends us these objections, all of which were before the Committee on Foreign Relations when this bill was reported, then confidentially communicated to us, but now made public. He sends the objections of the Chinese minister, five in number, against the passage of this bill. The correspondence which led to these objections is not furnished to the Senate; but if it be not the first instance in the history of our legislation when a President of the United States consulted a foreign power in reference to what we were legislating, as to whether that legislation would be agreeable to that power or not, I am mistaken in my ideas of history. The President of the United States has invited or has allowed the Chinese minister to come in here and to suggest objections against the legislation of Congress, and they are sent to us with a view to influence us in our course upon a great question concerning the very civilization of the people of the United States. It seems to me that it is the most extraordinary exhibition that was ever made in a legislative body or before a great people.

Why, sir, in debate we are not permitted here to refer to what is being done in the House of Representatives. We are prohibited by a parliamentary rule from referring to what is being done in the House of Representatives upon subjects that we have to consider legislatively in the Senate. What is the ground of that rule? Why is it that it is being continually quoted here? Why is it that Senators are being continually reminded of it when they refer to the action of the other House in respect to measures that are pending here for legislative action? It is because, and only because, the weight of the influence of that House is not legitimately to be employed or considered in the Senate upon any proposition that is pending here. We

exclude, as far as we are able to do, all extraneous influences upon legislation that we are conducting in the Senate; and it is a proper exclusion; it is a wise exclusion, and based upon the experience of legislative bodies, that it is necessary that each body should act for itself independently and upon its own convictions without pressure being brought from any outside source.

Here the President of the United States, as I have said, either by invitation or by permission, has found it convenient to consult with the Chinese minister to know what his government and his people or what he may think about the provisions of this bill. The Chinese minister states five objections, and each of those five objections is indorsed by the President of the United States. The argument of the Chinese minister is worth more against this bill than the great majorities by which it was passed in each House of Congress. Hereafter when we want to legislate in reference to any people or any subject whatever, the best thing we can do is to send out a commission to inquire of the people about whom we are to legislate whether it will be satisfactory to them or not!

Here is an inferior race of men against whom we have passed bills to prohibit under high penalty the importation of their slaves, the coolies, into this country. After these slave-traders had violated and evaded the law, and had crowded our western shores with an enormous mass of this population, we undertook during the administration of Mr. Hayes to pass a bill by which they should be excluded. It is not to be forgotten that the honorable Senator from Ohio [Mr. SHERMAN] was then a responsible member of the administration, and that he then planted himself upon ground to which he adheres to-day. It is not to be forgotten that the will of Congress upon this subject and its enlightened consideration of these questions is to have no influence in this country. It is not to be forgotten that administration after administration has thrown itself across the pathway of the people of the United States who are trying to exclude these heathens and pagans from our country and to prevent them from absorbing that which is the rightful heritage of the laboring people of our own race and kind.

The action of the Republican party upon this subject is distinct and definite beyond all denial, and now the leader of that party in the Senate rises here and for the purpose of smothering out the question and preventing the people of the United States from having a clear view of it, undertakes to ask us to evade the Constitution of the United States by refusing to vote upon the question of reconsideration by the constitutional vote on the yeas and nays and to slip around it by a majority vote of the Senate, which can be by yeas and nays or not, as we choose, referring it to a committee where it will be buried, and is bound to be buried, unless the committee report the bill back in the very shape in which it was sent to us.

As a member of that committee I desire to be put in a proper attitude toward the Senate about this matter. I want the instruction of the Senate. If the Senate refers the bill to that committee, is it to be understood that the President's objections to it prevail and that the committee must report a bill back in accordance with his objections? If we do, we shall have to take up almost every section of the bill and eliminate from it all that he or the Chinese minister has found it necessary to object to.

The motion to refer is only an evidence of entire hostility to the whole of this bill, to every principle contained in it, and every material provision which it embodies. I desire to know whether the Senate of the United States, when it refers the bill back with the President's message to the committee, will require us or expect of us that we shall come back into the Senate with a bill remodeled according to the President's message and the Chinese minister's requisitions, or whether we shall come back here with the bill that we once reported to the Senate, and from which we do not propose to recede.

The majority of that committee reported this bill. I do not remember that there was any minority report against it. Some Senator might have reserved privately the right to antagonize the bill upon some of its features; but I will say now, as it is legitimate I should say it, that the bill was considered maturely in that committee, and I do not suppose that any gentleman of the committee has had his views changed in respect of it. What, then, are we to do if the Senate send the bill to us, because it is dissatisfied with the vote by which it passed the bill? That was a decided vote. There are no difficulties about the fact that the Senate, by a decided majority, was in favor of this bill. The Senate has never reconsidered it; but when the Senate returns it to the committee, it will be in effect a reconsideration; but such will not be the intention of the Senate. What then is your committee to do? To bring in a bill in accordance with this implication of instruction, or can they stand and consider this question in the view which they as independent Senators have formed of its merits while it was before them in committee recently?

The embarrassments and difficulties which will surround this subject after it shall get into that committee and after it shall be returned with or without amendment into the Senate are exceedingly great. Hence it was that I concurred with the honorable President of the Senate in his opinion that our constitutional duty stood against the reference of the bill to any committee for further consideration, and that it required us in a mandatory way to consider the bill immediately, or as soon as we got ready to consider it in open Senate, and decide by a vote of yeas and nays after due debate. My opinions have

not been changed upon that subject, but have been greatly fortified by further consideration. However, the motion is before the Senate now, and is legitimately and properly made, and we must vote upon it; but I do insist that the Senate of the United States, by taking a vote on the reference of the bill, if it shall vote to refer it, thereby plainly evades a sworn duty under the Constitution to reconsider it in the Senate by a vote on the yeas and nays. When will you ever get that duty discharged? You may bury the bill; you may run away from it; you may fly from it for political shelter; but the duty will stand there, and the constitutional requirement will be unrequited when you slip around it by an attempt to refer the bill simply to the Committee on Foreign Relations.

Let the President of the United States confront the Senate and the country upon this question. If we have not the power to carry this bill over his veto, let it fall, but let us have the road clear so that we can go forward in a legitimate way and act upon the bill introduced by the honorable Senator from California [Mr. MILLER] this morning and such other bills as may come to us in the proper way; but when you vote to refer the bill you do not reconsider any part of it, but it goes to the Committee on Foreign Relations as a bill which was ordered to a third reading and passed through the Senate, after which no power in the Senate or out of it has a right to move an amendment to it. I shall therefore vote against the motion to refer.

Mr. BAYARD. Mr. President, I am very clear that in the present position of this measure a reference is wholly and utterly useless. The bill has been duly introduced originally; it has been duly referred; it has been duly considered in committee; it has been reported back again. That was its true history in the Senate; it was true of the other House. It has passed both Houses by a constitutional majority; and now under the Constitution having been returned unapproved by the Executive our duty is to consider whether the bill ought or ought not now to pass by a two-thirds vote, notwithstanding the failure to approve it, and the objections of the Executive returned to the Senate in writing; and we are told by the Senator from Ohio that the bill should be recommitted—not reconsidered or considered anew—but recommitted to the same committee who originally considered it and reported it back to the Senate.

To what end? What has the committee to do with this bill? They cannot amend it; they cannot report it back amended because it would be a new bill when so brought here. If this bill is to die, let those who have it in charge say so, and say no more about it; let it be knocked on the head by this Chinese veto; but do not undertake by referring it now to a committee to suppose that you can change its features in accordance with the veto. It is not competent for the committee to do so. As my friend from Ohio [Mr. PENDLETON] says, it is not competent for the Senate to do so. The question is whether this bill, to which both Houses have given their irrevocable consent, shall become a law notwithstanding the refusal of the President to sign it. You cannot reconsider the vote by which the bill was passed; it is too late. Neither House can reconsider that vote; it is clinched and you cannot recall it. Then what may you do with it? You cannot amend it, because you must have the vote reconsidered, first; and all you can now do is the single duty provided for you by the Constitution, and that is to vote whether it shall become a law notwithstanding the objection of the Executive now laid before you.

I hope the Senate will not consent to any further waste of time and delay, and I do not use the word offensively when I say, and the evasion of the plain issue whether we are to enact this bill into a law or no. If the Senate shall vote upon it and two-thirds shall not pass it, then I suppose the particular measure will be dead, and under our rules that vote after two days will not be capable of reconsideration. A new and distinct measure may be brought in; it may be debated; it may pass here again, and passed the other House, must then await the pleasure of the Executive before it becomes the law.

On the question of reference I propose to follow the example of the Senator from Ohio [Mr. SHERMAN] and discuss the treaty, and the bill, and the objections, or rather the single objection which has been returned to the Senate by the President.

There are very few questions in my opinion which have been before the Congress of the United States of more gravity, or which will prove to contain more far-reaching results, than this. While it may be said that public or private honor is a mere abstraction, I hold it to be the very essence of the individual's or the nation's life. When the President of the United States has seen fit in returning this bill to Congress, to couple it with such phrases as he has seen fit to employ, I propose to answer that part of his message, and show that it has no justification in fact, no justification in comity, no justification in the traditions of communication and respectful consideration of the action of one branch of this Government by another.

Mr. DAVIS, of West Virginia. If the Senator from Delaware will give way I will move that the Senate proceed to the consideration of executive business. The Senator says he wants to discuss this question, and of course he cannot do it well to-day, the message and accompanying papers having only been given to us in print this morning.

Mr. HOAR. One of the Senators on the other side said we must have an immediate vote; that there was great danger of violence

and bloodshed in San Francisco, and the whole Pacific coast would be burned up. Now, you are going to have that done just to accommodate the Senator from Delaware. [Laughter.]

Mr. DAVIS, of West Virginia. I did not catch what the Senator from Massachusetts said.

Mr. BAYARD. I want to say one thing. I do not think these proceedings should be a subject of jocularity. I think the gravity of this question and its importance to the people of the Pacific coast should prevent it from becoming a subject of jocularity in this senate.

Mr. HOAR. Will the Senator from Delaware pardon me? There was no jocularity on my part—

Mr. BAYARD. Then I greatly mistook the tone of the Senator's voice and the expression of his face.

Mr. HOAR. The Senator had not heard the sentence through. There was no jocularity on my part in regard to the statement of the Senator from California, or the opinion of the people of the Pacific coast. If there was any it was in regard to the proposition made by the Senator from West Virginia. I reminded that Senator that we were urged to consider these important objections brought forward by the President that the national faith was violated by the bill which he has vetoed, without even giving us the benefit of the examination of the objections of the Committee on Foreign Relations, because that Senator said he had advices from his State that there was danger of violence owing to the intense popular excitement there prevailing; and after the Senators have consumed mostly on that side of the Chamber, though not wholly, a large portion of the day, now when it is gravely proposed to postpone this matter, and to have this danger of violence incurred to accommodate the honorable Senator from Delaware, is it not apparent that that is a pretty ridiculous proposition?

Mr. DAVIS, of West Virginia. I move that the Senate proceed to the consideration of executive business.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from West Virginia, that the Senate proceed now to the consideration of executive business. [Putting the question.] The yeas seem to have it.

Mr. HOAR. I ask for the yeas and nays.

The PRESIDENT *pro tempore*. The yeas have it. Does the Senator from Massachusetts call for the yeas and nays?

Mr. HOAR. I withdraw the call.

Mr. BAYARD. The question of continuing the discussion further to-day is entirely for the convenience of the Senate to decide. There are but two clauses of the message which reached us yesterday which I will read in this connection. There are some remarkable propositions laid down by the message. It was announced by the Executive that—

A nation is justified in repudiating its treaty obligations only when they are in conflict with great paramount interests.

A repudiation I have always understood to be a disclaimer of obligation. A repudiator is a contemner of obligation. I do not hold that it is sound in ethics to announce that there can be justification in repudiation of treaty obligations, nor do I hold that there has been anything like it in the action of Congress in regard to the Chinese treaty. There is nothing to be found in the action of Congress to justify this other and further objection upon which the veto is sought to be justified. It is to be found on page 4:

The examination which I have made of the treaty, and of the declarations which its negotiators have left on record of the meaning of its language, leaves no doubt in my mind that neither contracting party in concluding the treaty of 1880 contemplated the passage of an act prohibiting immigration for twenty years, which is nearly a generation, or thought that such a period would be a reasonable suspension or limitation, or intended to change the provisions of the Burlingame treaty to that extent. *I regard this provision of the act as a breach of our national faith; and being unable to bring myself in harmony with the views of Congress on this vital point, the honor of the country constrains me to return the act with this objection to its passage.*

This is very strong language. To some persons, as to me, it may seem coarse language; it may seem devoid of that courtesy and restraint in phraseology which ought properly to characterize communications between two great departments of this Government, and would certainly be held offensive and inadmissible in diplomatic intercourse between two countries. The act of Congress in question was passed deliberately, reported by one of the committees of this body, I believe unanimously; it was discussed in both Houses and at length. I hold, therefore, that this language employed by the Executive is an unnecessary and unwarranted impingement of the act of Congress and of the votes of those who passed it. There has been in this message, as I say, an oversight and omission of that comity and due respect between the executive and legislative branches of the Government which, although unwritten, is as essential for the good government of this country as the letter of the Constitution itself.

Now, how is this objection sought to be sustained? Not by the force of the language employed in the treaty stipulations themselves, but by reference to the preliminary conversations of the American and Chinese commissioners, or to use the language of the message "the record of the meaning of the language employed by the commissioners" and their interpretation of what was intended. To carry out the logic of such a proposition, the enforcement of this treaty should have been also left to these commissioners, whose impressions

of the meaning of the words embodied in the treaty, and whose discretion in executing its provisions would entirely control the obvious intent of the provisions of the treaty, and the power of Congress to legislate in regard to its objects.

Any such rule of interpretation is utterly unwarranted. You can look to preliminary conversations, you can look to all that preceded the finality of diplomacy and its contracts, provided there is obscurity or ambiguity in the text of your treaty which you are not otherwise able to remove. This is a familiar rule of decision, reiterated by all courts over and over again, and by the Supreme Court of the United States lately in a very important case, in which Justice Miller, speaking for the court, in considering whether the Revised Statutes were the law of the land, or whether you could interpret and change their meaning by referring to the original statutes from which they were derived, declares:

The Revised Statutes must be treated as the legislative declaration of the statute law on the subjects which they embrace on the first day of December, 1873. When the meaning is plain the courts cannot look to the statutes which have been revised to see if Congress erred in that revision, but may do so when necessary to construe doubtful language used in expressing the meaning of Congress.—*United States vs. Bowen, 10 Otto, 100 United States Reports, South Carolina, page 513.*

Therefore if you want to ascertain the scope and meaning of this treaty, where are you to look? To the treaty itself. Upon what are you to agree? Upon the conditions of that treaty itself. To tell me that you are to go back, and find what was lurking in the mind of a commissioner prior to his final settlement and agreement, or to consider the chaffering that led to a contract instead of examining the contract itself, is to embark upon a sea of such uncertainty that any interpretation may be found for any construction that is sought to be given to an instrument. Why, sir, there is no safety for either contracting party, if the treaty itself as solemnly signed and sealed, is not to be held to contain the controlling evidence of its own meaning and its own construction.

But, sir, if there is an ambiguity I would clear it up by light from any quarter, from all contemporaneous official history, but the ambiguity must be established before you can call in the aid of preliminary and extraneous documents of this kind, and compel the language of the treaty to bend to the interpretation of something that preceded it, and was finally merged in it.

Mr. SHERMAN. I wish to ask the Senator from Delaware, if the treaty was so clear and unambiguous in terms, why was the word "skilled" inserted before the word "laborers?"

Mr. BAYARD. I will explain that.

Mr. SHERMAN. That certainly qualified the meaning of the word "laborers."

Mr. BAYARD. In the first place, I will adopt the facts and the source of the facts to which the Executive resorted, that is to say, the correspondence of the commissioners; and first I say that the agreement distinct and plain and clear, the principle which was admitted by the Chinese commissioners and their government—and which is contained here in the correspondence which accompanies the message of the President—that in regard to the regulation, limitation, or suspension of Chinese emigration to the United States, the sole discretion and the sole control were left to the Government of the United States. You may call it a unilateral power if you please, but it was expressly, exclusively conceded to the United States. It was placed there not by a unilateral treaty, but by the consent of both nations distinctly given by the intent and language of the treaty. Where is the proof of that? Let me read you from page 2556 of the RECORD, first, to see whose discretion, whose power was to construe and apply the terms of article 1 of the treaty of 1880. I read from page 2556 of the RECORD. The memorandum says:

At the moment, we are only prepared to negotiate for a mode of limitation, having in mind the interests of both governments. We are entirely ready to negotiate most carefully with your excellencies to the end that a limitation, either in point of time or of numbers, may be fixed upon the emigration of Chinese laborers to the United States.

Again on same page:

The Chinese commissioners replied that they had informed the secretary of the commission verbally that there would be difficulty in their accepting the word "prohibition," used in the second article; and, assuming that the word "regulate" would cover generally the other words "limit and suspend," they had suggested this limitation in hopes of learning from the United States commissioners what their idea of limitation was, and they would like to hear.

Mr. Trescott replied that the United States commissioners were not quite prepared to say.

I leave out what he says:

The Chinese commissioners said they did not intend their proposition to be considered as a substitute for article II, or in any sense an ultimatum on the part of the Chinese Government. They rather intended it to induce a free discussion of the subject so it should be thoroughly understood. By limitation in number they meant, for example—

That is the Chinese account—
that the United States having, as they supposed, a record of the number of immigrants in each year as well as the total number of Chinese now there, that no more should be allowed to go in any one year in future than either the greatest number which had gone in any year in the past, or the least number which had gone in any year in the past, or that the total number should never be allowed to exceed the number now there.

I draw the attention of the Senate to this definition from the Chinese commissioners, of that which they considered would be a reasonable exercise of discretion by the United States, in limiting the num-

ber of emigrants, and suggested that that should be enforced under the treaty, even that the Government of the United States could prevent any greater number from coming here than either the minimum or maximum of immigrants in any preceding year, and further, that at any time and forever the total number of Chinese laborers in the United States should not exceed that already here. Was not that a less reasonable limitation upon immigration than that of twenty years? Look at it practically; I will submit it to the common sense of mankind. The great body of Chinese laborers in California were young and healthy men who had been here not more than ten years, and many only two, three, four, or five years in this country. They were better fed, they were better paid, they were better off in every respect than they ever were at home. It was reasonable, therefore, to suppose that the term of their natural existence would rather be prolonged by their presence in this country. If the Chinese interpretation of what was intended by the power of limitation be carried out, would not those 120,000 men, or whatever is the present number, be nearly all alive at the end of twenty years? Some deaths in the course of nature would cause a loss of numbers; but remember, you have in the country a number of Chinese of the other sex; and if there was even in any moderate degree the institution of marriage existing among these people, natural fecundity would supply the loss by death of those who were already here, and the result would be logically that it would not only be a prohibition of twenty years, but it would be a perpetual prohibition against increase, because in any event according to the suggestions of the Chinese commissioners, the number in this country was not to exceed those there at the time the treaty was made.

The act of Congress which is so assailed by the Executive, secured expressly to every Chinaman in this country at the time of the passage of the act, and to those who should come within sixty days thereafter, all the privileges and immunities unimpaired as given by the Burlingame treaty. If there was any increase by birth among those already here there was to be no interference with such offspring.

I therefore say, that so far from the interpretation given to the treaty by the American Congress, that twenty years was a reasonable limitation being assailable, it was far less restrictive of emigration in its results than the proposition made by the Chinese commissioners themselves, which was, that under no circumstances should the total number of their people then in this country be ever increased beyond what it was at the date of the treaty.

But further as to the power of regulation conceded to the Government of the United States, I read again from the Chinese commissioners' reply:

As to limitation in time they meant, for example, that Chinese should be allowed to go in alternate years, or every third year, or, for example, that they should not be allowed to go for two, three, or five years.

Mr. Trescott replied that the United States commissioners feared there was some misunderstanding on the part of the Chinese commissioners as to the meaning of Article II. The United States Government did not ask the Chinese Government to regulate, limit, suspend, or prohibit immigration, but to leave that to the discretion and action of the United States Government itself. That under the Burlingame treaty, as construed in practice, the Chinese had the absolute right, in any numbers, to come to the United States. This had caused trouble and embarrassment. What the United States Government asked was that the Chinese Government should consent to such a modification of the Burlingame treaty as would enable it, without raising unpleasant questions of treaty construction, to exercise that discretion. The reasons why the United States Government should be allowed to do this rather than to impose the task upon the Government of China are manifest. If undertaken by China it would necessitate complicated regulations; the appointment of special officers at each port to enforce the rules on the part of the local officers would raise questions between the two governments. Besides, as the memorandum of the Chinese commissioners states, they could only apply to the ports of China, while the larger portions of emigrants go from Hong-Kong and Singapore.

It is far easier to prevent them from entering the United States than to prevent their leaving China. If the United States had the right it would most easily find the power to accomplish this result by appropriate legislation.

They thought it best for the friendly relations and the interests of both countries that the United States should have the right to limit, suspend, and prohibit, and to enforce such limitation or prohibition by their own laws, in their own ports, without imposing further responsibility upon China.

The Chinese commissioners asked if the United States commissioners could give them any idea of the laws which would be passed to carry such power into execution.

Mr. Trescott replied that this could hardly be done. It would be as difficult to say what would be the special character of any act of Congress as it would be to say what would be the words of an edict of the Emperor of China to execute a treaty power. That two great nations discussing such a subject must always assume that they will both act in good faith and with due consideration for the interests and friendship of each other. That the United States Government might never deem it necessary to exercise this power. It would depend upon circumstances.

At the risk of fatiguing the Senate at this late hour I must ask them to consider further what was said:

If Chinese immigration concentrated in cities where it threatened public order, or if it confined itself to localities where it was an injury to the interests of the American people, the Government of the United States would undoubtedly take steps to prevent such accumulations of Chinese. If, on the contrary, there was no large immigration, or if there were sections of the country where such immigration was clearly beneficial, then the legislation of the United States under this power would be adapted to such circumstances. For example, there might be a demand for Chinese labor in the South, and a surplus of such labor in California, and Congress might legislate in accordance with these facts. In general, the legislation would be in view of, and depend upon, the circumstances of the situation at the moment such legislation became necessary.

And here follows the next memorandum:

The Chinese commissioners said this explanation was satisfactory.

What now becomes of the objection of the veto? In the first place, it is strange that our commissioner, Mr. Trescott, should talk about the capacity of the Government of the United States to remove the accumulations of population in any part of this country, or that the Congress of the United States might assume to pass a law to enable the landing of these immigrants at one port of the United States and not at others. It was obviously overlooking an essential feature of our Constitution that privileges shall not be given to the ports of one State over another by Congressional regulation. After a population finds itself lawfully within the territorial limits of the United States, Congress may not restrain them and compel them to take up their residence in one State or in another. That may do for China, but it will not do for the United States. The Emperor of China, I apprehend, can by an edict remove or decapitate his population at his will; but that is not yet the Government of this country.

At the same meeting the Chinese commissioners went on to say, that they would never forget that the Government and people of the United States had not treated Chinese laborers as they had been treated elsewhere; the Chinese Government "would never forget that it was the Government of the United States through its representatives abroad that first called the attention of the Government of China to the cruelties to which its subjects were subjected in Cuba and elsewhere," and appreciated the feeling of the kindness of the Government of the United States. I read this to show the discretion which by clear and mutual understanding was to interpret the treaty and "to apply the restrictions was conceded solely and wholly to the Government of the United States to be exercised without consultation with China at all, except to inform the emperor of what we had decided upon by way of legislation to enforce the provisions of the treaty."

There is not—

Said our three commissioners in their communication No. 7, dated at Peking, November 6, 1880—

There is not in the treaty any language which modifies this concession, and there was not, as we think, the slightest intention on the part of the Chinese commissioners to diminish the full force of the discretion given to the United States.

There were one or two minor points upon which we would have preferred our own language. For instance, we wished in article I to say "Chinese laborers should be protected against any abuse or maltreatment," instead of "should not be subject to any abuse or maltreatment;" but this latter phrase had been used in the treaty with Great Britain, and although we thought it weaker than the form we proposed, we did not think it worth while to insist upon our preference in view of the concession of the principle which we think securely established that the Government of the United States had the power to regulate, limit, or suspend, without conditions, Chinese labor immigration when deemed injurious to the interests of its citizens.

It would be difficult indeed to state the control of the United States over the "principle" conceded in more unmistakable words—

that the Government of the United States had the power to regulate, limit or suspend without conditions Chinese labor immigration when deemed injurious to the interests of its citizens.

The Senator from Ohio [Mr. SHERMAN] asked me just now by what right we interpolated the word "skilled" before the word "laborers." Let us see what answer there is to this from the source from which the President has drawn his information of the treaty, and the language by which it is to be construed. I read from page 2557 of the RECORD in a memorandum submitted to the Chinese commissioners:

2. The United States commissioners feel it their duty to insist upon their definition of Chinese laborers, namely: "The words Chinese laborers are herein used to signify all immigration other than that for teaching, trade, travel, study, and curiosity heretofore referred to and provided for in existing treaties." They cannot consent that artisans shall be excluded from the class of Chinese laborers, for it is this very competition—

I commend this to the Senator from Ohio—

of skilled labor in the cities where the Chinese labor immigration concentrates which has caused the embarrassment and popular discontent they wish to avoid. But they are willing to adopt an article providing that the classes who are authorized to come and reside in the United States shall bring the servants who are necessary to their convenience.

3. The United States commissioners cannot consent to the limitation that Chinese laborers excluded shall be those only who are employed by American citizens. This, so far from being a check upon such immigration, would be simply a prohibition of the use of cheap labor by the American citizens. Every other person, that is, any and every resident, French, English, German, Chinese, would have the right to bring into the country and use such labor in direct competition with the American citizen. The United States commissioners can scarcely think that this proposition was fully considered by the Chinese commissioners.

I feel unwilling to rest under the imputation, which I resent, that by any vote of mine I have infringed a rule of honor of my country, or committed any breach of national faith, and the gross injustice of the charge is proven by an examination of its alleged basis. Let me read further as to this. On page 2558 of the RECORD the United States commissioners reporting to Mr. Evarts, then Secretary of State, say:

Without going into a detailed history of the negotiations which has been furnished to the Department from time to time in our former dispatches, we may say that the Chinese Government submitted a scheme which provided—

First. That the immigration should be "regulated" by the Government of the United States, such regulations, however, to be communicated to the Chinese Government for approval before going into effect.

Second. That "artisans" should not be included among Chinese laborers.

Third. That the regulation should apply only to Chinese laborers in the employ of American citizens.

Fourth. That if the regulation should extend to the limitation or suspension of such immigration, the limitation in point of numbers or the suspension in point of time should be specific.

As to the second and third points of this scheme it is unnecessary to repeat the obvious reasons why they could not even be taken into consideration.

At this point in the discussion we deemed it best to say that while the details of the treaty and its language were matters in which we would gladly consult the preferences of the Chinese Government, we could not consent to any settlement which did not recognize the entire discretion of the United States in dealing with this subject. We thought that any regulations to be matter of joint arrangement would only raise new questions, and that the administration of any such joint regulations would in practice prove unsatisfactory. Besides which they could only be of force in Chinese ports and would be useless in regard either to Hong-Kong or Singapore. We thought that the simplest, the directest, and the only efficient plan was to give the control of the subject to the Government of the United States.

We therefore communicated to the Chinese commissioners that we would consent to strike out the word "prohibit," provided they would accept the words "regulate, limit, or suspend," being satisfied that these words covered the power to devise and enforce all necessary and proper legislation.

Upon their acceptance of this proposition we consented to such variation of the phraseology of the articles as they desired. You will observe that this language imposes no conditions upon the discretion of the United States. That the discretion should be used reasonably; that all classes of Chinese subjects not within the scope of this treaty should be protected in the enjoyment of such rights as are now conferred by existing treaties, and that the diplomatic representative of the Chinese Government should have the right from time to time to call the attention of the United States Government to any unanticipated hardship that the legislation of the United States might cause, are provisions which need no comment.

As to the fourth point of the Chinese project, we were satisfied that the necessity for such special limitation or suspension, varying according to the actual condition of the country and the character and extent of the immigration at the date of such proposed limitation or suspension, it would be impossible to devise a satisfactory specification. We thought that the principle of its right to use its discretion being once admitted as belonging to the Government of the United States, the Chinese Government should assume that we would exercise that discretion with justice, and in a spirit of friendship.

Now, Mr. President, here is a proof, if words can prove anything, that there was a concession deliberately made by the Chinese Government and its commissioners that the regulation, the power to control under this treaty, the limitation or suspension of emigration were vested without conditions, and solely in the discretion of the Government of the United States. That is a clear, admitted fact. Then it follows, that when the Chinese were asked what their interpretation of discretion as to limitation as to numbers was, they stated that in their view, it would be reasonable and proper for the United States to declare, that no more Chinese laborers should ever be in the United States than were here at the time the treaty was made.

Now what have the Government of the United States done? Have they permanently prohibited the coming of Chinese laborers? or have they proposed to diminish the number now here? Have they declared that the number never should exceed those already here? No, sir. They have simply said in this bill that for twenty years no more should be brought here, and they have adopted the meaning of the word "laborers" precisely as it was conceded by the Chinese commissioners themselves, that is to say, that artisans, that men who are skilled laborers, should not be allowed to come in.

But twenty years is the bugbear. What is the force of the objection to a suspension for twenty years?

Mr. SHERMAN. The Senator will allow me before he leaves that point to call his attention to one point. I see noted in these papers a concession by the commissioners of China of the construction put upon the word "laborers" by Mr. Trescot, but, on the other hand, in the paper from the Chinese minister communicated within a day or two and sent to us by the President, I see that the President communicates these reasons of the Chinese minister, and they make this very point as one of the leading objections, that the word "skilled" was inserted instead of using the words prescribed by the treaty, the word "laborers." The meaning of that, however, has been extended by the use of the terms "skilled" and "unskilled" as describing "laborers."

Mr. BAYARD. I encounter that by reading the memorandum of the conversation between the plenipotentiaries or commissioners.

Mr. SHERMAN. The Senator read what Mr. Trescot said, but did not read any assent on the part of the Chinese commissioners to that construction of the word "laborers." It may be in the papers, but I do not see it. I do not see that the Chinese commissioners ever consented to that meaning of the word "laborers."

Mr. BAYARD. I may say further to the honorable Senator, that I believe that this discussion should properly be confined to the single objection on which the President has based his veto, and that is, that the twenty years' suspension is a dishonorable violation of the treaty. I have endeavored to show by the language of the Chinese commissioners themselves, that they proposed limitations far more prohibitory in their necessary results than those which the present bill contains, and I leave the strength of that statement to stand on what I have read from their own account.

But you speak of the twenty years. Why, what is twenty years in the life of a nation? What is twenty years for discovering the true results and effects of a policy? It has taken you nearly twenty years to find out that the Burlingame treaty was a curse instead of a blessing. We never had diplomatic relations with China until within thirty-eight years. The first treaty was in 1844, a treaty of peace, amity and commerce. We had another in 1858 upon claims and regulations, and then came the Burlingame treaty of 1868.

Now, about that I have a word to say. I do not think in the history of civilized government another such precedent can be found of a treaty rooted in such soil as that. In 1867 Mr. Burlingame was the ambassador of the United States at China; he was charged with the representation of the interests of this country; he was thoroughly

informed as to its counsels and entrusted with its powers. While he was abroad in China occupying the position of minister of the United States, the representative, advocate, and friend of this people, in the twinkling of an eye he changed his position and became the Chinese minister to the United States. Such an act was in my judgment indefensible. It is impossible, for a man honestly to serve two masters, and a treaty begotten under such influences and under such circumstances could scarcely fail to bear its natural fruits. Somebody was deceived, and it either was the people of the United States who lost the services of their confidential minister and agent, or it was the people of China who accepted them. I would like to read the first and only news that this Government had from Mr. Burlingame of his change. It is dated from the United States Legation at Peking on the 23d of November, 1867, and telegraphed "To his Excellency Hon. Cassius M. Clay, United States Minister" at Russia.

UNITED STATES LEGATION, PEKING,
November 23, 1867.

To his Excellency Hon. Cassius M. Clay, United States Minister:

Chinese empire appointed me envoy to treaty powers. Accepted. Leave immediately for San Francisco.

ANSON BURLINGAME.

Mr. SHERMAN. I desire to say to the Senator from Delaware that Mr. Burlingame was an intimate acquaintance of mine, and I know as a matter of public history—it was universally spoken of; I was then a member of the Senate—that this was done with the assent and the approval of the United States Government.

Mr. BAYARD. I have just read what Mr. Burlingame himself says and let him speak for himself. That is the best way.

Mr. SHERMAN. As I understand it, a communication was made directed to our Government that he was offered this mission, and he was authorized to accept it. Indeed, it was regarded as a great compliment to the people of the United States, that this great empire, about to open its ports, did select the American minister rather than any other as their envoy.

Mr. BAYARD. I merely read this as the proof of history. I desire to make no comment on any man living or dead, but I desire the truth. The true history of the origin of this diplomacy with China should appear. From Shanghai on the 14th of December, 1867, Mr. Burlingame wrote to Mr. William H. Seward, then Secretary of State:

SHANGHAI, December 14, 1867.

SIR: You will have learned from my telegram from Peking of my appointment by the Chinese Government as "envoy" to the treaty powers, and of my acceptance of the same.

The facts in relation to the appointment are as follows: I was on the point of proceeding to the treaty ports of China to ascertain what changes our citizens desired to have made in the treaties, provided a revision should be determined upon; after which it was my intention to resign and go home. The knowledge of this intention coming to the Chinese, Prince Kung gave a farewell dinner, at which great regret was expressed at my resolution to leave China, and urgent requests made that I would, like Sir Frederick Bruce, state China's difficulties and inform the treaty powers of their sincere desire to be friendly and progressive. This I cheerfully promised to do. During the conversation, Wensiang, a leading man of the empire, said, "Why will you not represent us officially?" I repulsed the suggestion playfully, and the conversation passed to other topics.

Subsequently I was informed that the Chinese were most serious, and a request was made through Mr. Brown, Chinese secretary of the British legation, that I should delay my departure for a few days until a proposition could be submitted to me. I had no further conversation with them until the proposition was made in form requesting me to act for them as ambassador to all the treaty powers. I had in the interim thought anxiously upon the subject, and after consultation with my friends determined, in the interests of our country and civilization, to accept. The moment the position was formally tendered I informed my colleagues of all the facts, and am happy to say that they approved of the action of the Chinese and did all they could to forward the interests of the mission.

J. McLeavy Brown, esq., Chinese secretary of the British legation, was persuaded in the common interest to act as first secretary to the mission, and Mr. Dechamps, a French gentleman who had accompanied Ping on a visit to Europe, was selected as second secretary. Two Chinese gentlemen of the highest rank were selected from the foreign office to conduct the Chinese correspondence and as "learners." My suite will number about thirty persons. I shall leave for the United States by the February steamer for California.

I limit myself in this note to the above brief history of the mission, reserving my reasons for accepting it to a personal interview at Washington.

I may be permitted to add, that when the oldest nation in the world, containing one-third of the human race, seeks, for the first time, to come into relations with the west, and requests the youngest nation through its representative to act as the medium of such a change, the mission is one not to be solicited or rejected.

Dr. S. Wells Williams, for the sixth time, has been left in charge of the United States legation in China, and is, in every respect, competent to conduct its affairs.

Permit me to request the Government, most earnestly, not to name my successor until I can give it information which may be useful in making a selection.

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

ANSON BURLINGAME.

Hon. WILLIAM H. SEWARD, Secretary of State.

Mr. President the suite of thirty persons I believe swelled to sixty, and it came over to San Francisco in a manner that is described by the Chinese commissioners. They declare—you will find it on page 2554 of the RECORD—after stating that this objection to Chinese immigration comes from the rabble, and from the Irish against the foreign guests, and all that sort of thing—

Since the establishment of treaty relations between the two countries, citizens of the United States in China have not been relegated to the jurisdiction of the Chinese authorities. China has accorded this privilege to the United States. Chinese subjects have been permitted to go and come at their pleasure. The United States has granted this concession to China. At the ratification of this treaty the people of both sides of the Pacific Ocean leaped, shouted, and clapped their hands with joy and pleasure, friendly relations were firmly established, divisions were obliterated, the people could come and go as they chose, and the Government only heeded the wishes of the people. All this was eminently just and honorable in the

highest degree to the United States. This being so, when other powers were exceedingly urgent in their need of Chinese labor and desired this Government to allow its subjects to go of their own free will, this Government, because those other powers treated the Chinese laborers harshly and not with the kindness shown them by the United States, could not do otherwise than take this difference into consideration.

Is there anything like this in history? I know of nothing, and would be glad to be corrected by any one whose reading has taken a wider range than my own.

Was there ever a case before in which an ambassador charged with the duty of representing his country at a foreign court—possessed of all manner of confidential information, undertook in the midst of negotiations to change his allegiance and become at once the representative of an antagonist? Because, although you may speak of "friendly powers"—the interest of nations are diverse, and the doctrine and duty of self-protection and self-preservation is ever present and asserting itself.

The consent of the Government of the United States may absolve the ambassador from its claims, but it cannot qualify him, nor make the transaction admissible in any view of political morality and right.

A man cannot faithfully serve two contending governments at the same time. It is not possible in the nature of things. Somebody is deceived and somebody is wronged in such a transaction.

Now, what was the result of this great Burlingame treaty? Here is the treaty itself. Contrast it with the prior treaties made by William B. Reed and by Caleb Cushing, which confined the American ambassador almost to his own house in China, and you suddenly plunge from that into the most gushing condition of relationship, in which it seems to me that these orientals and occidentals suddenly fell upon each other's necks and embraced each other like long-lost brothers.

What was the object in the Chinese using an American, an American minister to represent them in the United States? What was the object of the American Government consenting that the man formerly in their confidence, charged with the guardianship of their especial interests, should suddenly go over to the other side and represent them? It was the spirit of mercantile greed, the spirit of gain, and that spirit has been woefully disappointed. They overlooked or disregarded the difference of race, they overlooked the difference between Chinese and Christian civilization, they overlooked the great and manifest distinctions between these two nations and their population; they did not consider nor weigh for an instant their dissimilarities in essentials. They saw but one thing—a profitable commerce, and they rushed with haste into a treaty that considered Americans and Chinamen as if they were all of the same race, habits, and characteristics—all equally and alike entitled and fitted to become citizens of the Republic of the United States. And that was only fourteen short years ago! But it has taken time to discover the effect of the Burlingame treaty; it has taken time to discover what it meant; and at last the people of the Pacific coast, who are the victims of that error, of that mistake, of that want of proper consideration in that treaty, come here now and with a single voice, inform the people of the United States that the prospect of further Chinese immigration is absolutely unbearable.

I do not care to recite all that they have said; it would be painful and it would be useless; but if ever in the history of time communities spoke with one voice, imploring their fellow-countrymen and imploring their government, that they should be protected from this inundation of countless numbers and of a race wholly different from their own, it has been spoken by the people of the Pacific coast in this case. I have heard it, and from my heart I respond to it to-day. We cannot undertake, as Mr. Trescott may have suggested, and as the Chinese commissioners suggested, to admit this population to one part in the country and not to another, or to move them at will from place to place after they have come here. It may not be. The question is whether under the practical historical and geographical facts, under the contiguity of the Pacific slope to the Empire of China, we will interpose in accordance with the treaty stipulations which are before the Senate, in one accord with their letter and spirit, and acting inside of the very limitation the Chinese themselves, suggested as a definition of our powers, grant them the relief which they so urgently and prayerfully ask at our hands.

Oh, Mr. President, the Burlingame treaty was a humbug; it began and ended in it. I can recall the procession of that embassy as it swept like a grand circus over the United States, and know what it meant and know what it did, and now you see its fruits. They were dealing with a great question in a petty spirit. They were dealing with a vast question of human association with all its sensibilities, prejudices, and idiosyncracies, with all its hopes and fears, and they were dealing with it as if nothing but commerce and trade filled and swayed the human heart and exercised the human intellect. Why was there not some mingling of reverence in this, why was there not some respect paid to the finger of the Almighty when he points out the difference between races of mankind? No; the same short-sighted sense of commercial greed that made the Burlingame treaty is the same that would prevent now our remedying it by this law.

The veto message contains so far as I have read it not one word of kindly sympathy or feeling for those of our fellow-countrymen who cry aloud to us for relief and assistance. It enlarges upon the

value and results of Chinese labor, and seems disposed rather to encourage the immigration that shall bring it here to compete with and destroy the labor of our own people.

Now, sir, whether I admire the Chinese or not, whether I wish to make my home with them, or that they should make their homes here, is not the question. I do stand, I believe we should stand upon the firm ground of good faith and firm adherence to treaty stipulations, and I deny that there has been in the act of Congress the slightest ground to charge the Congress of the United States with a violation of the national faith under this treaty by the law which they have passed, and which I hope will pass again notwithstanding this veto.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Ohio to refer the bill, with the message and accompanying papers, to the Committee on Foreign Relations.

Mr. GARLAND. I ask for a division of the question so as to vote on the reference of the bill first and afterward of the message and papers.

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

Mr. HARRIS. I hope the Senator from Colorado will not insist on that motion. I think we can come to a vote at once and dispose of this question. If we do not dispose of it to-night, there is no telling how much of to-morrow will be consumed with it.

Mr. TELLER. I am not particular. I think there is some executive business which ought to be disposed of.

Mr. COCKRELL. We can do that after awhile.

Mr. DAVIS, of West Virginia. I hope we shall have a vote now. A few minutes ago when some gentleman wished an executive session the other side of the House objected.

Mr. TELLER. I withdraw the motion.

The PRESIDENT *pro tempore*. The Senator from Arkansas asks for a division of the question on the motion to refer. The first question is, Will the Senate refer the bill to the Committee on Foreign Relations?

Mr. SHERMAN. I call for the yeas and nays.

The yeas and nays were ordered, and the Principal Legislative Clerk proceeded to call the roll.

Mr. BECK, (when his name was called.) I am paired with the Senator from Maine [Mr. HALE] on all political questions and on all questions which his colleague [Mr. FRYE] may regard as such. Being so paired, I decline to vote on this question.

Mr. GARLAND, (when his name was called.) I am paired with the Senator from Vermont, [Mr. EDMUNDS,] who I believe, if here, would vote for the reference of the bill, and I should vote against it. Mr. JONAS, (when his name was called.) On this question I am paired with the Senator from Iowa, [Mr. ALLISON.] If he were present, I should vote "nay."

Mr. RANSOM, (when his name was called.) On this question I am paired with the Senator from Illinois, [Mr. LOGAN.] If he were present, I should vote "nay."

Mr. ROLLINS, (when his name was called.) On this question I am paired with the Senator from Florida, [Mr. JONES.]

Mr. SAULSBURY, (when his name was called.) I am paired with the Senator from Michigan, [Mr. FERRY.] I do not know how he would vote; but if he were present, I should vote "nay."

Mr. SAUNDERS, (when his name was called.) I am paired with the Senator from Kentucky, [Mr. WILLIAMS.] If he were present, I should vote "yea."

Mr. KELLOGG, (when Mr. VANCE's name was called.) The Senator from North Carolina [Mr. VANCE] is paired with the Senator from Michigan, [Mr. CONGER.] If the Senator from North Carolina were present, he would vote "nay."

The result was announced—yeas 18, nays 32; as follows:

YEAS—18.			
Aldrich,	Harrison,	McMillan,	Sawyer,
Anthony,	Hawley,	Miller of N. Y.,	Sherman,
Blair,	Hill of Colorado,	Mitchell,	Windom.
Dawes,	Hoar,	Morrill,	
Frye,	Kellogg,	Platt,	
NAYS—32.			
Bayard,	Farley,	Johnston,	Plumb,
Call,	Gorman,	Jones of Nevada,	Pugh,
Cameron of Wis.,	Groome,	Lamar,	Sewell,
Cockrell,	Grover,	McPherson,	Slater,
Coke,	Hampton,	Maxey,	Teller,
Davis of Illinois,	Harris,	Miller of Cal.,	Vest,
Davis of W. Va.,	Ingalls,	Morgan,	Voorhees.
Fair,	Jackson,	Pendleton,	Walker.
ABSENT—26.			
Allison,	Edmunds,	Jones of Florida,	Saulsbury,
Beck,	Ferry,	Lapham,	Saunders,
Brown,	Garland,	Logan,	Vance,
Butler,	George,	McDill,	Van Wyck,
Camden,	Hale,	Mahone,	Williams.
Cameron of Pa.,	Hill of Georgia,	Ransom,	
Conger,	Jonas,	Rollins,	

So the Senate refused to refer the bill to the Committee on Foreign Relations.

The PRESIDENT *pro tempore*. The question now is on the remaining branch of the motion, to refer the message and papers accompanying the bill to the Committee on Foreign Relations.

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

Mr. HARRIS. I hope this question will be disposed of.
 Mr. ANTHONY. I withdraw the motion.
 The PRESIDENT *pro tempore*. The question is on the other branch of the motion, to refer the message and accompanying papers to the Committee on Foreign Relations.

Mr. SHERMAN. I call for the yeas and nays.
 The yeas and nays were ordered; and the Principal Legislative Clerk proceeded to call the roll.

Mr. GARLAND, (when his name was called.) I am paired with the Senator from Vermont, [Mr. EDMUNDS.]

Mr. ROLLINS, (when his name was called.) I am paired with the Senator from Florida, [Mr. JONES.]

Mr. SAULSBURY, (when his name was called.) I am paired with the Senator from Michigan, [Mr. FERRY.]

Mr. SAUNDERS, (when his name was called.) I am paired with the Senator from Kentucky, [Mr. WILLIAMS.] If not paired, I should vote "yea."

The roll having been concluded the result was announced—yeas 19, nays 29; as follows:

YEAS—19.			
Aldrich,	Harrison,	Mitchell,	Sewell,
Anthony,	Hawley,	Morrill,	Sherman,
Blair,	Hoar,	Platt,	Teller,
Dawes,	McMillan,	Plumb,	Windom.
Frye,	Miller of N. Y.,	Sawyer,	

NAYS—29.			
Bayard,	Gorman,	Jones of Nevada,	Pugh,
Cameron of Wis.,	Groome,	Kellogg,	Slater,
Cockrell,	Grover,	Lamar,	Vest,
Coke,	Hampton,	McPherson,	Voorhees,
Davis of Illinois,	Harris,	Maxey,	Walker.
Davis of W. Va.,	Ingalls,	Miller of Cal.,	
Fair,	Jackson,	Morgan,	
Farley,	Johnston,	Pendleton,	

ABSENT—28.			
Allison,	Conger,	Hill of Georgia,	Ransom,
Beck,	Edmunds,	Jonas,	Rollins,
Brown,	Ferry,	Jones of Florida,	Saulsbury,
Butler,	Garland,	Lapham,	Saunders,
Call,	George,	Logan,	Vance,
Camden,	Hale,	McDill,	Van Wyck,
Cameron of Pa.,	Hill of Colorado,	Mahone,	Williams.

So the Senate refused to refer the message and accompanying papers to the Committee on Foreign Relations.

Mr. FARLEY. I now ask that we come to a vote on the bill.

The PRESIDENT *pro tempore*. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are to be taken on this question by the Constitution. Those who are in favor of the passage of the bill notwithstanding the objections of the President of the United States will, as your names are called, answer "yea;" those of a contrary opinion will, as your names are called, answer "nay."

The Principal Legislative Clerk proceeded to call the roll.

Mr. GARLAND, (when his name was called.) I am paired with the Senator from Vermont, [Mr. EDMUNDS,] who, if here, would vote "nay" and I should vote "yea."

Mr. JACKSON, (when his name was called.) On the passage of this bill I am paired with the junior Senator from Iowa, [Mr. McDILL.] If he were present, I should vote "yea."

Mr. JONAS, (when his name was called.) On this bill I am paired with the Senator from Iowa, [Mr. ALLISON.] If he were present, he would vote "nay" and I should vote "yea."

Mr. RANSOM, (when his name was called.) I am paired on this question with the Senator from Illinois, [Mr. LOGAN.] If he were present, I should vote "yea."

Mr. ROLLINS, (when his name was called.) I have transferred my pair with the Senator from Florida [Mr. JONES] to the Senator from Virginia [Mr. MAHONE] on this question.

Mr. SAULSBURY, (when his name was called.) I am paired with the Senator from Michigan, [Mr. FERRY.] If he were present, I should vote "yea."

Mr. SAUNDERS, (when his name was called.) I am paired with the Senator from Kentucky, [Mr. WILLIAMS.] If he were here, I should vote "nay."

Mr. RANSOM, (when Mr. VANCE's name was called.) My colleague [Mr. VANCE] was paired on this bill with the Senator from Louisiana, [Mr. KELLOGG.] That pair has been transferred to the Senator from Michigan, [Mr. CONGER.] If my colleague were present, he would vote "yea."

The roll-call was concluded.
 Mr. BECK. My colleague [Mr. WILLIAMS] is necessarily absent. He would vote "yea" if present.

The result was announced—yeas 29, nays 21; as follows:

YEAS—29.			
Bayard,	Farley,	Lamar,	Slater,
Beck,	Gorman,	McPherson,	Teller,
Call,	Grover,	Maxey,	Vest,
Cameron of Wis.,	Hampton,	Miller of Cal.,	Voorhees,
Cockrell,	Harris,	Miller of N. Y.,	Walker.
Coke,	Hill of Colorado,	Morgan,	
Davis of W. Va.,	Johnston,	Pendleton,	
Fair,	Jones of Nevada,	Pugh,	

NAYS—21.			
Aldrich,	Harrison,	Mitchell,	Sewell,
Anthony,	Hawley,	Morrill,	Sherman,
Blair,	Hoar,	Platt,	Windom.
Davis of Illinois,	Ingalls,	Plumb,	
Dawes,	Kellogg,	Rollins,	
Frye,	McMillan,	Sawyer,	

ABSENT—26.			
Allison,	Ferry,	Jonas,	Saulsbury,
Brown,	Garland,	Jones of Florida,	Saunders,
Butler,	George,	Lapham,	Vance,
Camden,	Groome,	Logan,	Van Wyck,
Cameron of Pa.,	Hale,	McDill,	Williams.
Conger,	Hill of Georgia,	Mahone,	
Edmunds,	Jackson,	Ransom,	

The PRESIDENT *pro tempore*. The bill does not pass, two-thirds of the Senators present not voting in the affirmative.

HOUSE BILL REFERRED.

The joint resolution (H. R. No. 185) granting the use of tents at the soldiers' reunion to be held at Belle Plaine, Iowa, in the month of September or October, 1882, was read twice by its title, and referred to the Committee on Military Affairs.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a message from the President of the United States, transmitting, in reply to the resolution of the 29th ultimo, the report of the Secretary of State concerning the arrest of citizens of the United States confined in Ireland; which was referred to the Committee on Foreign Relations, and ordered to be printed.

He also laid before the Senate the following message from the President of the United States; which was referred to the Committee on Indian Affairs, and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a communication from the Secretary of the Interior of this date with draft of bill for the relief of Pierre Garrieaux and correspondence in relation thereto.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, April 5, 1882.

He also laid before the Senate the following message from the President of the United States; which was referred to the Committee on Appropriations, and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a communication from the Secretary of the Interior, setting forth the necessity for an increased number of law clerks in the office of the Assistant Attorney-General in the Department of the Interior because of the growing amount of business in that office. The matter is commended to the attention and favorable action of Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, April 5, 1882.

PRESIDENTIAL ELECTIONS.

Mr. HOAR. I move that the Senate now proceed to the consideration of the bill concerning the Presidential count. I suppose it is not necessary to have the title read.

Mr. COCKRELL. The same bill that was pending?
 Mr. HARRIS. Yes, sir; and on my motion it was postponed until to-morrow, and I very much hope the Senate will take it up.

The PRESIDENT *pro tempore*. If there be no objection, the bill will be taken up. The Chair hears no objection, and it is taken up. Senate bill No. 613 is laid before the Senate as the unfinished business.

Mr. ANTHONY. I move that the Senate adjourn.
 The motion was agreed to; and (at five o'clock and twelve minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, April 5, 1882.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. F. D. POWER.

The Journal of yesterday was read and approved.

SOLDIERS' REUNION, BELLE PLAINE, IOWA.

Mr. THOMPSON, of Iowa. I ask unanimous consent for the present consideration of a joint resolution which I send to the desk. It will take but a moment.

Mr. RANDALL. Let it be read, the right to object being reserved. The Clerk read as follows:

Joint resolution granting the use of tents at the soldiers' reunion, to be held at Belle Plaine, Iowa, in the month of September or October, 1882.

Resolved, *ds.*, That the Secretary of War be, and is hereby, authorized to send from the arsenal at Rock Island, Illinois, to be used at the soldiers' reunion at Belle Plaine, Iowa, to be held in the month of September or October, 1882, such tents as can be conveniently spared, said tents to be returned after holding of said reunion-meeting in as like good condition as when received: *Provided*, That all transportation of said articles to and from the place of the reunion to the arsenal shall be without expense to the Government: *Provided further*, That the adjutant-general of the State of Iowa, or other proper accounting officer, shall receipt for said camp equipage in the name of said State, and that such of them as shall not be returned shall be charged to said State against its quota.